



EUROPEAN COMMISSION

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SENSITIVE*: *COMP Operations*

**Subject: State Aid SA.102504 (2022/N) – Belgium
COVID-19: Aid by Flanders to undertakings and public entities that suffer a negative economic impact due to the Covid-19 measures and Brexit**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 4 April 2022, Belgium (Flemish Region) notified aid in the form of limited amounts of aid (aid to undertakings and public entities that suffer a negative economic impact due to the Covid-19 measures and Brexit, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)¹.
- (2) The Belgian authorities provided further information on 6, 21, and 25 April, and 2, 18 and 31 May, 2022.
- (3) Belgium exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

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¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

Son Excellence Madame Sophie Wilmès
Ministre des Affaires étrangères, des Affaires
européennes et du Commerce extérieur,
et des Institutions culturelles fédérales
Rue des Petits Carmes, 15
B - 1000 Bruxelles

Hare Excellentie mevrouw Sophie Wilmès
Minister van Buitenlandse Zaken, Europese Zaken en
Buitenlandse Handel,
en van de Federale Culturele Instellingen
Karmelietenstraat 15
B - 1000 Brussel

Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) The Flemish authorities consider that the COVID-19 pandemic affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the pandemic.
- (5) In addition to the pandemic, the Flemish authorities consider that undertakings have suffered losses and costs related to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (“Brexit”). They note that the latest indicators and enquiries among entrepreneurs in Flanders highlight a progressive negative impact after a period of uncertainty as a consequence of the simultaneous impact of Brexit and of the COVID-19 pandemic.
- (6) The Flemish authorities note that signs of cumulative impact have become visible in all sectors, especially in trade and logistics, fisheries, and services. For example, in the agrifood sector, ornamental horticultural growers have been particularly affected, as a direct result of the disruption of flower shows, due to the COVID-19 pandemic, on top of the increased administrative burden, time losses, and higher costs as a result of Brexit. Tourism is also significantly affected, in particular hotels, restaurants, catering, and tour operators. For example, the demand for previously very popular school trips from the United Kingdom to West Flanders (“world war tourism”) significantly decreased: Brexit increased travel costs and the need for travel documents, as well as the COVID-19 pandemic, resulted in the cancellation of almost all trips.
- (7) The Flemish authorities confirm that the aid under the measure is not conditional upon the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (8) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework³.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ L 17, 6.10.1958, p. 385.

³ The Flemish authorities indicate that aid may also be granted in accordance with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1 (“GBER”), Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1 (“ABER”), and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37 (“FIBER”) and de minimis Regulations (Commission Regulation (EU)

2.1. The nature and form of aid

- (9) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (10) The legal basis for the measure is the draft Decision of the Flemish Government regarding the granting of aid to undertakings and public entities that suffer a cumulative negative economic impact due to the Covid-19 measures and Brexit (“Decision of the Flemish Government”).

2.3. Administration of the measure

- (11) The Flanders Innovation and Entrepreneurship Agency (“VLAIO”) is responsible for administering the measure.

2.4. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 223 million.
- (13) The measure will be financed by public funds.
- (14) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 30 June 2022.

2.5. Beneficiaries

- (15) The beneficiaries of the measure are public entities⁴, and undertakings that have an active place of business in the Flemish Region, which are affected economically by the effects of the COVID-19 pandemic and Brexit. Credit and financial institutions are excluded as eligible beneficiaries.
- (16) Aid may not be granted under the measure to medium-sized⁵ and large enterprises that were already in difficulty within the meaning of the GBER⁶, ABER⁷ or FIBER⁸, on 31 December 2019⁹.

No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8)).

⁴ See also in that respect the explanation in footnote 14.

⁵ As defined in Annex I to GBER.

⁶ As defined in Article 2(18) GBER.

⁷ Article 2(14) ABER.

⁸ Article 3(5) FIBER.

- (17) Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, ABER, or FIBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁰ or restructuring aid¹¹.
- (18) The Flemish authorities expect that approximately 500 undertakings and public entities would apply for support under the measure.

2.6. Sectoral and regional scope of the measure

- (19) The measure is open to all sectors, except the financial sector. It applies to the Flemish Region of Belgium.

2.7. Basic elements of the measure

- (20) The measure aims at granting aid to companies that are affected by the COVID-19 pandemic, the effects of which have been reinforced by Brexit.
- (21) The Flemish authorities have identified five categories of eligible costs: (i) staff costs, (ii) working costs, (iii) costs of external experts, (iv) investments, and (v) overheads (equal to 7% of staff costs and working costs). Value added tax and costs supporting relocation are excluded. In order to be eligible under this measure, costs must have been incurred between 19 March 2020 and 30 June 2022. Aid under the measure will not exceed 80% of the eligible costs incurred in respect of a project referred to in recital (22), and paid out during the reference period.
- (22) Applicants under the measure must submit their applications via the VLAIO website, indicating, *inter alia*, their project proposal and the eligible costs during the grant period. As part of the application process, applicants must submit evidence that they have suffered the negative impacts of both Brexit and of the COVID-19 pandemic. Projects will be assessed as to their quality, impact, and extent to which they correspond with the Flemish government's priorities, as set out in the Flemish Resilience Plan. Applications will be reviewed in order of submission, until the budget of the measure is exhausted or until the call for applications is discontinued. The VLAIO may check the veracity of the costs reported by the applicant, and may recover the aid if it identifies that the grant was unduly received. Aid may be refused, not paid, or recovered if the applicant does not comply with the laws in force in the Flemish Region.
- (23) The Flemish authorities confirm that the overall maximum amount of aid per undertaking (gross, before any deduction of tax or other charge), as set out in paragraphs 22(a) and 23(a) of the Temporary Framework, will be respected.

⁹ The Flemish authorities clarified that an undertaking will be entitled to apply for aid under the measure, even if it had been an undertaking in difficulty on 31 December 2019, so long as it is no longer in difficulty at the time of the aid application.

¹⁰ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹¹ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- (24) The Flemish authorities confirm that aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanisation or composting by the undertakings concerned.
- (25) The Flemish authorities confirm that the overall nominal value of the grants does not exceed EUR 345 000 per undertaking active in the fishery and aquaculture sector or EUR 290 000 per undertaking active in the primary production of agricultural products.
- (26) The Flemish authorities confirm that aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market.
- (27) The Flemish authorities confirm that aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014.
- (28) The Flemish authorities confirm that, where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, they will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.3 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23 (a) of the Temporary Framework, the overall maximum amount of EUR 345 000 will not be exceeded per undertaking.

2.8. Cumulation

- (29) The Flemish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹² or the GBER, ABER, or FIBER, provided the provisions and cumulation rules of those Regulations are respected.
- (30) The Flemish authorities confirm that aid under the measure may be cumulated with Union financing, provided that the conditions for cumulation and the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (31) The Flemish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (32) The Flemish authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures

¹² Commission Regulation (EU) No 1407/2013, Commission Regulation (EU) No 1408/2013, Commission Regulation (EU) No 717/2014 and Commission Regulation (EU) No 360/2012.

approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point(s) 22(a) and 23(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (33) The Flemish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure, and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (34) By notifying the measure before putting it into effect, the Flemish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (35) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (36) The measure is imputable to the State, since it is administered by the VLAIO (see recital (11)), and it is based on the Decision of the Flemish Government (see recital (10)). It is financed through State resources, since it is financed by public funds (see recital (13)).
- (37) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (9)). The measure thus confers an advantage on those beneficiaries that they would not have had under normal market conditions.
- (38) The advantage granted by the measure is selective, since it is awarded only to certain undertakings¹⁴, in particular undertakings that have an active place of business in the Flemish Region and that can demonstrate being affected economically by the effects of both the COVID-19 pandemic and Brexit, excluding the financial sector (see recital (15)).
- (39) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since

¹³ Referring to information required in Annex III GBER, Annex III to ABER, and Annex III to FIBER.

¹⁴ Insofar as the measure also provides support to public entities that are not acting as undertakings (recital (15)), it is not subject to State aid assessment.

those beneficiaries are active in sectors in which intra-Union trade exists (see recital (15)).

- (40) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Flemish authorities do not contest that conclusion.

3.3. Compatibility

- (41) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (42) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (43) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that *“the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”*. The Commission concluded that *“State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”*.
- (44) The measure aims at assisting beneficiaries financially at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and the difficulties caused by Brexit, and that combination is affecting the wider economy and leading to severe disturbances of the real economy of Belgium.
- (45) The measure is one of a series of measures conceived at national level by the Belgian authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (*“Limited amounts of aid”*) described in section 3.1 of the Temporary Framework.
- (46) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- The aid takes the form of direct grants (recital (9)). The overall nominal value of the grants shall not exceed EUR 2.3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (28)). The measure therefore complies with point 22(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (12). The measure therefore complies with point 22(b) of the Temporary Framework.
 - Aid may not be granted under the measure to medium-sized¹⁵ and large enterprises that were already in difficulty on 31 December 2019

¹⁵ As defined in Annex I to GBER.

(recital (16)). The measure therefore complies with point 22(c) of the Temporary Framework.

- Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁶ or restructuring aid¹⁷ (recital (17)). The measure therefore complies with point 22(c)bis of the Temporary Framework.
- Aid will be granted under the measure no later than 30 June 2022 (recital (14)). The measure therefore complies with point 22(d) of the Temporary Framework.
- Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanisation or composting by the undertakings concerned (recital (24)). The measure therefore complies with point 22(e) of the Temporary Framework.
- The overall nominal value of the grants does not exceed EUR 345 000 per undertaking active in the fishery and aquaculture sector or EUR 290 000 per undertaking active in the primary production of agricultural products (recital (25)). The measure therefore complies with point 23(a) of the Temporary Framework.
- Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (26)). The measure therefore complies with point 23(b) of the Temporary Framework.
- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (27)). The measure therefore complies with point 23(c) of the Temporary Framework.
- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Flemish authorities will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.3 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 345 000 is

¹⁶ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹⁷ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

not exceeded per undertaking (recital (28)). The measure therefore complies with point 23bis of the Temporary Framework.

- (47) The Flemish authorities confirm that the aid under the measure is not conditional upon the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (7)).
- (48) The Flemish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (33)). The Flemish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recital (31)).
- (49) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

