



EUROPEAN COMMISSION

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SENSITIVE* : *COMP Operations*

Subject: **State Aid SA.57056 (2020/N) – Belgium – Brussels Capital Region COVID-19: Decision of the Brussels Capital Government relating to aid in the context of the Covid-19 health crisis for companies active in the primary production of agricultural products and in aquaculture for the food sector**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 16 April 2020, Belgium notified aid in the form of a direct grant (“aide dans le cadre de la crise sanitaire du Covid-19, pour les entreprises actives dans la production primaire de produits agricoles et dans l’aquaculture, dans le domaine de l’alimentation”) in the Brussels Capital Region 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 confirm that the notification does not contain confidential information.
- (3) The Belgian authorities exceptionally agree to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958², and to have this Decision adopted and notified in English.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended on 4 April 2020, OJ C 112I, 4.4.2020, p. 1-9.

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

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2. DESCRIPTION OF THE MEASURE

- (4) The Belgian authorities consider that the COVID-19 outbreak has started to affect the real economy. The measure is one of a series of measures conceived by Belgium to remedy the liquidity shortage faced by undertakings and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs. The sectors concerned are affected considerably by the COVID-19 outbreak due to several factors, notably the decrease or even absence of local market outlets such as delivery of products to schools, the non-availability of workforce and destruction of stocks.
- (5) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by Section 2 and Section 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of a direct grants up to EUR 3 000 per undertaking.

2.2. National legal basis

- (7) The legal basis for the measure is a draft Order of special powers of the Government of the Brussels-Capital Region relating to aid in the context of the Covid-19 health crisis for undertakings active in the primary production of agricultural products and in aquaculture for the food sector.

2.3. Administration of the measure

- (8) The Brussel Economie en Werkgelegenheid van de Gewestelijke Overheidsdienst Brussel/Bruxelles Economie et Emploi du Service public régional de Bruxelles (hereinafter ‘BEE’) is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The Belgian authorities confirm that no more than EUR 200 000 in aid will be granted under the measure.
- (10) Aid may be granted under the measure as from its approval until 31 December 2020.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are Brussels Capital Region’s undertakings active in the primary production of agricultural products and in aquaculture for the food sector that suffered a loss of income resulting from the COVID-19 health crisis. They must be registered under the VAT activities in the “Kruispuntbank van Ondernemingen/Banque-Carrefour des Entreprises” on 13 March 2020. Undertakings active in the processing and marketing of agricultural products do not fall within the scope of this scheme.
- (12) Aid may be granted under the measure only to undertakings that were not already in difficulty within the meaning of the Agricultural Block Exemption Regulation

("ABER") and Fisheries Block Exemption Regulation (FIBER)³ on 31 December 2019. In addition, undertakings who are in bankruptcy, liquidation, cessation of activities, judicial reorganization or have informed about their bankruptcy or are subject of a liquidation or judicial reorganization procedure, or in any situation analogous resulting from a similar procedure existing in other national regulations, are excluded from receiving aid under the measure.

- The beneficiaries must not have received aid within the framework of the decree of the Government of the Brussels-Capital Region of special powers n° 2020/013 of 7 April 2020 relating to aid for the compensation of companies affected by emergency measures to limit the spread of the COVID-19 coronavirus or of the decree of the Government of the Brussels-Capital Region of special powers n° 2020/007 of April 2020 relating to aid for the " compensation for social integration enterprises affected by emergency measures to limit the spread of the COVID-19 coronavirus.

(13) Undertakings are excluded from support if:

- (a) they were sanctioned on the basis of Article 10 of the ministerial decree of 23 March 2020 on emergency measures to limit the spread of the COVID-19 coronavirus or any other regulation which it replaces or by which it is replaced;
- (b) they provide intentionally erroneous information
- (c) they do not comply with all the obligations applicable in the fields of environmental, social and labor law;
- (d) they are in one of the cases referred to in Article 3, § 1, paragraph 1, of the order of 8 October 2015 laying down general rules relating to the retention, recovery and non-liquidation of subsidies in employment and economy, and this, as long as it does not return the subsidies.

2.6. Sectoral and regional scope of the measure

(14) The measure is open to the agriculture and aquaculture sectors. It applies to the whole territory of the Brussels Capital Region.

2.7. Basic elements of the measure

(15) The aim of the measure is to remedy the liquidity shortage faced by undertakings playing a key role in the food supply chain in the region and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability.

³ As defined in Article 2(14) of the 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 of 1.7.2014, p.1, and Article 3(5) of the 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 of 24 December 2014, p. 37.

- (16) The aid will not exceed the overall amount of EUR 3,000 per undertaking active in the agriculture and aquaculture sectors. Aid is not fixed on the basis of the price or quantity of the products put on the market.
- (17) Only primary food production activities before their first placing on the market are eligible. If the allocated budget is not sufficient, support will first be provided to undertakings active in production and reproduction of plants. Then, support will also be given to undertakings active in animal production, associated culture and breeding, support activities for agriculture and aquaculture.
- (18) Approximately 50 to 100 undertakings will be able to benefit from this measure. Undertakings will be predominantly micro and small enterprises.
- (19) Beneficiaries will have to lodge their request until 29 May 2020 to the BEE. A specific form will be available on the BEE website. Beneficiaries will also have to provide a declaration mentioning all other aid amounts they have been granted under the COVID-19 Temporary Framework.
- (20) The BEE will then check whether the beneficiaries comply with the maximum amounts of EUR 100,000 ceiling for the agricultural sector⁴ and of EUR 120,000 for the aquaculture sector⁵.
- (21) When an undertaking is active in both agricultural and aquaculture sectors, the Belgian authorities will check whether this undertaking has not already received more than EUR 120.000 of which no more than EUR 100.000 for the agricultural sector.
- (22) The grant decision is notified to the beneficiary after receipt and filing of all requests by 31 December 2020, at the latest.
- (23) The measure does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014⁶.

2.8. Cumulation

- (24) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
- (25) The Belgian authorities confirmed that aid under the notified measure may be cumulated with other compatible aid and de minimis aid provided the cumulation rules under the different de minimis Regulations are respected, or with other

⁴ As defined in Article 2(1) of 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)

⁵ As defined in Article 2(1) of 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.

⁶ Commission Regulation (EC) No (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 90, 28.6.2014, p. 45.

forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

2.9. Monitoring and reporting

- (26) The Belgian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Legality of the measure

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

3.2. Existence of State aid

- (28) 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.
- (29) The measure is imputable to the State, since it is administered by the BEE and is based, as mentioned in recital (8), on a draft Order of special powers of the Government of the Brussels-Capital Region relating to aid in the context of the Covid-19 health crisis for companies active in the primary production of agricultural products and in aquaculture for the food sector. It is financed through State resources, since it is financed by public funds.
- (30) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (31) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the Brussels Capital Region in agriculture and aquaculture sectors as mentioned in recitals (11) and (17).
- (32) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (33) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Belgian authorities do not contest that conclusion.

3.3. Compatibility

- (34) 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.
- (35) 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*”.
- (36) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (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*”.
- (37) The measure aims at providing a direct grant to beneficiaries to overcome liquidity difficulties arising from the decrease of their activity at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (38) The measure is one of a series of measures conceived by Belgium to remedy a serious disturbance in their economy. The importance of these measures to ensure viability of undertakings during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire economy. The measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of direct grant*”) described in Section 3.1 of the Temporary Framework.
- (39) The elements of the notified scheme meet all the applicable conditions provided for by Section 3.1 of the Temporary Framework:
- The estimated budget of the scheme is provided by Belgium (recital (9)). Therefore, the condition of paragraph 22(b) of the Temporary Framework is met.
 - In compliance with paragraph 22(c) of the Temporary Framework, the aid will only be granted to undertakings that were not already in difficulty in the meaning of the ABER and FIBER on 31 December 2019 (recital (12))⁷.
 - The aid will be granted no later than 31 December 2020 (recital (23)) hence the condition set out in paragraph 22(d) of the Temporary Framework is met.
 - The aid will be granted in the form of direct grants (recital (6)) as laid down in paragraph 23(a) of the Temporary Framework.

⁷ The Commission takes note of the fact that the Brussels-Capital Region excludes certain beneficiaries from receiving aid, as detailed in recitals (12) to (13).

- For undertakings active in (i) the fishery and aquaculture sector, and (ii) the primary production of agricultural products, the overall nominal value per undertaking does not exceed EUR 120 000 and EUR 100 000 (recital (21)), respectively, as laid down in paragraph 23(a) of the Temporary Framework.
 - The aid to undertakings active in the primary agricultural production is not fixed on the basis of the price or quantity of products put on the market (recital (17)). Hence, the condition set out in paragraph 23(b) of the Temporary Framework is met.
 - Aid 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 (24)), as laid down in paragraph 23(c) of the Temporary Framework.
 - The Belgian authorities confirm that, where an undertaking is active in several sectors, to which different maximum amounts apply in accordance with paragraph 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 these activities, and that the highest possible amount is not exceeded in total (recital (22)); Therefore the condition set out in paragraph 23 bis of the Temporary Framework is considered to be met.
 - The Belgian authorities confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital ((27)).
- (40) 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.
- (41) According to point 48 of the Temporary Framework, the Commission may request additional information regarding the aid granted to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION