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**Subject: State Aid SA.57132(2020/N) – Belgium
COVID-19: Flemish subordinated loan scheme for start-ups, scale-ups and SMEs**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 April 2020, Belgium notified aid in the form of a subordinated loan scheme for start-ups, scale-ups and SMEs (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).¹ The Belgian authorities revised the notification on 30 April and 4 May 2020.
- (2) The Belgian authorities confirm that the notification does not contain confidential information.
- (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 Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

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 by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 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) Belgium considers that the COVID-19 outbreak has started to affect 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 outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) 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 subordinated loan scheme for start-ups, scale-ups and SMEs.

2.2. Legal basis

- (7) The legal basis for the measure comprises *inter alia* the following instruments:
 - (a) the decision of Flemish Government to increase the capital of the publicly owned investment company Participatiemaatschappij Vlaanderen (“PMV”) by EUR 250 million with a view to financing the measure,
 - (b) the decision of PMV’s Board of Directors of 17 April 2020 to increase the capital of its subsidiary PMV/z-Leningen by EUR 250 million with a view to financing the measure, and
 - (c) the decision of the Board of Directors of PMV/z-Leningen NV of 22 April 2020 approving the granting of the measure.

2.3. Administration of the measure

- (8) The Flemish Region is responsible for administering the measure. PMV and its subsidiary PMV/z-Leningen NV are responsible for implementing the measure. Loans under the measure are granted directly by PMV/z-Leningen NV, while PMV and PMV/z-Leningen NV are explicitly obliged to fully use the capital increases mentioned in recital (7) for granting loans to the final beneficiaries.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 250 million.
- (10) The measure is financed through the budget of the Flemish Region. The Flemish Region represents 59.2 % of Belgium’s GDP and the majority of its workforce.³
- (11) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

³ Eurostat 2019.

2.5. Beneficiaries

- (12) The final beneficiaries of the measure are start-ups, scale-ups and SMEs⁴ registered in the Flemish Region. However, financial institutions are excluded as eligible final beneficiaries.
- (13) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁵ on 31 December 2019.⁶

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to all sectors except the financial sector. It applies to the whole territory of the Flemish Region.

2.7. Basic elements of the measure

2.7.1. Form of aid

- (15) The measure provides aid in the form of loans for start-ups, scale-ups and SMEs with a maturity of three years, which are subordinated to ordinary senior unsecured creditors, but senior to shareholder’s claims, in case of insolvency proceedings.

2.7.2. Total nominal value

- (16) The total nominal value of subordinated loans granted under the measure does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector⁷ or EUR 100 000 per undertaking active in the primary production of agricultural products⁸ or EUR 800 000 for all other eligible undertakings. All figures used are gross, that is, before any deduction of tax or other charges.

⁴ As defined in Annex I to 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 of 26.6.2014, p. 1.

⁵ As defined in Article 2(18) of 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 of 26.6.2014, p. 1, Article 2(14) of 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 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.

⁶ Aid may be granted to undertakings that were in difficulty on 31 December 2019, but were no longer in difficulty on 29 February 2020 or when they apply for aid under the measure.

⁷ 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.

⁸ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

2.7.3. Additional provisions

- (17) In order to be granted aid under the measure, eligible undertakings must meet the following conditions:
- (a) They must demonstrate a significant impact on their financial situation due to the COVID-19 outbreak (*e.g.*, actual or potential decrease in turnover or activity, limited access to external financing).
 - (b) They must have no arrears on their current credits, taxes or social security contributions as of 1 February 2020, or they must have less than 30 days of arrears on their current credits, taxes or social security contributions as of 29 February 2020.
 - (c) Undertakings with 10 or more employees must retain an effective employment rate of at least 80 % of the total workforce as of 29 February 2020 or commit to return to such an employment rate upon the grant of aid under the measure (failure to meet this condition may result in the loans granted under the measure to become due and payable early).
 - (d) In case of any existing financing agreement between eligible undertakings and credit or other financial institutions, these institutions must commit not to terminate such financing for a period of at least six months following the granting of aid under the measure and, if necessary, they must grant a six-month payment moratorium for any outstanding loan principal.
- (18) The loan principal for eligible start-ups and scale-ups is repaid on maturity, while for other eligible SMEs it is repaid on maturity or within 24 months from the grant of the loan. Loans granted under the measure are remunerated as follows:
- (a) Eligible start-ups and scale-ups pay an annual deferred interest of 500 basis points, payable in full on maturity. Under the loan agreement, outstanding principal and interest may be converted into equity in case of a capital increase or an exit of existing shareholders. The conversion price will be 25 % below the share price at the time of the conversion, *i.e.*, the price that will be given to the exiting party or the price charged at the new capital round.
 - (b) Other eligible SMEs pay an annual cash interest of 450 basis points, payable on a monthly, quarterly or six-monthly basis.
- (19) The Belgian authorities confirm that:
- (a) aid granted to undertakings active in the processing and marketing of agricultural products⁹ is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or

⁹ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

quantity of products purchased from primary producers or put on the market by the undertakings concerned;

- (b) aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
- (c) aid to undertakings active in the fishery and aquaculture 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;¹⁰ and
- (d) where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Belgian authorities will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities.

2.8. Cumulation

- (20) 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 European Structural and Investment Funds (ESIF).
- (21) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹¹ or the GBER,¹² provided the provisions and cumulation rules of those Regulations are respected.
- (22) The Belgian authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

¹⁰ 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.

¹¹ Commission Regulation (EU) 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 of 26.4.2012, p. 8).

¹² 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 of 26.6.2014, p. 1, Commission Regulation (EC) 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 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 on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

- (23) The Belgian 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.
- (24) The Belgian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or under other measures approved by the Commission under Section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, shall be respected.

2.9. Monitoring and reporting

- (25) The Belgian 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 granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (26) 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

- (27) 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.
- (28) The measure (subordinated loan scheme for start-ups, scale-ups and SMEs) is imputable to the State, since it is administered by the Flemish Region and it is based on the instruments set out in recital (7). It is financed through State resources, since it is financed by public funds.
- (29) The measure confers an advantage on its beneficiaries in the form of subordinated loans for start-ups, scale-ups and SMEs, which, for most of them, could not obtain such loans in the same conditions on the market. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

¹³ Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. The nominal value of the loan shall be inserted per beneficiary.

- (30) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that meet the conditions in recitals (12) and (13), excluding the financial sector.
- (31) 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.
- (32) 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

- (33) 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.
- (34) 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*”.
- (35) 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*”.
- (36) The measure aims at facilitating the access of undertakings to external finance 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.
- (37) 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. The importance of the measure to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the economy of the Flemish Region, which, as explained in recital (10), is important for the entire Belgian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid in the form of direct grants, repayable advances or tax advantages”) described in Section 3.1 of the Temporary Framework.
- (38) 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 subordinated loans for start-ups, scale-ups and SMEs (recital (15)). The total nominal value of subordinated loans granted

under the measure shall not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products or EUR 800 000 for all other eligible undertakings; all figures used are gross, that is, before any deduction of tax or other charges (recital (16)). The measure therefore complies with points 22(a) and 23(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 (9). The measure therefore complies with point 22(b) of the Temporary Framework.
- Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 22(c) of the Temporary Framework.
- Aid will be granted under the measure no later than 31 December 2020 (recital (11)). 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 conditional on not being partly or totally passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by such producers (recital (19)). Furthermore, aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market (recital (19)). The measure therefore complies with points 22(e) and 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 (19)). 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 Belgian authorities will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities (recital (19)). The measure therefore complies with point 23bis of the Temporary Framework.

(39) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (25)). The Belgian 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 are respected and the cumulation rules of the relevant Regulations are respected (recitals (20) to (24)).

(40) 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) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

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Director of the Registry
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