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**Subject: State Aid SA.57246(2020/N) – Belgium
COVID-19: Second Flemish subordinated loan scheme for start-ups,
scale-ups and SMEs**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 5 May 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 provided additional information on 8 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 and Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

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 measure consists of a second subordinated loan scheme targeting start-ups, scale-ups and SMEs, complementing the subordinated loan scheme approved by the Commission on 5 May 2020 (the “first subordinated loan scheme”).³ The objective of this second scheme is to provide subordinated loans with amounts exceeding the ceilings set out in Section 3.1 of the Temporary Framework.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Section 3.3 of the Temporary Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of a subordinated loan scheme for start-ups, scale-ups and SMEs.

2.2. Legal basis

- (8) 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 this measure and the first subordinated loan scheme,
 - (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 the first subordinated loan scheme, 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

- (9) 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 (8) for granting loans to the final beneficiaries.

³ Commission Decision SA.57132(2020/N) – Belgium – COVID-19: Flemish subordinated loan scheme for start-ups, scale-ups and SMEs, adopted on 5 May 2020.

2.4. Budget and duration of the measure

- (10) The estimated total budget of the present measure and the first subordinated loan scheme combined is EUR 250 million.
- (11) 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.⁴
- (12) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

- (13) The final beneficiaries of the measure are start-ups, scale-ups and SMEs⁵ registered in the Flemish Region. The Belgian authorities confirm that: (i) large undertakings are not eligible for aid under the scheme; (ii) only SMEs are eligible for aid under the scheme; and (iii) all start-ups and scale-ups eligible for aid under the scheme fall within the definition of SMEs. Furthermore, financial institutions are excluded as eligible final beneficiaries.
- (14) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation,⁶ Regulation (EU) No 702/2014⁷ and/or Regulation (EU) No 1388/2014⁸ on 31 December 2019.⁹

2.6. Sectoral and regional scope of the measure

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

⁴ Eurostat 2019.

⁵ 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.

⁶ 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.

⁷ As defined in 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.

⁸ As defined in 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.

⁹ 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 applied for aid under the measure.

2.7. Basic elements of the measure

2.7.1. Nature of the loans

- (16) 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 shareholders' claims, in case of insolvency proceedings.
- (17) The subordinated loans may relate to investment and/or working capital needs.

2.7.2. Maximum loan amount

- (18) The maximum loan amount for all subordinated loans granted under the measure per beneficiary does not exceed:
 - the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019 or for the last year available; or
 - 12.5% of the total turnover of the beneficiary in 2019.
- (19) In any event, the maximum loan amount of all subordinated loans granted under the measure does not exceed EUR 3.5 million.

2.7.3. Interest rates of the loans

- (20) The applicable annual interest rates for the subordinated loans granted under the measure are at least:
 - (a) 600 basis points for the entire maturity of the loan and payable at maturity for start-ups and scale-ups, and;
 - (b) 450 basis points for the entire maturity of the loan and payable on a monthly, quarterly or six-monthly basis for other eligible SMEs.

2.7.4. Additional provisions

- (21) 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.

2.8. Cumulation

- (22) 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).
- (23) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹⁰ or under the Block Exemption Regulations, provided the provisions and cumulation rules of those Regulations are respected.
- (24) 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.
- (25) 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.
- (26) The Belgian authorities confirm that aid granted under Section 3.3 of the Temporary Framework shall not be cumulated with aid granted for the same underlying loan principal under Section 3.2 and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 25(d) or in point 27(d) of the Temporary Framework.
- (27) A beneficiary may benefit in parallel from multiple schemes under Section 3.3 of the Temporary Framework provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 27(d), in case of subordinated loans as limited under point 26, of the Temporary Framework.

¹⁰ 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).

- (28) In case of potential cumulation mentioned in recitals (26) and (27), the Belgian authorities confirm that the alternative third option in point 27(d)(iii) of the Temporary Framework, related to the beneficiary's liquidity needs based on self-certification and assessed on a case-by-case basis, is intended to apply in situations where an eligible undertaking can justify why the limits provided under the other ceilings are not appropriate proxies to forecast its liquidity needs in the next months. This alternative option will be used for certain beneficiaries, namely early-stage undertakings or undertakings focussed on research and developments activities, given the structural unbalance between the turnover compared to the investment costs of these undertakings and the limited relevance of the wage bill for growing undertakings.

2.9. Monitoring and reporting

- (29) 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 granting¹¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (30) 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

- (31) 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.
- (32) The measure is imputable to the State, since it is administered by the Flemish Region and it is based on the instruments set out in recital (8). It is financed through State resources, since it is financed by public funds.
- (33) 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.

¹¹ 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.

- (34) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that meet the conditions in recitals (13) and (14), excluding the financial sector.
- (35) 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.
- (36) 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

- (37) 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.
- (38) 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*”.
- (39) 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*”.
- (40) 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.
- (41) 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 (11), 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 subsidised interest rates for loans”) described in Section 3.3 of the Temporary Framework.
- (42) 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 applicable annual interest rates for the subordinated loans granted under the measure are at least: (i) 600 basis points for the entire maturity of the loan for start-ups and scale-ups and (ii) 450 basis points for the entire

maturity of the loan for other eligible SMEs (recital (20)). Taking into account that the annual base rates (1 year IBOR or equivalent as published by the Commission)¹² applicable on 1 January 2020 for Belgium are - 0.31%, the applicable implied credit risk margins under the scheme are higher than the minimum credit risk margins provided for in point 27bis of the Temporary Framework for the entire duration of the subordinated loans. The measure therefore complies with point 27bis of the Temporary Framework.

- The subordinated loan contracts are signed by 31 December 2020 at the latest and have a maturity of three years (recitals (12) and (16)). The measure therefore complies with point 27(c) of the Temporary Framework.
 - For all subordinated loans granted under the measure, the maximum loan amount per beneficiary is limited to the maximum between (i) the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019 or for the last year available or (ii) 12.5% of the total turnover of the beneficiary in 2019. The measure therefore complies with points 26 and 27bis of the Temporary Framework (recital (18)).
 - Loans granted under the measure relate to investment and working capital needs (recital (17)). The measure therefore complies with point 27(f) of the Temporary Framework.
 - Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the measure (recital (14)). The measure therefore complies with point 27(g) of the Temporary Framework.
- (43) The Commission notes that the Belgian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (29)). 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. In particular, a beneficiary may benefit in parallel from multiple measures under Section 3.3 of the Temporary Framework, provided the overall amount of loans per beneficiary does not exceed the ceilings set out in points 27 (d), in case of subordinated loans as limited under point 26, of the Temporary Framework (recitals (22) to (28)).
- (44) 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.

¹² Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at:
https://ec.europa.eu/competition/state_aid/legislation/base_rates2020_04_en.pdf

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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