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**Subject: State Aid SA.57605 (2020/N) – Belgium
COVID-19: Strategic transformation aid to undertakings in the
Flemish region for investments in COVID-19 related products**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 8 June 2020, Belgium notified a measure in the form of investment aid for the production of COVID-19 relevant products, the *Decree of the Flemish Government granting strategic transformation aid to undertakings in the Flemish region for investments in COVID-19 related products* (“the measure”), under Article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by section 3.8 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).¹
- (2) Belgium exceptionally agrees to waive its 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.

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, 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, and by 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, OJ C 164, 13.5.2020, p. 3.

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

Zijne Excellentie de Heer Philippe Goffin
Minister van Buitenlandse Zaken en Europese Zaken
Karmelietenstraat 15
B - 1000 Brussel

2. DESCRIPTION OF THE MEASURE

- (3) The measure aims at supporting the production of products needed to respond to the COVID-19 outbreak. According to Belgium, currently there is not enough production activity in the Flemish region in order to guarantee a sufficient supply of strategic products such as medicinal products, medical equipment and devices, protective clothing, disinfectants and their intermediary products, raw chemical materials necessary for their production, and data collection and processing tools. The shortage of these products has a subsequent impact on the continuity of business activity.
- (4) Belgium therefore considers that it is essential that the State can provide incentives to companies to direct their activities to the production of certain products that are crucial to tackle the public health crisis. Belgium considers that the measure contributes to address that objective.
- (5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, as interpreted by section 3.8 of the Temporary Framework.

2.1. The nature and form of aid

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

2.2. Legal basis

- (7) The legal basis for the measure is the *Decree of the Flemish Government granting strategic transformation aid to undertakings in the Flemish region concerning investments relating to the production of COVID-19 relevant products* (“Decree of the Flemish Government”).³

2.3. Administration of the measure

- (8) The Flemish governmental organisation Agency Innovation & Entrepreneurship (*Agentschap Innoveren & Ondernemen*, hereinafter referred to as “VLAIO”) is responsible for administering the measure.⁴
- (9) The Belgian authorities confirm that the aid is not channelled through credit or financial institutions.
- (10) The direct grants will be paid in two instalments: (i) 50% will be paid after the decision to grant the aid has been issued, provided the investment project has

³ Original title: *Besluit van de Vlaamse Regering tot toekenning van strategische transformatiesteun aan ondernemingen in het Vlaams Gewest die investeringen doen betreffende de productie van Covid-19 relevante producten.*

⁴ The Agency for Innovation and Entrepreneurship (VLAIO) is a governmental organisation of the Flemish Government for all entrepreneurs in Flemish region. The mission of VLAIO is to stimulate and support innovation and entrepreneurship and to contribute to a favourable business-climate in Flemish region. See related information available at <https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/organisation/agency-innovation-and-entrepreneurship-vlaio> and <https://www.vlaio.be/nl/andere-doelgroepen/flanders-innovation-entrepreneurship/information-foreign-investors/Government>.

already started; and (ii) 50% will be paid following completion of the investment project.

2.4. Budget and duration of the measure

- (11) The estimated budget of the measure is EUR 21 million. The Belgian authorities explain that this budget is the remaining available budget of the already existing block-exempted scheme SA.54202,⁵ but which, due to the economic crisis, will not be fully used for that purpose given the lower number of applications for investment aid. Therefore, both schemes will share the same budget.
- (12) The measure will not be co-financed by EU funds.
- (13) Aid may be granted under the measure as from its approval until no later than 31 December 2020. Beneficiaries can submit applications for aid until 1 November 2020.

2.5. Beneficiaries

- (14) The beneficiaries of the measure are undertakings of any size⁶ active in the Flemish region. However, financial institutions are excluded as eligible beneficiaries.
- (15) 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”),⁷ the Agricultural Block Exemption Regulation (“ABER”),⁸ or the Fisheries Block Exemption Regulation (“FIBER”),⁹ respectively, on 31 December 2019.

2.6. Sectoral and regional scope of the measure

- (16) The measure is open to all sectors except the financial sector.
- (17) The measure applies to the territory of the Flemish region.

⁵ Case SA.54202 (2019/X), *Strategische transformatiesteun aan ondernemingen in het Vlaamse Gewest*. This scheme concerned regional aid, investment aid, aid for start-ups and training aid. The initial budget amount was EUR 40 million.

⁶ The Belgian authorities confirm that SMEs are those 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, 26.6.2014, p. 1.

⁷ 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, 26.6.2014, p. 1.

⁸ 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, 1.7.2014, p.1.

⁹ As defined in 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, 24.12.2014, p. 37.

2.7. Basic elements of the measure

- (18) The measure provides investment aid in the form of direct grants for the production of the following COVID-19 related products:
- medicines (including vaccines) and treatments, intermediates, active pharmaceutical ingredients and raw materials;
 - medical devices, hospital and medical equipment (including breathing equipment, protective clothing and protective equipment, and diagnostic materials) and necessary raw materials;
 - disinfectants and intermediate products and chemical raw materials necessary for their manufacture; and
 - data collection and processing instruments.
- (19) Undertakings applying for the aid must submit a ‘transformation plan’, describing the main elements of the investment project such as the objectives, timing, effectiveness and profitability. The national authorities will assess this transformation plan, both at the level of the undertaking and at the level of the Flemish economy, on the basis of the extent to which the investment project will contribute to the strengthening of the value chain.
- (20) Only investment projects started as of 1 June 2020 will be eligible.
- (21) The beneficiary must complete the investment project within six months after the date of the granting of the aid. The investment project shall be deemed to be completed when the VLAIO accepts it as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants is to be reimbursed, unless the VLAIO determines that the delay is due to factors outside the control of the aid beneficiary.
- (22) The eligible costs concern all the investment costs necessary for the production of the products referred to in recital (18) and the costs of trial runs of the new production facilities. Those costs can relate to both tangible investments (e.g. land, buildings and plants, machinery, installations and equipment) and intangible investments (e.g. assets which imply a technology transfer through the obtaining of patents, licenses, knowhow or other non-patented intellectual technical knowledge), to the extent that they contribute to the transformation.
- (23) The maximum aid intensity is set at 50% of eligible costs.
- (24) The Belgian authorities confirm that no loss cover guarantee will be granted in addition to the direct grants.

2.8. Cumulation

- (25) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁰ or the GBER, the ABER or the FIBER, provided the provisions and cumulation rules of those Regulations are respected.
- (26) 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.
- (27) 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.
- (28) The Belgian authorities confirm that aid granted under the measure shall not be combined with other investment aid for the same eligible costs.

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 national State aid website or Commission's IT tool within 12 months from the moment of granting).¹¹ In particular, the Belgian authorities commit to publish the relevant information in the State aid Transparency Award Module website,¹² as well as to keep detailed records for 10 years upon granting of the aid and to provide them to the Commission upon request.

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.

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, 26.4.2012, p. 8).

¹¹ Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014, in Annex III to Commission Regulation (EU) No 702/2014 of 25 June 2014, and in Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

¹² Available at <https://webgate.ec.europa.eu/competition/transparency/>.

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 governmental agency VLAIO (see recital (8)) and it is based on the Decree of the Flemish Government (see recital (7)). It is financed through State resources, since it is financed by public funds, namely a grant of VLAIO.
- (33) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (6)). The measure thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.
- (34) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular to undertakings fulfilling the criteria laid down in recitals (14), (15) and (16). In addition, the aid is granted for investments in the production of specific COVID-19 relevant products as defined in recital (18).
- (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.

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)(c) TFEU, the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (39) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to address the health crisis caused by the COVID-19 outbreak. The measure aims at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. The measure has been designed to meet the requirements of the specific categories of aid (“*Investment aid for the production of COVID-19 relevant products*”) described in section 3.8 of the Temporary Framework.
- (40) The Commission accordingly considers that the measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:

- Aid granted under the measure is limited to the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework (see recital (18)).
 - Aid is granted under the measure in the form of direct grants (see recitals (6) and (18)). The measure therefore complies with point 39(b) of the Temporary Framework.
 - Since only investment projects started as of 1 June 2020 will be considered as eligible (see recital (20)), the aid granted under the measure is deemed to have an incentive effect as stated in point 39(c) of the Temporary Framework.
 - Eligible investment projects must be completed within six months after the grant of the investment aid. If this deadline is not respected, the beneficiary shall reimburse 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the beneficiary (see recital (21)). The measure therefore complies with point 39(d) of the Temporary Framework.
 - Costs eligible for aid under the measure consist of all investment costs necessary for the production of the products listed in point 39(a) of the Temporary Framework as well as the costs of trial runs of the new production facilities (see recital (22)). The measure therefore complies with point 39(e) of the Temporary Framework.
 - The aid intensity shall not exceed 50% of the eligible costs (see recital (23)), and thus below the maximum ceiling of 80%. The measure therefore complies with point 39(e) of the Temporary Framework.
 - The cumulation of the aid granted under the measure with other investment aid for the same costs shall not be permitted (see recital (28)). The measure therefore complies with point 39(g) of the Temporary Framework.
 - Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (see recital (15)). The measure therefore complies with point 39(i) of the Temporary Framework.
- (41) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (see recital (29)).
- (42) 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 (see recitals (25) to (27)).
- (43) In the light of the elements above, the Commission considers that the measure complies with the compatibility conditions laid down by the Temporary Framework. The Commission has taken due consideration of the common objective pursued by the measure and its positive effects on tackling the health crisis provoked by the COVID-19 outbreak when balancing those effects against the potential negative effects of the measure on the internal market. The Commission concludes that those positive effects of the measure outweigh its potential negative effects on competition and trade.

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)(c) 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/eojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President