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**Subject: State Aid SA.58165 (2020/N) – Belgium  
COVID-19: Exemption from the payment of the annual fee due to  
the Agence Fédérale pour la Sécurité de la Chaîne Alimentaire  
(AFSCA) for 2020 (HORECA contribution)**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 31 July 2020, Belgium notified aid in the form of limited amounts of aid (exonération de la contribution du secteur HORECA pour la campagne 2020, “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”).<sup>1</sup>
- (2) 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<sup>2</sup> and to have this Decision adopted and notified in English.

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<sup>1</sup> 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 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, 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 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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

Son Excellence Monsieur Philippe Goffin  
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## **2. DESCRIPTION OF THE MEASURE**

- (3) 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.
- (4) Belgium confirmed that the aid under the measure is not conditioned on 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.
- (5) 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 Framework.

### **2.1. The nature and form of aid**

- (6) The measure provides aid in the form of a payment advantage, consisting in the exemption from the payment of the annual fee due to the *Agence Fédérale pour la Sécurité de la Chaîne Alimentaire* (AFSCA).

### **2.2. Legal basis**

- (7) The legal basis for the measure is the *Arrêté royal* to be adopted with a view to modifying the *Arrêté royal* of 10 November 2005 concerning the fees covered by Article 4 of the Belgian law of 9 December 2004 concerning the financing of AFSCA<sup>3</sup>.

### **2.3. Administration of the measure**

- (8) The Belgian Federal Government (*Ministre des Classes moyennes, des Indépendants, des PME, de l'Agriculture, et de l'intégration sociale, chargé des Grandes Villes*) is responsible for administering the measure.

### **2.4. Budget and duration of the measure**

- (9) The estimated budget of the measure is EUR 11 million.
- (10) Aid may be granted under the measure as from its approval by the Commission until no later than 31 December 2020.

### **2.5. Beneficiaries**

- (11) The beneficiaries of the measure are all undertakings registered in Belgium that are active in the HORECA sector (hotel, restaurants and cafés) as well as mobile

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<sup>3</sup> Arrêté royal du 10 novembre 2005 relatif aux contributions visées à l'article 4 de la loi du 9 décembre 2004 portant financement de l'Agence fédérale pour la Sécurité de la Chaîne alimentaire

food vendors<sup>4</sup>. The Belgian authorities estimate the number of beneficiaries to be around 62 000 for the HORECA sector and 3 500 for the mobile food vendor sector.

- (12) Aid may not be granted under the measure to medium<sup>5</sup> and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>6</sup> on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER 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 aid<sup>7</sup> or restructuring aid<sup>8</sup>.

## **2.6. Sectoral and regional scope of the measure**

- (13) The measure is only open to the HORECA sector (hotel, restaurant, cafés) and the sector of mobile food vendor. It applies to the whole territory of Belgium.

## **2.7. Basic elements of the measure**

- (14) The measure aims at alleviating liquidity shortages faced by the beneficiaries, which have been forced to stop or reduce their activities from March to June 2020 and whose activities are still affected by the COVID-19 outbreak.
- (15) The budget of the AFSCA is notably based on a fee (“*contribution*”) paid, in particular, by the HORECA sector and the mobile food vendor sector. The level of the fee depends on a series of factors such as the precise sector in which the company operates, the number of staff or the production capacity. This fee is due every year.
- (16) The measure exempts the beneficiaries from the payment of the fee due for the year 2020. In practice, the exemption will be up to a few thousand euros for the largest players. The aid will therefore not exceed the gross figure of EUR 800 000.
- (17) Aid granted to undertakings active in the processing and marketing of agricultural products<sup>9</sup> is conditional on not being partly or entirely passed on to primary

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<sup>4</sup> Financial institutions are therefore excluded by nature as eligible final beneficiaries.

<sup>5</sup> 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, 26.6.2014, p. 1.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

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.

## **2.8. Cumulation**

- (18) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>10</sup> or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (19) 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.
- (20) The Belgian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid 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) of that framework, will be respected.

## **2.9. Monitoring and reporting**

- (21) 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 above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>11</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (22) By notifying the measure before putting it into effect (recital (10)), the Belgian authorities have respected their obligations under Article 108(3) TFEU.

### **3.2. Existence of State aid**

- (23) 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.
- (24) The measure is imputable to the State, since it is administered by the *Ministre des Classes moyennes, des Indépendants, des PME, de l'Agriculture, et de*

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<sup>10</sup> 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).

<sup>11</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

*l'intégration sociale, chargé des Grandes Villes* of the Belgian Federal government and it is based on an Arrêté royal (recital (7)). It is financed through State resources, since it consists in the exemption from the payment of a fee due to public authorities (recital (6)).

- (25) The measure confers an advantage on its beneficiaries in the form of a payment advantage (exemption from paying an annual fee). The measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.
- (26) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely only to undertakings active in the HORECA sector and in the sector of mobile food vendors, thereby excluding the financial sector.
- (27) 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.
- (28) 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**

- (29) 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.
- (30) 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*”.
- (31) 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*”.
- (32) The measure aims at alleviating the beneficiaries shortage of liquidity by exempting them of the payment of an annual fee, 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.
- (33) 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 exempt undertakings from the payment of fees is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across a sector which has been severely affected by governmental measures adopted to limit the spread of

COVID-19 (including prohibitions to operate at all for several months). 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.

(34) 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 a payment advantage consisting in the exemption from the payment of a fee due to the AFSCA for the year 2020 (recital (6)).

The overall nominal value of the payment advantage shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recitals (16) and (20)). The measure therefore complies with point 22(a) of the Temporary Framework;

- Aid is granted under the measure on the basis of a scheme (recital 11) with an estimated budget as indicated in recital (9). The measure therefore complies with point 22(b) of the Temporary Framework;
- Aid may not be granted under the measure to medium<sup>12</sup> and large enterprises that were already in difficulty on 31 December 2019 (recital (12)). 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 aid<sup>13</sup> or restructuring aid<sup>14</sup> (recital (12)). The measure therefore complies with point 22(c)bis of the Temporary Framework;
- Aid will be granted under the measure no later than 31 December 2020 (recital (10)). 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 entirely 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 (17)). The measure therefore complies with point 22(e) of the Temporary Framework.

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<sup>12</sup> 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, 26.6.2014, p. 1.

<sup>13</sup> 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.

<sup>14</sup> 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.

- (35) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (21)). 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 (18) to (20)).
- (36) 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/ejojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President