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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.62486 (2021/NN) – Belgium
Prolongation of the 6th Management Contract between the Belgian State and bpost**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 3 May 2021, registered by the Commission on the same day, following pre-notification contracts¹, the Belgian authorities notified to the Commission the prolongation of the 6th Management Contract² between the Belgian State and bpost (the

¹ The Commission and the Belgian State's representatives regarding the bpost case discussed the prolongation of the 6th Management Contract on 29 March 2021 in a meeting. On 15 June 2021 the Commission requested additional information, which was submitted by the Belgian authorities on 17 June 2021. On 7 July 2021 the Commission requested additional information, which was submitted by the Belgian authorities on 8 July 2021.

² The "6th Management Contract" refers to the contract concluded between the Belgian State and bpost regarding the entrustment of several SGEIs to the latter by the former for the years 2016 to 2020. The "Prolonged 6th Management Contract" refers to the contract concluded between the Belgian State and bpost for the years 2016 to 2021 (the 6th Management Contract prolonged by one year).

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“measure”) under Article 108(3) of the Treaty on the Functioning of the European Union (hereafter “TFEU”).

- (2) The notified measure is a prolongation of the Management Contract, approved by the Commission in its decision of 3 June 2016 in case SA.42366³ (“the 2016 Decision”), under the European Union framework for State aid in the form of public service compensation.⁴ This framework spells out the conditions under which State aid not falling in the scope of Commission Decision 2012/21/EU⁵ can be found compatible with the internal market pursuant to Article 106(2) TFEU.
- (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 1/1958⁶ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Beneficiary of the measure

- (4) The sole beneficiary of the measure is bpost, which is the leading postal service operator in Belgium. bpost’s core business consists in collecting, sorting, transporting and delivering letters and parcels.
- (5) The turnover of bpost in 2020 was EUR 4.1151 billion⁷. bpost employed 36 291 persons on 31 December 2020⁸. bpost maintains a network of 1.300 postal service points, at least 650 of which are post offices⁹.
- (6) On the date of this Decision, 51.04% of bpost’s shares are owned by the Belgian State through the Société Fédérale de Participations et d’Investissement/Federale Participatie- en Investeringsmaatschappij (“SFPI/FPIM”)¹⁰ and 48.96% of the shares are free float.

³ Commission Decision C(2016) 3338 of 3 June 2016 in case SA.42366 (2016/N) – Belgium, State compensations to bpost for the delivery of public services over 2016-2020, OJ C 341/01, 16.9.2016, p.1. Available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_42366.

⁴ Communication from the Commission: European Union framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15.

⁵ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3.

⁶ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁷ « Rapport annuel 2020, Compte de résultats consolidé », available at: bpost-rapport-annuel-2020-fr.pdf

⁸ *Ibid.*

⁹ « Investor presentation – First quarter 2021 », May 2021, available at: https://corporate.bpost.be/~media/Files/B/Bpost/quarterly-results/2021/1Q21/20210505_1Q21_roadshow%20presentation.pdf

¹⁰ The SFPI/FPIM manages the federal government’s shareholdings.

Recitals (7) to (10) of the 2016 Decision contain a comprehensive description of the nature and evolution of bpost.

2.2. Object and scope of the 6th Management Contract

- (7) The scope of the contract includes the provision of services of general economic interest ('SGEIs') defined by the Belgian State in the 6th Management Contract, as laid out in section 2.4 of the 2016 Decision ("SGEIs entrusted to bpost under the 6th Management Contract").

2.2.1. Scope of the SGEIs

- (8) Under the 6th Management Contract, bpost was entrusted with compensated and non-compensated SGEIs.

2.2.1.1. SGEIs for which bpost was compensated under the 6th Management Contract

Retail Network SGEI

Maintenance of the 'Retail Network'

- (9) Article 9 of the 6th Management Contract entrusts bpost with the operation of the Retail Network SGEI. The conditions with which bpost must comply are laid down in Articles 9 to 14 of the 6th Management Contract. According to these provisions, the Belgian State requires bpost to maintain a retail network which is denser and geographically more widespread than what would be commercially viable or than what is required for the delivery of the universal service obligation for postal services ('USO') and other public service tasks (the "Product SGEIs¹¹").
- (10) Bpost's retail network is composed of different kinds of postal services points ("PSP"):
- a) Post offices, which are directly managed, owned, and run by bpost and provide a complete range of services¹² to the customer.
 - b) Postal shops which are run by third parties and in which such third parties carry out public service tasks in the name and for the account of bpost. Third parties can be private or public partners. bpost's contracts with third parties for the franchising of postal shops do not contain any clauses that restrict the freedom of the third parties to distribute, on their premises, products or services of other postal operators in any manner that does not create any confusion in the eyes of the customers.

¹¹ Product SGEIs refer to the Day to Day SGEIs (see Recitals (14) *et seq.*) and Ad hoc SGEIs (see Recitals (19) *et seq.*).

¹² The "complete range of services" entails at least the following public services: (a) the minimum service range (see footnote 7); (b) the execution of operations of basic banking services as defined in the Code of Economic Law of 23 February 2013; (c) the payment of inland postal money orders; (d) the sale, reimbursement, replacement, and exchange of fishing permits; (e) the acceptance of "cash deposits at counter" to accounts held by bpost or other financial institutions; (f) cash withdrawal from an account, irrespective of the proposed method; (g) payments of "assignment P"; (h) collection of payment order forms for payments from own account.

- c) Postal halts or other contact points for the customer, where at least the minimum service¹³ is offered by the personnel of bpost during a limited number of hours. These may be installed inside a postal shop. There is currently no postal halt in the network.
- (11) The entrustment of the Retail Network SGEI provides for specific requirements in terms of size, composition and density in order to ensure proximity and full territorial presence within Belgium:
- a) The retail network must have at least 1300 PSP offering at least the minimum service. PSP with minimum service range must be accessible for a minimum of 95% of the population within 5 kilometres (by road) and for a minimum of 98% within 10 kilometres (by road).
- b) The retail network must have at least 650 Post Offices, while:
- guaranteeing at least one Post Office in each of the 589 municipalities of the country;
 - maintaining more than one Post Office in some municipalities (to be determined by bpost, taking into account the social role of bpost).
- (12) bpost's retail network can be subdivided into different segments:
- a) The **commercial optimal retail network**: this is the part of the retail network that bpost would maintain, even if it were not entrusted with any SGEI. It is defined on the basis of two commercial principles: profit maximisation and optimisation of customer satisfaction (through optimal territory coverage) with the fewest number of PSP possible. The Belgian authorities submit that the commercial optimal retail network consists of [...] post offices and [...] postal shops, as per the 2016 Decision.
- b) The **accessibility network**: this is the part of the retail network that is necessary to appropriately provide the USO and other public service tasks ("Product SGEIs"). According to Article 142, §2 of the Belgian Law of 21 March 1991 on the reform of certain economic public companies (hereinafter "the Law of 1991"), to discharge the USO, bpost must maintain one access point per municipality. In each access point, users must be able to drop all types of postal items falling within the USO (including parcels) and collect postal items that were unsuccessfully delivered at home (including registered mail). Hence, the access point in each municipality must be at least a postal shop. The accessibility network fully incorporates the commercial optimal retail network plus [...] additional postal shops in order to reach the density requirements.
- c) The **territorial presence network**: this is the part of the retail network that is necessary to ensure proximity and full territorial presence within Belgium. It goes beyond the accessibility network (and therefore, also beyond the commercial optimal retail network). The territorial presence network consists of [...] post offices and [...] postal shops, as per the 2016 Decision.

¹³ The minimum service range entails the following public services: (a) the collection of letter postal items and postal parcels related to USO, except for items with an insured value; (b) the storage and distribution of registered mail and postal parcels that form part of the USO for which a notice was left (unsuccessful delivery at home); (c) the sale of post stamps; (d) the acceptance of "cash deposits at counter" of maximum EUR 500 to accounts held by bpost or other financial institutions (cash deposits at counter are provided via a structured notice); (e) as far as possible, a minimum range of packaging shall be made available for sale.

- (13) The Retail Network SGEI consists in the obligation to maintain the territorial presence network and can be also defined as the difference between the total network¹⁴ operated by bpost and the accessibility network.

Day to day SGEIs

- (14) Day-to-day SGEIs include public services that are provided to users with some measure of recurrence (for example, every day, every month...). They consist of the following:

1. Home payment of retirement and survivors' pensions and disabled persons' allowances

- (15) Article 141 §1 C) of the Law of 1991 entrusts bpost with the execution of the service of doorstep payment of old age and surviving dependents' pensions and benefits for people with limited moving capabilities. This SGEI is further detailed in Article 28 of the 6th Management Contract.

- (16) The home delivery of pensions allows people with limited moving capabilities and old people to receive their benefits and pensions at home. This service is offered over the entire territory of the country at no additional charge.

2. Cash at counter services

- (17) The Law of 6 July 1971 on bpost and the Royal Decree of 12 January 1970 on the regulation of the postal service entrust bpost with the execution of certain financial services. These services are further detailed in Article 21 of the 6th Management Contract, which provides that bpost must provide the following:

- i. Acceptance of cash deposits crediting a postal current account or an account with another financial institution;
- ii. Issuance and payment of domestic postal money orders (mandates).

- (18) The Belgian State requires bpost to offer these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted or financially vulnerable. Moreover, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.

Ad hoc SGEIs

- (19) The category of ad hoc SGEIs includes public service missions which, by nature, are provided without any recurrence.

1. Social role of the postman

- (20) Article 35(a) of the 6th Management Contract assigns to bpost the duty to ensure the social role of the postman. This includes services to be provided to persons who live alone and the least privileged, including but not limited to:

- Passing time with them, in terms of simple conversations and contacts;

¹⁴ The total network comprises 669 post offices and 675 postal shops, as per the 2016 Decision (see recital (27) of the 2016 Decision).

- Assisting them with electronic transactions and payments (e.g., with the use of handheld payment terminals and electronic ID cards).
- (21) This service is provided free of charge to the users. Through this SGEI, the Belgian State aims to improve social cohesion and, in particular, offer protection for the people living alone and underprivileged citizens at their residence.
2. Delivery of addressed or unaddressed election printed items
- (22) Article 35(e) of the 6th Management Contract entrusts bpost with the duty to deliver during the election period relevant materials at reduced prices. Through this SGEI, the Belgian State seeks to guarantee a more open and democratic election process by facilitating the dissemination of information by all candidates and political parties.
3. Delivery at a special price of postal items sent by associations
- (23) Article 35(f) of the 6th Management Contract entrusts bpost with the duty to deliver at reduced prices postal items sent by associations to stimulate the social web. Through this SGEI, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.
4. Delivery of letter post items that fall within the freepost system
- (24) Article 35(g) of the 6th Management Contract entrusts bpost with the duty to deliver free of charge postal items originating from or addressed to the King, correspondence between Members of the Parliament, correspondence between certain public services and institutions, etc.
- (25) A detailed description of the postal items falling within the scope of this SGEI is included in Article 49 of the Royal Decree of 24 April 2014, Article 57 of the Law of 18 July 1991 on the regulation of supervision of the police and intelligence services and Article 18 of the Law of 22 March 1995 on the creation of the federal ombudsmen. Through this SGEI, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
5. Printing, sale, reimbursement, replacement and exchange of fishing permits
- (26) Article 35(j) of the 6th Management Contract entrusts bpost with the duty to print, sell, reimburse, replace and exchange fishing permits. The Belgian State realised that the strict legislative framework on fishing would become ineffective if the services of issuing permits would be left to the market. In that case, market players would have an interest to issue a high number of permits in order to maximise profits. The Belgian State seeks to assign those services as an SGEI to monitor more easily and effectively how they are issued in practice.

2.2.1.2. *SGEIs for which bpost was not compensated under the 6th Management Contract*

Universal Service Obligations and Related Obligations

- (27) Pursuant to Article 144 *octies* §1 of the Law of 1991 (now abolished), the universal service obligation (“USO”) was entrusted to bpost in 2010 for a period of 8 years ending on 31

December 2018. After 2018, the Belgian State was to attribute the provision of USO to bpost and/or another postal service provider for periods of 10 years¹⁵.

- (28) The USO entrusted to bpost includes the provision of the following services:
- Clearance, sorting, transport, and distribution of postal items up to 2 kg ;
 - Clearance, sorting, transport, and distribution of postal parcels up to 10 kg ;
 - Distribution of postal parcels received from other Member States and weighing up to 20 kg;
 - Services for registered items and insured items.
- (29) In providing the USO, bpost has to comply with the following obligations:
- One access point must be available in each municipality to receive mail and postal parcels that fell within the scope of the USO;
 - One collection, one dispatch, and one distribution of mail and postal parcels per day must take place per municipality at least 5 days per week;
 - Distribution of mail must be made to all homes that have a mailbox in Belgium. Parcels that cannot be delivered to the recipient shall be kept in a place located in the municipality of the recipient.
- (30) As the provider of the USO, bpost has to meet the following requirements:
- Comply with the essential requirements defined in Article 142, §§2 and 3 of the Law of 1991;
 - Offer an identical service to similarly situated users;
 - Offer the service without discrimination;
 - Offer the service continuously without interruption, except in case of *force majeure*; and
 - Adapt the service to the technical, economic and social environment, as well as to the needs of users.
- (31) bpost is also responsible, in its capacity as operator designated by the State, for the operation of the international letter postal service and the operation of the international *postcolli* service in accordance with the relevant acts of the Universal Postal Union.

Ad hoc SGEIs

- (32) Certain Ad hoc SGEIs do not fall within the compensation system established in the 6th Management Contract:

¹⁵ Since 1 January 2019, bpost will then continue to provide the universal service on the basis of a management contract concluded with the State for a period of five years,

- (33) **Please Postman service:** Article 35(b) of the 6th Management Contract entrusts to bpost the duty to provide the “please postman” service. Through this SGEI, the Belgian State enables the elderly and the least privileged citizens to request from postmen various types of postal services. Through this SGEI, the Belgian State aims to improve social cohesion and offer help for the elderly and underprivileged citizens at their residence.
- (34) **Dissemination of information to the public:** Article 35(c) of the 6th Management Contract entrusts to bpost the duty to offer information to the public, upon a specific request from the Belgian State. The dissemination of information can take place, among other ways, through the post offices of bpost’s retail network. Through this SGEI, the Belgian State aims to reinforce social and territorial cohesion, by establishing a direct channel of communication with the citizens, especially for important issues and campaigns.
- (35) **Cooperation with regard to the delivery of voting paper packages:** Article 35(d) of the 6th Management Contract entrusts to bpost the duty to distribute the voting paper packages (weighing more than 10 kg), through special rounds of the postmen. Through this SGEI, the Belgian State aims to make the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).
- (36) **Payment of attendance fees during elections:** Article 35(h) of the 6th Management Contract entrusts to bpost the duty of managing the payment of attendance fees during elections. bpost issues the invoices and then requests the entity where elections took place to disburse the attendance fees. Through this SGEI, the Belgian State aims at making the election procedure more efficient and transparent and also ensures consistency in the administrative details of the different election procedures (for example at the federal or regional level).
- (37) **Financial and administrative processing of fines:** Article 35(i) of the 6th Management Contract entrusts bpost with the duty to manage the payment of fines. This includes not only accepting the payment, but also taking other administrative actions leading to the payment (e.g., sending invitations to pay to infringers, reminders, etc.). This SGEI allows the Belgian State to easily monitor the financial and administrative processing of fines and ensures that it takes place efficiently and in line with fundamental human rights and the general principles of good administration.
- (38) **Sale of stamps and other postal values:** Article 131 4^o *sexies* of the Law of 1991 and Article 35(k) of the 6th Management Contract entrust bpost with the duty to sell post stamps and other postal values. On the basis of transparency criteria, bpost may allow third parties to sell post stamps and other postal values, taking into account that the postal value of such post stamps constitutes the sale price to the end consumer, except in the case of sales for philately purposes. Through this SGEI, the Belgian State aims to ensure that citizens will have easy access to post stamps and other postal values (at least) through bpost’s retail network. It also guarantees horizontal pricing of stamps and other postal values throughout the country’s territory, by requiring that their postal value equals the sale price to the end-consumer, except in the case of sales for philately.

2.3. State compensations granted to bpost under the 6th Management Contract

- (39) Under the 6th Management Contract, the Belgian State compensated bpost for the provision of the Retail Network SGEI, the day-to-day SGEIs and several ad hoc SGEIs described in recitals (19) to (26) of this Decision for the financial years 2016-2020.
- (40) bpost received advanced payments for these SGEIs calculated on the basis of the Net Avoided Cost Methodology (hereinafter "NAC"). Moreover, at the end of each calendar year, there was an *ex post* verification of bpost's financial accounts in order to ensure that there was no overcompensation. Furthermore, the exact compensation amounts were subject to a cap.

Advance payments

- (41) To guarantee the continuity with the previous Management Contracts (see recitals (12) to (16) of the 2016 Decision), the advance payment for each specific year was disbursed in two instalments under the 6th Management Contract:
- i. A first instalment in January of each specific year (Y) for 266/365 of the amounts set out in Recital (90) of the 2016 Decision (mentioned in recital (44) of this Decision) in relation to that specific year (Y); and
 - ii. A second instalment in January of following year (Y+1) for 99/365 of the amounts set out in Recital (90) of the 2016 Decision (mentioned in recital (44) of this Decision) for the specific year (Y).

Calculation of the compensation for the SGEIs

- (42) **Retail Network and day-to-day SGEIs:** for the Retail Network and day-to-day SGEIs, compensation was equal to:
- a) bpost's NAC for the provision of this SGEI, which already includes a reasonable profit ;
 - b) Increased by a 67% share of efficiency gains or decreased by a 67% share of efficiency losses¹⁶;
 - c) Decreased by a special penalty mechanism evaluating bpost's performance against several quality targets:
 - i. For cash at counter services, bpost committed to ensure that 95% of all transactions would be executed on time. Deposits relating to bpost bank accounts would be executed within D+1. For all other accounts, transactions would be executed within D+2;
 - ii. For the home delivery of pensions, bpost committed to ensure that the net number of complaints in relation to this SGEI received in writing by bpost would remain below 50 for every 10,000 deliveries;

¹⁶ Efficiency gains are calculated as the actual reduction of bpost's total costs compared to the costs incurred in the previous year when providing the SGEI, after neutralizing the effect of all parameters not related to bpost's performance (e.g., volume changes). Similarly, efficiency losses are calculated as the actual increase of bpost's total costs compared to the costs incurred in the previous year when providing the SGEI, after neutralizing the effect of all parameters not related to bpost's performance.

iii. For the retail network SGEI, bpost committed to ensure that between 80% and 90% of all customers would be served within five minutes in post offices; in addition, it committed to ensure that the application level of the Goolda/Brasma¹⁷ standard would be between 80% and 90%.

iv. If the quality targets described in (i) to (ii) would not be met and bpost would incur efficiency losses, the share of losses borne by bpost would be increased from 67% to 100%. If the quality targets described in (i) to (ii) would not be met and bpost would achieve efficiency gains, the share of gains obtained by bpost would be reduced from 67% to 33 %. If the quality target described in (iii) would not be met, compensation would be reduced by up to 10% on the basis of a specific formula, set out in Article 18 of the 6th Management Contract.

(43) **Ad hoc SGEIs:** For ad hoc SGEIs, the compensation amount was calculated on the basis of the NAC methodology, which already includes a reasonable profit.

Ex post verification and compensation cap

(44) At the end of the calendar year, the *ex post* verification of bpost's financial accounts was to be performed by the Board of Auditors¹⁸, which ensured that there was no overcompensation (see table 3 in recital (114)). The compensation amount was subject to a cap, as described in Article 7.3 of the 6th Management Contract, as follows:

i. For the period from 1 January 2016 to 31 December 2016: EUR 90 068 119.18 (EUR 91 637 659 including actual inflation);

ii. For the period from 1 January 2017 to 31 December 2017: EUR 90 473 767.31 (EUR 94 487 776 including actual inflation);

iii. For the period from 1 January 2018 to 31 December 2018: EUR 92 773 016.69 (EUR 98 539 131 including actual inflation);

iv. For the period from 1 January 2019 to 31 December 2019: EUR 93 228 165.65 (EUR 100 996 401 including actual inflation);

v. For the period from 1 January 2020 to 31 December 2020; EUR 91 808 947.40 (EUR 100 856 519 including actual inflation).

(45) If the compensation amount (calculated on the basis of the *ex post* verification and taking into account the cap) was lower than the advance payments for a specific year, then the difference was to be reimbursed by bpost to the State within 30 days of the determination of this difference. If the compensation amount (calculated on the basis of the *ex post* verification) was higher than the advance payments for a specific year, then the difference was to be paid by the State to bpost within 30 days of the determination of this difference. According to Article 7.3 of the 6th Management Contract, if the cap (always after application of the adjustment mechanism) is lower than the compensation amount,

¹⁷ Quality criteria based on the Goolda/Brasma welcome model (greet, make eye contact, help/offer solutions, smile, thank, say goodbye).

¹⁸ The Belgian authorities have explained that the Board of Auditors is composed of four members, two of which are appointed by the Belgian Court of Auditors and two of which by bpost.

calculated according to recitals (42) and (43) above, the cap amount becomes the final compensation. If the compensation amount is lower than the cap (always after application of the adjustment mechanism), then the cap does not apply and the final compensation amount is the compensation amount calculated according to recitals (42) and (43).

2.4. Prolongation of the 6th Management Contract

2.4.1. Scope of the prolongation

- (46) The modifications to the 6th Management Contract (which are applicable for the year 2021), which are limited to the compensation cap and to the payment modalities, i.e. not to the scope of the SGEIs, are laid down in the “*Encadrement de la compensation et des modalités de paiement en 2021 suite à la prorogation du 6^e Contrat de gestion entre l’État et bpost*” of 8 March 2021 signed by bpost and the Belgian State (“the Addendum”). Under the prolonged 6th Management Contract, the compensated public service missions entrusted to bpost by the Belgian State remain the same as those under the 6th Management Contract (see recitals (8) to (26)).

2.4.2. Prolongation period

- (47) The extension of the measure is limited to one year, i.e. until 31 December 2021. The Belgian authorities explained that on 31 December 2020, the end date of the 6th Management Contract (2016-2020), no new Management Contract had yet entered into force, because the current Belgian government only assumed office in October 2020 and was preceded since December 2018 by a caretaker government, which could not take important new financial commitments. When the current government assumed office there was not enough time left to negotiate a new Management Contract, all the more in the context of the COVID-19 pandemic.
- (48) Since on the expiration date of the 6th Management Contract, i.e. on 31 December 2020, no new management contract had entered into force, the 6th Management Contract was automatically extended in accordance with Article 5, §3 of the Law of 1991.¹⁹
- (49) The Belgian authorities committed not to allow any additional prolongation of the 6th Management Contract but to negotiate and conclude a new management contract with bpost in 2021, so that it can enter into force on 1 January 2022.²⁰

2.4.3. Modifications that apply for the prolongation in 2021

- (50) As indicated in recital (7), the only modifications of the Management Contract concern the compensation cap and the payment modalities.
- (51) With the notified prolongation, the Belgian authorities postponed the payment date of the first advance payment for the year 2021 (see recital (41)) from 15 January 2021 to 21 July

¹⁹ Article 5, §3 of the Law of 1991 provides that if, upon the expiration of a management contract, no new management contract has entered into force, the existing management contract is automatically extended until such date as a new management contract enters into force.

²⁰ In case no new management contract would enter into force within one year from the extension, the Belgian federal government would be entitled by national law to adopt temporary rules (by way of a Royal Decree) in lieu of a management contract, until a new management contract enters into force.

2021. They explained that this modification is made to allow time for the adoption of the Commission decision following the notification of the measure.

- (52) With the notified prolongation, the Belgian authorities also intend to set the compensation cap at EUR 110 443 363,26 for the financial year 2021.
- (53) If the compensation amount (calculated on the basis of the *ex post* verification) is higher than the advance payments for the financial year 2021, the compensation due to bpost will remain limited to the capped amount (i.e. EUR 110 443 363,26) (Point 8 of the Addendum).
- (54) Apart from the notified modifications, the Belgian authorities confirm that no further amendments are proposed and that all other elements of the measure as approved by the 2016 Decision remain unchanged.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) TFEU

- (55) According to Article 107(1) TFEU “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*”.
- (56) It follows that, in order for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following four cumulative conditions have to be met:
 - i. it has to be imputable to the Member State and granted out of State resources;
 - ii. it has to confer an economic advantage on undertakings;
 - iii. the advantage has to be selective; and
 - iv. the measure has to distort or threaten to distort competition and affect trade between Member States.
- (57) The Commission concluded in recital (252) of the 2016 Decision that the state compensation under the 6th Management Contract for the delivery of public services by bpost constituted State aid within the meaning of Article 107(1) TFEU, based on the assessment in recitals (244) to (251) of that decision. The considerations set out in that decision that the scheme was granted through state resources and imputable to State, was selectively advantageous to bpost and that it was likely to have an effect on trade between Member States and to lead to a distortion of competition apply to the measures granted to bpost under the Prolonged 6th Management Contract, as the notified modifications for the year 2021 do not affect this assessment.

3.2. Legality of the aid

- (58) While it acknowledges that the Prolonged 6th Management Contract relates to essential public services for the Belgian population, the Commission regrets that the prolongation of the measure was put in place as of 1 January 2021, before the Commission adopted a

decision. The notified prolongation of the 6th Management Contract thus constitutes unlawful aid.

3.3. Compatibility of the aid with the internal market under the 2012 SGEI Framework

3.3.1. Legal basis

- (59) Article 106(2) TFEU reads as follows: "*Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.*"
- (60) In accordance with that provision, the Commission may declare compensation for SGEIs compatible with the internal market, provided that certain conditions are met. The Commission has laid down the conditions according to which it applies Article 106(2) TFEU in a series of instruments: the 2012 SGEI Framework²¹ and the 2012 SGEI Decision²² (hereinafter together: "the 2012 SGEI package").
- (61) Since the amount of the SGEI compensation granted to bpost under the Prolonged 6th Management Contract are above EUR 15 million per year, that compensation does not fall within the scope of the 2012 SGEI Decision, as set out in Article 2 thereof.
- (62) State aid falling outside the scope of the 2012 SGEI Decision may be declared compatible with Article 106(2) TFEU if it is necessary for the operation of the SGEI concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union²³. In this regard, the 2012 SGEI Framework sets out the guidelines for assessing the compatibility of SGEI compensation.

3.3.2. Compatibility assessment under the SGEI Framework

- (63) According to the 2012 SGEI Framework, the following compatibility criteria apply:

3.3.2.1. Genuine service of general economic interest referred to in Article 106 TFEU and public consultation

- (64) The Commission recalls that, in the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have a wide margin of discretion in defining a

²¹ Communication from the Commission: European Union Framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15.

²² Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU on State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI, OJ L 7, 11.1.2012, p. 3.

²³ 2012 SGEI Framework, paragraph 11.

given service as an SGEI²⁴. The Commission's competence in this respect is limited to checking whether the Member States has made a manifest error when defining the services as an SGEI²⁵.

- (65) In that regard, the Union Courts have ruled that there are certain minimum criteria common to every SGEI and that the inability of a Member State to demonstrate that a particular service fulfils those criteria constitutes a manifest error in defining this mission as an SGEI²⁶. According to the Union Courts, those criteria are the presence of an act of the public authority entrusting the operators in question with an SGEI and the universal and compulsory nature of that service²⁷.
- (66) The Commission has further explained in its 2012 SGEI Communication that it considers it inappropriate to attach specific public service obligations to an activity which is already provided or can be provided for satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions²⁸. The Commission's assessment in this regard is also limited to checking that the Member State has not made a manifest error.
- (67) Paragraph 14 of the 2012 SGEI Framework provides that “*Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account.*”
- (68) In this regard, the Belgian authorities consider that the prolongation of the 6th Management Contract does not contain substantive changes, except for the cap on the amount of aid, and therefore cannot affect the Commission’s conclusion that the public services which are entrusted to bpost and compensated under the 6th Management Contract constitute genuine SGEIs.
- (69) **Maintenance of the Retail Network SGEI:** the Belgian State considers that the Network SGEI is a genuine public service for the following reasons:
- bpost's retail network performs an important social and economic role which goes beyond the accessibility to the postal universal service and other SGEIs. The retail network ensures proximity and allows access throughout the country to a range of public (postal and non-postal) services for all citizens, including those living in rural areas and the elderly,

²⁴ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest Official Journal C8, 11.01.2012, p.4, Recital(46).

²⁵ Case T-289/03 BUPA and Others v Commission [2008] ECR II-81, paragraphs 166-169 and 172; Case T17/02 Fred Olsen [2005] ECR II-2031, paragraph 216.

²⁶ Case T-289/03 BUPA and Others v Commission, *ibidem.*, §172.

²⁷ *Ibid.*

²⁸ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, Recital (48).

disabled and socially disadvantaged, that cannot be provided through the internet or over the phone.

- PSPs (especially in rural areas) act as focal points for the local communities and are used by citizens as sources of information and assistance on public services.
- (70) **Cash at counter services:** Through this service, the Belgian State aims to improve social cohesion since it consists in offering these financial services universally, including to persons who are not served by banks, for instance because they are heavily indebted or financially vulnerable. Despite the high costs involved in cash handling, the service is offered at reduced tariffs, in order to be affordable to all the citizens in the country.
- (71) **Home delivery of pensions:** Through this service, the Belgian State aims to improve social cohesion since it allows people with limited moving capabilities and old people to receive their benefits and pensions at home.
- (72) **Social role of the postman:** Through this service, the Belgian State aims to improve social cohesion and, in particular, offer protection for persons living alone and underprivileged citizens at their residence.
- (73) **Delivery of addressed or unaddressed election printed items:** Through this service, the Belgian State seeks to guarantee a more open and democratic election process.
- (74) **Delivery at a special price of postal items sent by associations:** Through this service, the Belgian State aims to strengthen the role of associations in the society, facilitating the dissemination of information on their part.
- (75) **Delivery of letter post items that fall within the freepost system:** Through this SGEL, the Belgian State aims to facilitate the horizontal communications among various entities of the State and also the contacts between citizens and State bodies.
- (76) **Printing, sale, reimbursement, replacement and exchange of fishing permits:** the Belgian State considers that this service is essential to guarantee that the strict legislative framework on fishing is well implemented.
- (77) In addition, the Belgian State mandated Profacts²⁹ to organise a public consultation regarding the necessity, for the users and for the providers, to have access to the services entrusted to bpost by the Belgian State.
- (78) Profacts organised the public consultation from 14 May to 28 May 2020 and surveyed a representative sample of 2000 citizens through a computer-assisted web interviews method or through a computer-assisted telephone interviews method. The questionnaire submitted to the citizens comprised three parts:
- i. The first part aimed at determining the profile of each respondent, i.e. their gender, age, postal code, or language.
 - ii. The second part contained 6 questions, among which 5 were closed-ended questions and 1 was open-ended.

²⁹ Profacts is a private entity specialised in the analysis of data.

iii. The third part also aimed at determining the profile of each respondent, but going further than the first one: it concerned the respondents' education, profession and family situation.

- (79) According to the public consultation, 90% of the sample considered that it is important or very important to maintain a large network of postal services points³⁰. Approximately ¾ of the sample attach importance to the services proposed by bpost to the persons who do not own a bank account. Nearly 65% of the respondents think that bpost's social role through the payments at home is important..
- (80) The Commission already accepted the qualification of the SGEIs above as genuine SGEIs in the 2016 Decision, as stated in recital (269) of that decision. The Commission considers that the market has not evolved in a way that would alter the genuine nature of the SGEIs described above. Indeed, besides their importance for citizens, considering the stringent conditions imposed by the Belgian State for their delivery, those services could not be delivered under normal market conditions.
- (81) Based on the information provided, the Commission considers that the abovementioned services still qualify as genuine SGEIs and that the Belgian authorities have not committed a manifest error in their definition as such.
- (82) In light of the foregoing, the Commission considers that the requirement of paragraph 14 of the 2012 SGEI Framework has been fulfilled, and that all SGEIs entrusted to bpost under the Prolonged 6th Management Contract are genuine SGEIs.

3.3.2.2. Need for an entrustment act specifying the public service obligations and the methods for calculating compensation

- (83) As regards the SGEIs listed above, entrustment of bpost is by the Amended Law of 1991 and the 6th Management Contract, as amended by the Addendum as regards the new compensation cap for 2021 and new payment modalities (see recitals (50), (51) and (52)). In addition, depending on the SGEI in question, additional legal acts can also be part of the entrustment (see below the entrustment acts for each SGEI).).

Table 1: Entrustment acts

SGEIs	Entrustment legal acts
Network SGEI	Articles 9 to 14 of the 6 th Management Contract Art 141§1 A) of the Law of 1991
Cash at counter services	Article 21 of the 6 th Management Contract Art 2(2) a) and c), Art 2(4) Law of 6 July 1971 Royal Decree of 12 January 1970 on the regulation of the postal service

³⁰ Postal service points are both post offices and postal sales outlet.

	Article 131, 22°, Article 140, c) and Article 141, §1, B), 2° and 3° of the Law of 1991
Home delivery of pensions	Article 28 of the 6 th Management Contract Art 140 c), Art 141§1 C) of Law of 1991 Art 31 of the Royal Decree 24 October 1967 Art 137 of the Royal Decree 22 December 1967
Social Role of the Postman	Art 35 a) of the 6 th Management Contract Art 141§1 D) of the Law of 1991
Delivery of addressed or unaddressed election printed items	Article 35(e) of the 6 th Management Contract Art 141 <i>sexies</i> , 1° of Law of 1991 Art 48 of Royal Decree of 2014
Delivery at a special price of postal items sent by associations	Article 35(f) of the 6 th Management Contract Art 141§1 F) of the Law of 1991
Delivery of letter post items that fall within the freepost system	Article 35(g) of the 6 th Management Contract Art 141§1 G) of the Law of 1991 Art 1 §2 2° and Art 49-51 of the Royal Decree of 2014 Art 57 of Law of 18 July 1991 Art 18 of Law 22 March 1995 Art 7.3 of the Universal Postal Convention
Printing, sale, reimbursement, replacement and exchange of fishing permits	Article 35 (j) of the 6 th Management Contract Art 131, 4°ter and Art 141§1 <i>bis</i> of the Law of 1991 Agreements for the delivery of fishing permits: (i) Agreement of 22 December 1999 concluded between La poste and the Walloon Region ; (ii) Agreement concluded between La Poste and the Region Brussels-Capital; iii) Agreement of 15 October 1998 concluded between De Post and the Flemish Region.

- (84) In its 2016 Decision (recital (271)), the Commission considered that the legal documents above clearly defined and entrusted bpost with the delivery of the SGEIs listed in the 6th Management Contract. In addition, it considered that the 6th Management Contract clearly defined the compensation mechanism of the net cost of these SGEIs as well as the arrangements to avoid overcompensation in line with paragraph 16 of the 2012 SGEI

Framework. The Commission considers that the same conclusion is valid as regards the prolongation of the 6th Management Contract and the Addendum, which together establish the framework for the provision of SGEIs covered by the management Contract in 2021.

3.3.2.3. *Duration of the period of entrustment*

- (85) The Belgian authorities, in their notification to the Commission, sought approval of the measure's prolongation for one year, i.e. for the period 1 January 2021 to 31 December 2021, and justified the reason for such prolongation (see recital (47) of the present decision).
- (86) To deliver these SGEIs, bpost possesses several important groups of assets. The most important ones are the retail network buildings (used for example for the Retail Network, Cash at Counter and Managing of Fishing Permits SGEIs) and sorting centres (used for example for the Distribution of Election Material SGEI). The depreciation period for these assets ranges between 4 to 30 years. As the notification concerns a prolongation of the existing measure for one year, the Commission therefore considers that no concerns are raised in relation to the duration, as the prolongation does not exceed the period required for the depreciation of the most significant assets needed to provide the SGEIs.

3.3.2.4. *Compliance with Directive 2006/111/EC*

- (87) According to paragraph 18 of the 2012 SGEI Framework, "*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings*³¹".
- (88) As stated in the 2016 Decision in recital (185), bpost uses, for its cost accounting, an activity-based costing (ABC) methodology. All operational costs are allocated, up to the level of earnings before interest and tax (EBIT), to the various products.
- (89) The Commission considered in its 2016 Decision, based on the reasoning in recitals (185) to (190), that the cost accounting method used by bpost allocates all costs with a sufficient level of adequacy.
- (90) The cost accounting method remains the same under the Prolonged 6th Management Contract and shall be used in 2021. Therefore, the Commission considers that bpost allocates all costs with a sufficient level of adequacy.
- (91) The Commission therefore considers that bpost complies with Directive 2006/111/EC.

3.3.2.5. *Compliance with EU Public Procurement Rules*

- (92) According to paragraph 19 of the 2012 SGEI Framework, "[a]id will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and

³¹ OJ L 318 17.11.2006, p.17.

non-discrimination resulting directly from the Treaty and, where applicable, secondary EU legislation. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty."

- (93) The Belgian State considers that the sole provider exemption should be applicable in the present case. They argue that the same factors that led the Commission to consider that the abovementioned SGEIs entrusted to bpost were covered by the "sole provider exemption" in the 2016 Decision are still valid today. The Belgian authorities believe that, for this reason, the compensation for the provision of these public services is in line with the requirement contained in paragraph 19 of the SGEI Framework.
- (94) In recital (289) of its 2016 Decision, the Commission considered, based on its analysis in recitals (286) to (288), that all compensated SGEIs delivered through the postal distribution and retail networks (Retail Network SGEI, cash at counter services, home delivery of pensions, social role of the postman, delivery of addressed or unaddressed election printed items, delivery at a special price of postal items sent by associations, delivery of letter post items that fall within the freepost system, printing-sale-reimbursement-replacement and exchange of fishing permits) can be covered by the sole provider exemption and be entrusted through a negotiated procedure without prior publication according to Article 32 (2) b) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement³².
- (95) The Commission considers that the one-year prolongation of the 6th Management Contract does not affect this assessment and, hence, that all compensated SGEIs which are subject to the present decision can continue to be covered by the sole provider exemption.

3.3.2.6. *Absence of discrimination*

- (96) According to paragraph 20 of the 2012 SGEI Framework, "[w]here an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking."
- (97) In line with the assessment in the 2016 Decision (recital (290)), the SGEIs entrusted under the Prolonged 6th Management Contract are not assigned to "several undertakings", but only to bpost. Therefore, the Commission considers that there cannot be a question of discriminatory compensation between SGEI providers within the meaning of paragraph 20 of the 2012 SGEI Framework.

3.3.2.7. *Calculation of the net cost under the Prolonged 6th Management Contract*

- (98) According to paragraph 21 of the 2012 SGEI Framework, "[t]he amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit." In this respect, paragraph 24 of the 2012 SGEI Framework states that "[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible."

³² OJ L 94, 28.3.2014, p. 65–242

(99) According to paragraph 25 of the 2012 SGEI Framework, "*Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation*".

(100) The Belgian authorities have explained that the compensation granted to bpost continues to be based on the same NAC methodology as the one applicable for the 6th Management Contract, which was notified to the Commission and subject to the 2016 Decision. The NAC methodology aims at calculating the difference between the net cost for bpost of operating with the public service obligation and the net cost of operating without these obligations.

Description of the NAC methodology and NAC calculation for the 6th Management Contract, as laid down in the 2016 authorisation decision

(101) To define bpost's net cost of operating without the SGEIs, the Belgian authorities determined the commercially optimal strategy that bpost would adopt for each service, should the SGEI constraints be lifted.

(102) The following order is followed to lift SGEI-induced constraints:

1. Network SGEI;
2. Cash at Counter;
3. Pensions and other cash doorstep payments;
4. Other Product SGEIs.

(103) For each SGEI, the following approach was followed to determine the impact of the alternative commercial strategy:

- A. Definition of an alternative commercial strategy;
- B. Optimization of pricing and network size;
- C. Estimation of impact on volumes and revenues;
- D. Estimation of impact on costs;
- E. Estimation of cross and collateral effects.

(104) These steps are further described in recitals (297) to (304) of the 2016 Decision.

(105) The Belgian authorities first implemented the NAC methodology based on 2014 data and then extrapolated them for the period 2016-2020 (see recitals 306 and 307 of the 2016 Decision).

(106) The Belgian authorities also checked the reliability ("validity testing") of the overall NAC calculation (see recitals (308) to (312) of the 2016 Decision).

(107) An efficiency sharing mechanism was also introduced in order to incentivise bpost. It consists of 67% of the realised efficiency gains which can be kept by bpost, provided that precise quality targets are met (see recital (317) of the 2016 Decision).

(108) The Belgian authorities then calculated *ex ante* the NAC including efficiency incentives, as laid down in Table 2 (table 17 in the 2016 Decision).

Table 2: Ex ante calculated compensable amounts taking into account efficiency incentives

		2016 (F=forecast) (million €)	2017 (F) (million €)	2018 (F) (million €)	2019 (F) (million €)	2020 (F) (million €)
RETAIL NETWORK	NAC	[...]	[...]	[...]	[...]	[...]
	Collateral effects	[...]	[...]	[...]	[...]	[...]
	Cross Effects	[...]	[...]	[...]	[...]	[...]
	Efficiency incentives	[...]	[...]	[...]	[...]	[...]
	TOTAL	[...]	[...]	[...]	[...]	[...]
PRODUCT SGEIs	NAC	[...]	[...]	[...]	[...]	[...]
	<i>Of which cash at counter</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which other</i>	[...]	[...]	[...]	[...]	[...]
	Efficiency incentives	[...]	[...]	[...]	[...]	[...]
	<i>Of which cash at counter</i>	[...]	[...]	[...]	[...]	[...]
	<i>Of which other</i>	[...]	[...]	[...]	[...]	[...]
	TOTAL	[...]	[...]	[...]	[...]	[...]
TOTAL		91.7	93.8	97.9	100.1	100.4
TOTAL EXCL. INFLATION (2015)		90.1	90.5	92.8	93.2	91.8

- (109) The compensable amounts presented in Table 2 corresponded precisely to the cap used for the compensation under the 6th Management Contract (recital (44)).
- (110) As the compensation could not exceed the cap, the Commission therefore concluded in its 2016 Decision that bpost was not overcompensated from an *ex ante* perspective.

Conclusion by the Commission on the application of the NAC methodology for the calculation of the net cost of the different SGEIs, as laid down in the 2016 Decision

- (111) The Commission considered at recital (313) of the 2016 Decision that the principles established by the Belgian authorities for the implementation of the NAC methodology were sound. In particular, in the Commission's view, the adopted methodology ensured that the counterfactual scenario corresponded to the optimal commercial strategy that bpost would have followed had the SGEI constraints been lifted. In addition, it ensured that there would not be double counting and that it allowed to take into account all the cross-effects and collateral effects of the counterfactual scenario.
- (112) Moreover, the Commission considered at recital (314) of the 2016 Decision that the Belgian authorities provided satisfactory evidence that the counterfactual scenario represented a credible picture of a counterfactual company that would be able to credibly operate the activities that would be kept by bpost in the absence of SGEI obligations. This conclusion was based on a validity testing of the NAC methodology, which included the analysis of profit levels, cost variability and productivity changes.

- (113) In addition, in recital (318) of the 2016 Decision, the Commission considered that the quality incentives and efficiency incentives were set out in a transparent manner in the 6th Management Contract. In particular, the Commission considered the fact that efficiency gains are shared between the State and bpost as well as the fact that efficiency gains will not be achieved at the detriment of quality to be in line with the 2012 SGEI Framework.

Ex-post control of overcompensation

- (114) The Belgian authorities calculated *ex post* the compensable amounts, which are laid down in Table 3, taking into account the efficiency incentives.

Table 3: Ex post calculated compensable amounts

	<u>2016</u> <u>(million €)</u>	<u>2017</u> <u>(million €)</u>	<u>2018</u> <u>(million €)</u>	<u>2019</u> <u>(million €)</u>	<u>2020</u> <u>(million €)</u>
NAC ex-ante as per 2016 decision (without inflation)	90.1	90.5	92.8	93.2	91.8
NAC ex-ante (adjusted with actual inflation)	[...]	[...]	[...]	[...]	[...]
NAC ex-post	[...]	[...]	[...]	[...]	[...]
Compensation	91.6	94.5	98.5	101.0	100.9

- (115) The *ex post* calculated compensable amounts significantly exceeded the compensation granted by the Belgian authorities, hence the compensated cap applied, adjusted to reflect the evolution of the consumer price index.

NAC calculation for the prolongation of the 6th Management Contract

- (116) Under the Prolonged 6th Management Contract, the Belgian authorities have used the same NAC methodology as described in recitals (101) to (105). The Commission considers that the one-year prolongation of the measure does not affect the soundness of the NAC methodology used by the Belgian authorities. The fact in particular that bpost was not overcompensated over the period 2016-2020 (recitals (110), (114) and (115) of the present decision) confirms that the NAC methodology employed was sound.
- (117) On the basis of the same NAC methodology, the Belgian authorities calculated the compensable amount for 2021, as laid down in Table 4, on an *ex ante* basis and taking into account efficiency incentives.

Table 4: Ex ante calculated compensable amounts taking into account efficiency incentives

		2021 (F) (million €)
RETAIL NETWORK	NAC	[...]
	Collateral effects	[...]
	Cross Effects	[...]
	Efficiency incentives	[...]
	TOTAL	[...]
PRODUCT SGEIs	NAC	[...]
	<i>Of which cash at counter</i>	[...]
	<i>Of which other</i>	[...]
	Efficiency incentives	[...]
	<i>Of which cash at counter</i>	[...]
	<i>Of which other</i>	[...]
	TOTAL	[...]
TOTAL		127.5

- (118) The compensable amount presented in Table 4 (i.e. EUR 127 million) exceeds the cap used for the compensation in 2021 under the Addendum (recital (52)).
- (119) As the compensation cannot exceed the cap, the Commission concludes that bpost will not be overcompensated from an *ex ante* perspective. Furthermore, there will be *an ex post* verification of bpost's financial accounts in order to ensure that there is no overcompensation also from an ex-post viewpoint.

3.3.2.8. Transparency

- (120) In its notification, the Belgian State has committed to publish all the information mentioned in paragraph 60 of the 2012 SGEI Framework on the internet.

3.3.2.9. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

- (121) The potential necessity of additional requirements for the Prolonged 6th Management Contract is to be analysed in light of paragraph 58 of the 2012 SGEI Framework which reads as follows “*The Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets. Where this is the case, it may be appropriate to require that competitors are given fair and non-discriminatory access to the infrastructure under appropriate conditions.*”

(122) In its 2016 Decision, the Commission considered, based on the reasoning in recitals (325) to (328), that no exceptional circumstances that would require additional conditions were present. The same reasoning is applicable for the Prolonged 6th Management Contract and the Commission considers that no new exceptional circumstances arise from the one-year prolongation of the 6th Management Contract. Therefore, no additional conditions are needed.

3.3.3. Conclusion on the compatibility of the aid of the SGEIs entrusted to bpost under the measure

(123) Based on the foregoing observations, the Commission considers the compensation granted by Belgium to bpost for the SGEIs entrusted to it under the one-year prolongation of the 6th Management Contract notified by the Belgian State to the Commission to be compatible with the internal market on the basis of Article 106(2) TFEU, as it meets all the requirements of the SGEI Framework.

4. CONCLUSION

- (124) The Commission regrets that Belgium put the aid in question into effect, in breach of Article 108(3) TFEU.
- (125) However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 106(2) TFEU.
- (126) The Commission notes that Belgium exceptionally accepts the adoption and notification of the decision in English.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/e_lojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

