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**Subject: State Aid SA.61748 (2021/N) – Belgium
COVID-19: Flemish support for uncovered fixed costs**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 2 February 2021, Belgium notified aid in the form of support for uncovered fixed costs (Besluit van de Vlaamse Regering betreffende het corona globalisatiemechanisme voor ondernemingen met een grote omzetzaling in 2020 ten gevolge van de coronamaatregelen,¹ the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).²
- (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 1/1958³ and to have this Decision adopted and notified in English.

¹ Decision of the Flemish Government regarding a Covid-19 Globalisation Mechanism for undertakings that suffer a large turnover decline in 2020 due to the Covid-19 measures.

² 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.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

- (3) Belgium considers that the COVID-19 outbreak affects the real economy. All sectors of the economy are adversely affected, largely due to the imposed closures of (physical) shops and because of other emergency measures that aim to contain the spread of the virus. The resulting decline or cessation of sales weighs most heavily on undertakings that lack the possibility of organizing e-commerce activities. In particular, small businesses with insufficient cash flow are finding it difficult to cope with such a protracted crisis.
- (4) Although the economic effects of the current lockdown appear to be less severe, than during the first lockdown, in a recent survey by the Economic Risk Management Group (ERMG), almost one out of every two Belgian firms indicated that they could only survive a second lockdown with public support measures.⁴ The National Bank of Belgium estimates that the corona crisis will also have a severe impact on the labour market and some 100,000 jobs could be lost by autumn 2021.⁵
- (5) The notified measure shall help beneficiaries to continue their operations during the current economic difficulties caused by the Covid-19 pandemic. 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. This ensures that the disruptions caused by the outbreak do not undermine the viability of the undertakings, thereby preserving the continuity of economic activity during and after the outbreak.
- (6) Belgium confirms 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 Belgium. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (7) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.12 of the Temporary Framework.

2.1. The nature and form of aid

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

2.2. Legal basis

- (9) The legal basis for the measure is the Decision of the Government of the Flemish region of Belgium, regarding a Covid-19 Globalisation Mechanism for undertakings that suffer a large turnover decline in 2020 due to the Covid-19 measures (“Besluit van de Vlaamse Regering betreffende het corona globalisatiemechanisme voor ondernemingen met een grote omzetzaling in 2020 ten gevolge van de coronamaatregelen”). The draft of this decision was submitted to the Commission on 2 February 2021.

⁴ <https://www.nbb.be/nl/covid-19/covid-19-dashboard-van-economische-indicatoren>.

⁵ https://www.nbb.be/doc/ts/publications/economicreview/2020/ecoreviii2020_h1.pdf.

- (10) After adoption, that Decision will be published in the Belgian Official Journal (“Belgisch Staatsblad”) and on the Flanders Innovation & Entrepreneurship Agency (“Vlaams Agentschap Innoveren & Ondernemen”, or “VLAIO”) website.

2.3. Administration of the measure

- (11) The VLAIO is the granting authority and responsible for administering the measure.

2.4. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 149 million. The measure is funded from the general State budget.
- (13) Pending approval by the Commission, no individual aid has been or will be granted or paid out under the notified aid scheme. Applications for such aid will be possible from the moment the relevant (web application) form is ready. A decision by the Flemish minister of Economy will announce the official start date for applications.
- (14) Aid may be granted under the measure as from the notification of the Commission’s approval decision until no later than 31 December 2021.

2.5. Beneficiaries

- (15) Beneficiaries can be both small and medium-sized enterprises (“SMEs”)⁶ and large enterprises. However, to be eligible under the measure, beneficiaries should have generated a turnover in the period of 1 April 2019 until 31 December 2019 of at least EUR 450,000. Certain undertakings, such as financial institutions and personal holding companies are excluded from the measure.⁷ Beneficiaries must deposit (audited) annual accounts with the Belgian National Bank.
- (16) Beneficiaries must be undertakings registered in Flanders, i.e. have a Flemish address (“actieve exploitatiezetel”) listed in the Belgian commercial register (“Kruispuntbank Ondernemingen”).
- (17) Aid may not be granted to medium and large enterprises that were on 31 December 2019 already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”), of the Agricultural Block Exemption Regulation (“ABER”) or of the Fisheries Block Exemption Regulation (“FIBER”) respectively.⁸ Aid may be granted to micro and small enterprises that were on 31

⁶ 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.

⁷ See article 5 of the draft Decision referred to in recital (9).

⁸ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 (see footnote (6)), Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1, and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37.

December 2019 in difficulty within the meaning of the GBER, ABER or FIBER, 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 aid⁹ or restructuring aid.¹⁰

2.6. Sectoral and regional scope of the measure

- (18) The measure is open to all sectors, except the financial sector.

2.7. Basic elements of the measure

- (19) The aid provided under the measure consists exclusively of direct grants.
- (20) Eligible under this scheme are only those undertakings which suffered a turnover decline due to COVID-19 measures of at least 60% (without VAT), in the period 1 April 2020 until 31 December 2020 (the “eligible period”), compared to the same period in 2019. For the purposes of implementation and control of the eligibility, (quarterly or monthly) VAT statements shall be submitted by the applicants together with the application. Beneficiaries not subject to VAT must declare turnover figures together with an audited piece of evidence.
- (21) The aid intensity under the measure will be set at 10% of the beneficiary’s turnover generated between 1 April 2019 and 31 December 2019 with a maximum of EUR 2 million. This amount is further limited by the following two thresholds:
- (a) The aid intensity cannot be higher than 70% (for large and medium undertakings) or 90% (for small undertakings) of uncovered fixed costs, observed in the period from 1 April 2020 until 31 December 2020, as stipulated by point 87(c) of the Temporary Framework.
 - (b) The aid amount will be limited depending on the actual employment figures of the beneficiaries. More specifically, the beneficiaries can calculate the maximum aid based on either one of the following ways of measuring employment:
 - Based on the enlarged employment figures¹¹, combined with the relevant percentage band of turnover decline.

Enlarged employment figures	Turnover decline between 60%-69%	Turnover decline between 70%-89%	Turnover decline more than 90%
1 to 4 employees	15,000 EUR	30,000 EUR	50,000 EUR
5 to 19 employees	25,000 EUR	50,000 EUR	100,000 EUR
20 to 49 employees	50,000 EUR	100,000 EUR	250,000 EUR
50 to 199 employees	250,000 EUR	500,000 EUR	1.000,000 EUR
200 and more employees	500,000 EUR	1,000,000 EUR	2,000,000 EUR

⁹ 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.

¹⁰ 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.

¹¹ As defined in article 1, 13° of the draft Decision referred to in recital (9).

- Based on the minimal Social Security employment figures¹² (“RSZ employment”), combined with the relevant percentage band of turnover decline, and the level of minimum turnover generated by the beneficiary during the 2019 reference period.

Minimal RSZ-employment	Minimum turnover	Turnover decline between 60%-69%	Turnover decline between 70%-89%	Turnover decline of more than 90%
1 employee	1,125,000 EUR	25,000 EUR	50,000 EUR	100,000 EUR
5 employees	3,000,000 EUR	50,000 EUR	100,000 EUR	250,000 EUR
10 employees	9,000,000 EUR	250,000 EUR	500,000 EUR	1,000,000 EUR
20 employees	25,000,000 EUR	500,000 EUR	1,000,000 EUR	2,000,000 EUR

- (22) In accordance with point 87(c) of the Temporary Framework, the losses of undertakings declared in their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs¹³. These losses represent the undertakings’ uncovered fixed costs, which are fixed costs incurred during the eligible period which are not covered by the profit contribution (i.e. revenues minus variable costs) during the same period and which are not covered by other sources, such as insurance, temporary aid measures covered by the Temporary Framework, or support from other sources. In particular, aid previously received through other COVID-19 aid regimes for the same costs (both under de minimis regulations¹⁴ and under schemes based on the Temporary Framework) will be deducted from the aid amount determined under the measure. As a basis for determining these uncovered fixed costs, Belgium refers to Code 9903 of the beneficiaries’ annual accounts, specifying their “losses before taxes”.
- (23) The aid under this measure may be granted based on the undertaking’s deposited (audited) annual accounts for 2020 (or on the finalised and audited accounts, which form the basis for the deposited annual accounts) and the underlying quarterly balance sheets. Any aid payment exceeding the finally assessed amount of aid will be recovered.
- (24) The overall aid amount under section 3.12 of the Temporary Framework cannot exceed EUR 10 million per undertaking (gross).

¹² As defined in article 1, 12° of the draft Decision referred to in recital (9).

¹³ One-off impairment losses are not included in the calculation of the losses.

¹⁴ 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.

2.8. Cumulation

- (25) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations or under the GBER, ABER and 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 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 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (29) The Belgian authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (30) 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 and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁵).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (32) 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.

¹⁵ Referring to information required in Annex III to the GBER and Annex III to the ABER and Annex III to the FIBER.

- (33) The measure is imputable to the State, since it is administered by VLAIO, and it is based on a decree issued by the Flemish Government (recitals (9) and (11)). It is financed through State resources, since it is financed by public funds (recital (12)).
- (34) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (8)). The measure thus confers an advantage on those beneficiaries, which they would not have had under normal market conditions.
- (35) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, fulfilling the criteria listed in recitals (15) to (18), in particular because it is only available to undertakings that have generated a certain turnover, that suffered a certain degree of turnover decline, and that are not part of the financial sector.
- (36) 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.
- (37) 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

- (38) 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.
- (39) 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”*.
- (40) 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”*.
- (41) The measure aims at supporting previously healthy undertakings that face a significant decline in turnover due to COVID-19 related restrictions, at a time when the normal functioning of 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.
- (42) The measure is one of a series of measures conceived at regional level by the Belgian authorities to remedy a serious disturbance in their economy. The importance of such measures to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Flemish economy. Furthermore, the measure has been designed to meet the requirements

of a specific category of aid (“*Aid in the form of support for uncovered fixed costs*”) described in section 3.12 of the Temporary Framework.

- (43) 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:
- Aid is granted under the measure no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 1 April 2020 and 31 December 2020 (recitals (14) and (20)). The measure therefore complies with point 87(a) of the Temporary Framework.
 - Point 87(b) of the Temporary Framework stipulates that aid could be granted on the basis of a scheme to undertakings that suffered a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. Under the notified measure, companies must demonstrate a turnover decline in the eligible period of at least 60% (recital (20)). The measure therefore complies with point 87(b) of the Temporary Framework.
 - The aid intensity under the measure will not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (21)). The losses of undertakings, observed from their profit and loss statements during the eligible period excluding one-off impairment losses, are considered to constitute uncovered fixed costs (recital (22)). The aid under this measure will be determined after realisation of the losses on the basis of audited accounts. Any payment exceeding the final amount of the aid must be recovered (recital (23)). The measure therefore complies with point 87(c) of the Temporary Framework.
 - The aid takes the form of direct grants (recital (8)). The overall nominal value of these direct grants cannot exceed EUR 10 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges. In fact, the maximum aid amount under this scheme is capped at EUR 2 million per undertaking and will in many cases be lower due to several other limitations (recital (21)). The measure therefore complies with point 87(d) of the Temporary Framework.
 - The aid under the measure shall not be cumulated with other aid for the same eligible costs (recital (29)). The measure therefore complies with point 87(e) of the Temporary Framework.
 - Aid may not be granted under the measure to medium¹⁶ and large enterprises that were already in difficulty on 31 December 2019. 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 aid¹⁷ or restructuring aid¹⁸ (recital (17)). The

¹⁶ As defined in Annex I to the GBER.

¹⁷ 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.

¹⁸ 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.

measure therefore complies with point 87(f) of the Temporary Framework.

- (44) The Belgian authorities confirm 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 Belgium. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (6)).
- (45) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (30)). 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 and the cumulation rules of the relevant Regulations are respected (recitals (25) to (29)).
- (46) 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/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

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Executive Vice-President