



Brussels, 10.01.2022
C(2022) 140 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.101027 (2021/N) – Belgium
COVID-19: Flemish Protection Mechanism for undertakings that
suffer a turnover decline due to the Covid-19 measures of 28 October
2021**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 13 December 2021, Belgium notified aid in the form of limited amounts of aid ('Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021 (the "measure"')) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").¹
- (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

¹ 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

Son Excellence Madame Sophie Wilmès
Ministre des Affaires étrangères, des Affaires
européennes et du Commerce extérieur,
et des Institutions culturelles fédérales
Rue des Petits Carmes, 15
B - 1000 Bruxelles

Hare Excellentie mevrouw Sophie Wilmès
Minister van Buitenlandse Zaken, Europese Zaken en
Buitenlandse Handel,
en van de Federale Culturele Instellingen
Karmelietenstraat 15
B - 1000 Brussel

Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) The Flemish region authorities consider that the COVID-19 pandemic continues affecting the real economy. Since the summer of 2021, several measures were adopted that offer more flexibility in re-opening the economy, but some restrictions remain in place. In addition, the continuing growth of the fourth wave of the COVID-19 pandemic and the stress on the health care services and hospitals have led to the adoption of new restrictive measures since October 2021, the (partial or complete) closure of certain sectors and other restrictions. Some sectors, such as discotheques, dancing clubs, private venues, and indoor playgrounds for children are closed and other sectors are very limited in capacity and opening hours. The aim of the measure is therefore to ensure that sufficient liquidity remains available to affected undertakings and that the disruptions caused by the continuing COVID-19 pandemic do not undermine their viability³.
- (4) The Flemish region 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 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 direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is a draft Decision of the Flemish Government (reference number VR 2021 1012 DOC.1454/3) regarding a Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021⁴ (the “draft Decision”), which will be adopted after its approval by the Commission.

2.3. Administration of the measure

- (8) The Flemish Agency for Innovation and Entrepreneurship (Agentschap Innoveren en Ondernemen (VLAIO)) is responsible for administering the measure.

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

³ This measure is similar to a previous aid scheme approved by the Commission in case SA.60524, as amended in cases SA.62156, SA.62826, SA.64488 and SA.64739, which related to the period from 1 January until 30 September 2021.

⁴ “Besluit van de Vlaamse Regering betreffende het Vlaams Beschermingsmechanisme voor ondernemingen die een omzetzaling hebben ten gevolge van de coronavirusmaatregelen van 28 oktober 2021”.

2.4. Budget and duration of the measure

- (9) The measure will be financed by the budget of the Flemish Region of Belgium. The estimated budget of the measure is EUR 25,5 million⁵.
- (10) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 30 June 2022.

2.5. Beneficiaries

- (11) The beneficiaries of the measure are undertakings which, on 1 October 2021, operate in the eligible sectors (recital (15)) in the Flemish region, having the corresponding NACE code in the Crossroads Bank of Enterprises. The Flemish region authorities estimate that approximately 5522 companies may benefit from the scheme. All undertakings, irrespective of their size, can apply for the aid. However, credit and financial institutions are excluded as eligible final beneficiaries.
- (12) Aid may not be granted under the measure to medium⁶ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")⁷ 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 aid⁸ or restructuring aid.⁹
- (13) The following undertakings are excluded from the scope of application of the measure, in particular:
 - (a) undertakings in one of the following legal situations: dissolution, discontinuation, bankruptcy, liquidation;
 - (b) holding companies, management companies or patrimony companies;
 - (c) the enterprises whose manager, as director or partner, is linked to another enterprise which received the subsidy and to which they provide business services;

⁵ The remaining budget from the previous aid scheme will be used and no new budget is foreseen for the measure.

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 As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

⁸ 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.

⁹ 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.

- (d) undertakings which, on 1 October 2021, had not yet started up and did not have an active operating establishment in the Flemish Region according to the Crossroads Bank for Enterprises;
- (e) undertakings which voluntarily closed in the period from 20 November to 31 December 2021, unless they were closed because of the normal annual closure or due to the restrictive measures linked to the COVID-19 pandemic.

2.6. Sectoral and regional scope of the measure

- (14) The measure applies to the territory of the Flemish region in Belgium.
- (15) The measure is only open to affected undertakings in the following sectors (NACE codes):
 - Banquet hall/Venues for private parties (56210, 56290, 50300 and 50100)
 - Holiday lodgings (55203)
 - Youth lodgings (55201)
 - Youth work activities (94991)
 - Travel agencies (79110 and 79120)
 - Transport of persons (49310, 49320 and 49390)
 - Events and cultural activities (56210, 74201, 74901, 77291, 77292, 77293, 77294, 77296, 77299, 77392, 77399, 79909, 82300, 90011, 90012, 90021, 90022, 90023, 90029, 90032, 90041 and 90042)
 - Night shops (47112 and 47113)
 - Sports clubs (93121, 93122, 93123, 93125, 93126, 93127, 93128 and 93129)
 - Cinemas (59140)
 - Discotheques and dancing (56302)
 - Indoor playgrounds (93212 and 93299).

2.7. Basic elements of the measure

- (16) The objective of the measure is to support undertakings that suffered a decline in turnover during the period in which their usual operation was restricted, limited or severely affected by the restrictive governmental measures adopted in the common interest to combat the COVID-19 pandemic. The period covered runs from 20 November 2021 until 31 December 2021.
- (17) Under the measure, undertakings are eligible for aid if they can demonstrate a total decrease in their turnover of at least:
 - 30% from 1 October 2021 until 31 December 2021, compared to the same period in 2019; and
 - 60% from 20 November 2021 until 31 December 2021, compared to the same period in 2019.

- (18) Eligible undertakings can receive a grant amounting to 5% of half of the turnover registered¹⁰ in the last quarter of 2019, excluding VAT¹¹.
- (19) The maximum amount of the grant is:
- (a) EUR 11 250 for undertakings with up to 9 employees;
 - (b) EUR 22 500 for undertakings with between 10 and 49 employees;
 - (c) EUR 60 000 for enterprises with 50 employees or more.
- (20) By way of derogation from recital (17), undertakings that were mandatorily closed as a result of the restrictive measures linked to the COVID-19 pandemic in the Flemish Region in the period from 20 November 2021 until 31 December 2021, namely undertakings active in the sectors of discotheques, dancing or indoor playgrounds, do not have to demonstrate a decrease in turnover. For those undertakings, the maximum grant amount is calculated on a pro rata basis depending on the duration of the compulsory closure period. This means that the aid amount is based on the number of calendar days of closure in the mandatory closure period between 20 November 2021 and 31 December 2021. During the mandatory closure, the aid amounts to 10% of the turnover in the same period in 2019.
- (21) The Flemish region authorities confirm that the overall maximum aid amount under the measure shall not exceed EUR 2.3 million per undertaking at any given point in time as provided for in point 22(a) the Temporary Framework (all figures used being gross, before any deduction of tax or other charges).

2.8. Cumulation

- (22) The Flemish region authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹² or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (23) The Flemish region 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.
- (24) The Flemish region 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

¹⁰ The amount of aid may be reduced for self-employed persons working part-time.

¹¹ For administrative simplification purposes, the reference period is the full quarter of 2019, while the compensation period covers only the period from 20 November 2021 until 31 December 2021. The measure therefore defines the compensation as “10% of half” of the turnover in the reference period, or 5%.

¹² 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), 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).

Framework, the overall maximum cap per undertaking, as set out in point 22(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (25) The Flemish region 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 granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (26) By notifying the measure before putting it into effect (recital (7)), the Belgian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (27) 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.
- (28) The measure is imputable to the State, since it is administered by the Flemish Agency for Innovation and Entrepreneurship (recital (8)) and it is based on the draft Decision mentioned in recital (7). It is financed through State resources, since it is financed by public funds (recital (9)).
- (29) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers on those beneficiaries an advantage that they would not have received under normal market conditions.
- (30) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in specific sectors (recital (15)), excluding the financial sector.
- (31) 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.
- (32) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Flemish region authorities do not contest that conclusion.

¹³ Referring to information required in Annex III to the GBER.

3.3. Compatibility

- (33) 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.
- (34) 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*”.
- (35) 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*”.
- (36) The measure aims at preserving the viability of the undertakings active in specific sectors that suffered a decline in turnover as a result of the restrictive governmental measures applicable in the Flemish region of Belgium (recital (3)), at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (37) The measure is one of a series of measures conceived by the Belgian authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amount of aid*”) described in Section 3.1 of the Temporary Framework.
- (38) 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 direct grants (recital (6)). The overall nominal value of the direct grants and of the other measures granted under Section 3.1 of the Temporary Framework shall not exceed EUR 2.3 million per undertaking (recital (21)); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme 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 medium¹⁴ 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

¹⁴ As defined in Annex I to the GBER.

granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁵ or restructuring aid¹⁶ (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 30 June 2022 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework.
- (39) The Flemish region 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 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 (recital (4)).
- (40) The Flemish region authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (25)). The Flemish region 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 (22) to (24)).
- (41) 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
Margrethe VESTAGER
Executive Vice-President

¹⁵ 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.

¹⁶ 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.