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**Subject: State Aid SA.101410 (2022/N) – Belgium
COVID-19: Grant to employers active in the events sector,
discotheques, nightclubs, indoor playgrounds and recreational
indoor venues**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 17 January 2022, Belgium notified wage subsidies to cover the social security contributions for employers active in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues (*Octroi d'une prime aux employeurs du secteur évènementiel, aux discothèques, dancings et plaines de jeux intérieures, et autres activités récréatives en intérieur* the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹ The Belgian authorities provided additional information on 27 January 2022.

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

- (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 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Belgium considers that the COVID-19 pandemic affects the real economy and puts at risk the jobs of workers and employees of undertakings that have reduced or suspended partially or entirely their activities due to the containment measures enforced by the national authorities.³ As regards the situation of the sectors targeted by the notified measure, the Belgian authorities have explained that those sectors are amongst those most severely affected by the consequences of the ongoing pandemic, being subject to prolonged periods of lockdown and having suffered from a significantly reduced level of activities in the periods where they were allowed to resume their activities.⁴ The reduction of the attendance in the sectors concerned are due to restrictions imposed on the activities (maximum capacity, distancing, Covid pass, air quality...) and also to the caution of the Belgian population to gather in closed spaces. As a result, there is a risk of significant redundancies and State aid is necessary to allow undertakings to resume their activities immediately after the lockdown period. The Belgian authorities have confirmed that the aid is aimed at avoiding lay-offs during the COVID-19 pandemic and that the individual aid awards will be granted no later than 30 June 2022, for employees that would otherwise have been laid off by the beneficiary as a consequence of the suspension or reduction of their business activities due to national measures, the effects of which materialise in the quarter of the year concerned, in response to the COVID-19 pandemic.
- (4) 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 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 3.10 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of a credit that the employers can use to pay social security contributions and intended as a wage subsidy, contributing to the wage cost born by the employers in relation to the employees concerned.

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

³ The Royal Decrees of 4 December 2021 and 23 December 2021 limited attendance to indoor public events to 200 persons and ordered closure of discotheques, nightclubs, indoor playgrounds and recreational indoor venues.

⁴ According to data provided by the Belgian authorities, event organisers reported a decrease of 50% of their turnover in 2021 compared to 2019 and the majority of event organisers expect that their turnover in 2022 (as a whole) will remain lower than in 2019.

2.2. Legal basis

- (7) The legal basis for the measure are i) the draft law laying down temporary support measures in response to the COVID-19 outbreak⁵, approved in second reading by the Council of Ministers of 14 January 2022 and ii) the draft Royal Decree implementing Article 44 of the law laying down temporary support measures in response to the COVID-19 outbreak⁶.

2.3. Administration of the measure

- (8) The Belgian National Social Security Office⁷ (“NSSO”) is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 26.23 million.
- (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 final beneficiaries of the measure are undertakings active in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues⁸.

2.6. Sectoral and regional scope of the measure

- (12) The measure is applicable to employers active in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues. It applies to the whole territory of Belgium.

2.7. Basic elements of the measure

- (13) The measure provides for a wage subsidy in the form of a credit registered in the social security account of the employer to cover the equivalent of one quarter of social security contributions for either the first or the second quarters of 2022 depending on the date of filing of the application by the beneficiary. Conditions apply however, notably on the maintenance of employment, over the two quarters.

⁵ “*Avant-projet de loi portant des mesures de soutien temporaires en raison de la pandémie de COVID-19 / Voorontwerp van wet houdende tijdelijke ondersteuningsmaatregelen ten gevolge van de Covid-19-pandemie*”

⁶ “*Projet d’Arrêté royal pris en exécution de l’article [44] de la loi du XX XX 2022 portant des mesures de soutien temporaires en raison de la pandémie du COVID-19 / Ontwerp van Koninklijk besluit tot uitvoering van artikel [44] van de wet van XX XX 2022 houdende tijdelijke ondersteuningsmaatregelen ten gevolge van de COVID-19-pandemie*”

⁷ *Office National de Sécurité Sociale (ONSS) / Rijksdienst voor Sociale Zekerheid (RSZ)*

⁸ Indoor subtropical swimming pools, trampoline parks, bowlings, billiards, darts, paintball, lasergames and escape rooms venues.

- (14) Indeed, in order to benefit from the measure, employers must:
- (a) keep in service the benefitting personnel between 1 January and 30 June 2022, unless the worker has resigned or was dismissed on serious grounds.
 - (b) from 1 January to 30 June 2022, refrain from: i) distributing dividends to shareholders, ii) distributing bonuses to the Administration Board or to management staff and iii) repurchasing own shares.
- (15) In order to benefit from the measure, employers will have to submit an application to the NSSO by 15 May 2022.
- (16) For employers who are active in both the first and the second quarter of 2022, and who submit their application no later than 25 February 2022, the subsidy will be calculated in two phases:
- (a) First phase - The NSSO will calculate a wage subsidy equal to the higher of the amounts of the social security contributions due for either the second or the third quarter of 2021. This wage subsidy will be credited on the employer's account with the NSSO and used automatically to pay first the employer's social security contributions relating to the first quarter of 2022 and then, where appropriate, any other amounts due to the NSSO. If there is a positive outstanding balance, the employer may request the reimbursement of the outstanding balance. If the employer does not request the reimbursement, the balance will be carried forward and used to pay the next amounts owed by the employer to the NSSO.
 - (b) Second phase - The NSSO will then calculate a wage subsidy equal to the amount of the social security contributions due for the fourth quarter of 2021. This amount will be then compared with the amount calculated during the First phase. If it is lower than the amount calculated in the First phase, the amount of the subsidy will not be modified (the employer will not need to reimburse the difference). If it is higher than the amount calculated during the First phase, the employers will be entitled to receive an additional amount, equal to the difference between the amount calculated in the Second phase and the amount calculated in the First phase. This amount will be credited on the employer's account with the NSSO and used automatically to pay first the employer's social security contributions relating to the second quarter of 2022 and then, where appropriate, any other amounts due to the NSSO. It follows that the amount of the wage subsidy is construed as an estimate of one quarter of social security contributions: the highest amount of the social security contributions paid for the second, third or fourth quarter of 2021, even if that subsidy is paid out – i.e. it can be used as a credit – over one or both of the first and second quarters of 2022.
- (17) For employers active in the second quarter of 2022, who submit their application between 26 February 2022 and 15 May 2022, only one phase of calculation will be necessary. Employers who had already applied for aid before 26 February may not apply for aid again. The amount of the subsidy will be calculated as the highest of the amounts of the social security contributions due for either the second, the third or the fourth quarter of 2021. This wage subsidy will be credited

on the employer's account with the NSSO and used automatically to pay first the employer's social security contributions relating to the second quarter of 2022 and then, where appropriate, any other amounts due to the NSSO. If there is a positive outstanding balance, the employer may request the reimbursement of the outstanding balance. If the employer does not request the reimbursement, the balance will be carried forward and used to pay the next amounts owed by the employer to the NSSO.

- (18) The amount of aid granted under the measure may not exceed 80% of the benefitting personnel's gross salary (including the employer's social security contributions) declared to the NSSO for the quarter for which aid is granted. The salaries of employees laid off during the quarter concerned will not be taken into account, unless the employee was laid off for gross misconduct⁹.

2.8. Cumulation

- (19) The Belgian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁰ or the General Block Exemption Regulation¹¹, provided the provisions and cumulation rules of those Regulations are respected.
- (20) 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.
- (21) The Belgian authorities confirm that aid granted under the measure may be combined with support granted under other generally available measures or with aid schemes in the form of employment support measures, provided the total amount of combined support does not lead to overcompensation of the wage costs of the personnel concerned.

2.9. Monitoring and reporting

- (22) The Belgian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (e.g., by 30 June 2022, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed

⁹ Pursuant to Article 35 of the Belgian Law on employment contracts, the concept of *gross misconduct* («*faute grave*» or «*motif grave*») is defined as any a serious fault that makes any further professional cooperation between the employer and the employee immediately and permanently impossible ("*Est considéré comme constituant un motif grave, toute faute grave qui rend immédiatement et définitivement impossible toute collaboration professionnelle entre l'employeur et le travailleur*").

¹⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

¹¹ 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 of 26.6.2014, p. 1.

records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (23) 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

- (24) 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.
- (25) The measure is imputable to the State, since it is administered by the NSSO and it is based on i) the draft law laying down temporary support measures in response to the COVID-19 outbreak, approved in second reading by the Council of Ministers of 14 January 2022 and ii) the draft Royal Decree implementing Article 44 of the law laying down temporary support measures in response to the COVID-19 outbreak. It is financed through State resources, since it is financed by public funds.
- (26) The measure confers an advantage on its beneficiaries in the form of a credit that the employers can use to pay social security contributions and/or be reimbursed. The measure thus relieves those beneficiaries of costs, which are normally part of their budget.
- (27) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues.
- (28) 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.
- (29) 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

- (30) 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.
- (31) 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*”.

- (32) 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*”.
- (33) The measure aims at preserving employment and/or avoiding redundancies during the COVID-19 pandemic, which is affecting the wider economy and leading to severe disturbances of the real economy of the Member States.
- (34) The measure is one of a series of measures conceived at national level by the Belgian authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of wage subsidy*”) described in Section 3.10 of the Temporary Framework.
- (35) 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 granted under the measure is aimed at avoiding redundancies during the COVID-19 pandemic (recital (3)). The measure therefore complies with point 43(a) of the Temporary Framework.
 - Aid is granted in the form of schemes to undertakings in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues that are particularly affected by the COVID-19 pandemic (recital (3) and (12)). The measure therefore complies with point 43(b) of the Temporary Framework.
 - The individual aid awards under the measure are granted no later than 30 June 2022 (recital (10)), for employees that would otherwise have been made redundant as a consequence of the suspension or reduction of business activities due to the COVID-19 pandemic (recital (3)), subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (recital (14)(a)). In that regard, the Commission notes that Article 8 of the draft law laying down temporary support measures in response to the COVID-19 outbreak expressly provides that the aid amount – which is an approximation of one quarter of social security contributions due by the employer (see recitals (16) and (17)) – must be used to maintain employment between 1 January 2022 and 30 June 2022. Further, the Belgian authorities have confirmed that the aid is aimed at avoiding lay-offs during the COVID-19 pandemic and that the individual aid awards will be granted no later than 30 June 2022, for employees that would otherwise have been laid off by the beneficiary as a consequence of the suspension or reduction of their business activities due to national measures, the effects of which materialise in the quarter of the year concerned, in response to the COVID-19 pandemic. The measure therefore complies with point 43(c) of the Temporary Framework;

- The monthly wage subsidy will not exceed 80% of the monthly gross salary (including the employer's social security contributions) of the benefitting personnel (recital (18)). The measure therefore complies with point 43(d) of the Temporary Framework.
 - The Belgian authorities confirm that if wage subsidies granted under the measure are combined with other generally available or selective employment support measures, overcompensation of the wage costs of the personnel concerned will be excluded (recital (21)). The measure therefore complies with point 43(e) of the Temporary Framework.
 - The measure does not apply to employees from the financial sector (recital (12)). The measure is therefore in line with points 20bis and 43bis of the Temporary Framework.
- (36) 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 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)).
- (37) The Belgian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (22)). 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 (19) to (21)).
- (38) 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