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SENSITIVE* : *COMP Operations*

**Subject: State Aid SA.58014 (2020/N) – Belgium – Flanders
Aid scheme to support potato growers and ornamental plant growers
affected by COVID-19**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 13 July 2020, Belgium notified aid in the form of direct grants (“*Steunregeling aardappeltelers en siertelers getroffen door COVID-19*” (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹. On 17 July 2020, Belgium has sent additional information.
- (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.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

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 Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

² 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 has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) Belgium confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants, which are directly paid to the beneficiaries.

2.2. Legal basis

- (7) The legal basis for the measure is:
 - the draft of Decision of the Flemish Government granting aid to potato growers confronted with an unsaleable stock of free potatoes in their own ownership as a result of the Covid-19 outbreak;
 - the draft of the decision of the Flemish Government to grant aid to ornamental plant growers who have suffered a drop in turnover as a result of the operating restrictions imposed by the measures taken by the National Security Council as of 12 March 2020 concerning COVID-19.

2.3. Administration of the measure

- (8) The Department of Agriculture and Fisheries of the Flemish Ministry of Agriculture and Fisheries is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure, which is entirely financed through resources from the Flemish budget, is EUR 35 million of which EUR 25 million for the floricultural sector and EUR 10 million for the potato sector.
- (10) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are micro, small and medium-sized enterprises³ registered in Flanders active in the sectors described in recital (14).
- (12) Aid may not be granted under the measure to:
- micro, small, medium and large enterprises that were already in difficulty within the meaning of the Agricultural Block Exemption Regulation (“ABER”)⁴ on 31 December 2019;
 - undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission Decision (either as an individual aid or an aid under an aid scheme being declared incompatible), until those undertakings have reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
- (13) The number of beneficiaries is estimated at 650 potato growers and 800 ornamental plant growers.

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to primary agricultural producers active in the potato and the floricultural sectors in Flanders. Undertakings active in the processing and marketing of agricultural products do not fall within the scope of this measure. Financial institutions are excluded as eligible final beneficiaries.

2.7. Basic elements of the measure

- (15) According to the Belgian authorities, the measure intends to support the potato and ornamental plant growers in response to the COVID-19 outbreak and to help combat their liquidity problems (recitals (16) and (24) to (26)) caused by the COVID-19 outbreak, thus contributing to the preservation of the viability of the companies and the production infrastructure, as well as social stability in rural areas.

Aid to potato growers

- (16) In 2019 about 9 600 potato growers were active in Flanders, growing a total of 56 522 ha of potatoes, on which they produced around 2.8 million tons of potatoes. Due to the measures taken to manage the COVID-19 outbreak in Belgium and in the export countries within and outside the European Union, and in particular due to the closure of the catering industry and the cancellation of major events, at mid-May there were an estimated 880 000 tons of potatoes in stock in Flanders. Between 330 000 and 340 000 tonnes of these potatoes in stock, were not processed. While the normal value of these ware potatoes during this period is on

³ As defined in Annex I to 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.

⁴ As defined in Article 2(14) of the 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 of 1.7.2014, p.1.

average EUR 150/ton, they have now completely lost their value. The maximum storage period for these potatoes ends in June/July. The longer the potatoes have to remain in stock, the higher the costs become. The total loss of the sector is estimated between EUR 50 and 65 million euros.

- (17) Within the limits of the available budget appropriations (recital (9)) aid is granted to the potato grower (farmer) who fulfils all following conditions:
- the farmer must be registered in the “*Kruispuntbank van Ondernemingen*” with an active company number during the period from 13 March 2020 to 30 June 2020, or in an external database, which contains all basic information of company and its location(s);
 - the farmer is identified as a farmer and is managed as a farmer by the competent authority with at least one production location on the territory of the Flemish Region of Belgium;
 - the farmer has declared in his single application⁵ of 2019 the fields on which ware potatoes are grown as fields in use at the date of 31 May 2019;
 - the farmer had on 15 May 2020, at least a stock of 100 tons of free potatoes in ownership;
 - the farmer may not plow the free potatoes in ownership into the fields.
- (18) The aid shall not exceed EUR 50 per ton of the potatoes in ownership in stock on 15 May 2020.
- (19) The first 100 tons of free potatoes in ownership are not eligible for aid.
- (20) In addition, the aid is limited to 20 tons of potatoes per hectare, as declared in the single application of 2019, and to a maximum of 400 tonnes of free potatoes in ownership.
- (21) The competent authority determines the amount of aid on the basis of the appropriations available in the budget and the total amount of the approved aid amounts. The aid amounts will be reduced on a pro-rata basis if the budget is not sufficient.
- (22) If the appropriations available in the budget are not exhausted after the payment of all aid amounts, additionally 1500 tons of free potatoes in ownership become eligible for aid.
- (23) The farmer provides the following documents for verification to the competent authority: (i) accounting documents, (ii) a certificate, which determines the stock, which is drawn up by 30 June 2020 at the latest, (iii) weighing receipts, (iv) administrative data and (v) as the case may be, photographic evidence.

Aid to ornamental plant growers

⁵ Single application as mentioned in Article 11 of the Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance.

- (24) Due to the measures taken in Belgium and in other European countries to manage the COVID-19 outbreak, sales of ornamental plants from practically all ornamental plant groups came to a standstill around 16 March 2020. In the meantime, the decision of the Belgian National Security Council to reopen garden centres, flower shops and markets in phases brought limited relief for the part of the production that was ready for sale just then. As the Flemish ornamental plant sector is highly export-oriented and mainly sells its production within the internal EU market, that market is even more important for the companies than the local sales channels. Due to the decrease in sales and the standard practice of long payment terms of foreign customers in the floricultural sector the plants growers received insufficient fresh money.
- (25) Plants are living matter that have to meet strict standards in order to be marketable. In comparison to foreign competitors, Flemish plant growers are active on a smaller scale and try to distinguish themselves by, among other things, following meticulous cultivation schedules to be able to deliver their plants just-in-time. After all, consumers do not buy plants that have already partially finished flowering.
- (26) Many plants are strictly seasonal, such as, for example, annual spring bloomers, comparable to a winter collection that cannot be sold in other seasons, because plants are living/degradable matter. For several species, up to 80 % of the total annual turnover is realised in the period around Easter. Plants continue to grow, when they are not sold on time, causing additional costs such as the daily maintenance costs (treatment, water, food, energy, etc.), as well as damage or bruising during handling, packaging and transport. At the same time, the risk of infestation by diseases and pests increases. Many floriculture companies had to destroy their perishable floricultural products because they could no longer be sold in time. The above-mentioned situation caused liquidity shortage and losses to the sector. At the end of April 2020, the total loss of turnover of the sector was estimated at about EUR 200 million.
- (27) Within the limits of the available budget appropriations (recital (9)) aid is granted to the ornamental plant grower (company) who fulfils all following conditions:
- during the period from 16 March 2020 to 30 May 2020 the company must be registered in an external database, which contains all basic information of companies and their location, or in the “*Kruispuntbank van Ondernemingen*” as a company with floricultural activities with at least one of the following NACE-codes⁶ registered in the VAT-administration: 01.130, 01.191, 01.199, 01.280, 01.290, 01.301, 01.309 and 02.100;
 - the company is identified as a farmer and is managed as a farmer by the competent authority with at least one production location on the territory of the Flemish Region of Belgium;
 - the company realises at least 50% of its total revenue from its own floricultural production;

⁶ Statistical Classification of Economic Activities in the European Community, commonly referred to as NACE (“Nomenclature statistique des Activités économiques dans la Communauté Européenne”).

- the company has correctly declared the parcels of land on which the floricultural production is realised as floricultural acreage in its own single application and has these parcels in own use on 31 May 2020;
 - the company is eligible for aid if it finds itself in at least one of the following situations:
 - the company has suffered, for at least one of the crops, which it produces itself and which belongs to a floricultural group of the category A⁷, an individual decrease in turnover of at least 30% due the COVID-19-measures⁸;
 - the company has suffered, for at least one of the crops, which it produces itself and which belongs to a floricultural group of the category B, an individual decrease in turnover of at least 50% due the COVID-19-measures;
- (28) The decrease in turnover is the decrease exclusive VAT in the period from 16 March 2020 until 30 May 2020 in comparison to the average turnover in the same period in 2017, 2018 and 2019, which is the result of reduced activities.
- (29) The maximum aid amounts for each floricultural group, expressed as an amount per acre (EUR/acre), are included in the annex to the draft decision of the Flemish government (see footnote 7).
- (30) The maximum aid amounts are calculated on the basis of limited average production costs per acre and take account of the percentage of the average turnover of the period concerned compared to the average annual turnover.
- (31) The aid is granted for the acreage of the floricultural group, which suffered the decrease in turnover.
- (32) If the sum of all accepted aid amounts exceeds the total available budget appropriations, the maximum aid amounts will be reduced on a pro rate basis.
- (33) The competent authority verifies if the company fulfils the relevant conditions. The authority is entitled to verify the veracity of the decrease in turnover declared by the company on the basis of all possible documentary proof, administrative information, on-the-spot-controls and the administration of the company.

Common provisions to the potato and ornamental plant sectors

- (34) The total amount of aid granted per potato or ornamental plant grower, in accordance with the provisions of Section 3.1 of the Temporary Framework,

⁷ The categories A and B, the floricultural groups and the maximum aid amounts are listed in the annex to the draft of the decision of the Flemish Government to grant aid to ornamental plant growers who have suffered a drop in turnover as a result of the operating restrictions imposed by the measures taken by the National Security Council as of 12 March 2020 concerning COVID-19 (recital (7) second bullet point).

⁸ The COVID-19 measures are the measures of the Belgian National Security Council (“Nationale Veiligheidsraad”) within the framework of COVID-19, which have been taken since 12 March 2020, and the subsequent measures taken by the authorities responsible for civil safety and security.

cannot be more than EUR 100 000.⁹ If the calculation of the aid results in an amount exceeding that ceiling, the estimated aid amount shall be reduced to the amount compliant with the provisions of the Temporary Framework before the adoption of the granting decision.

- (35) Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market.
- (36) The following amounts are deducted from the aid calculated under the measure:
- payments received from income-loss-insurances;
 - the amount of saved costs;
 - revenue from sales of subsidised potatoes;
 - revenue from sales of ornamental plants during the eligible period;
 - all compensation, benefits and reimbursements the beneficiary receives for the same costs of the measure.
- (37) The beneficiary must submit the application for aid through e-mail or by registered mail by means of a form, which is available on the website of the competent authority.
- (38) The aid is granted after the approval of the measure by the European Commission.
- (39) The aid will be refused and the already paid grants will be recovered if the competent authority determines that the relevant conditions for aid are not fulfilled.

2.8. Cumulation

- (40) Aid provided under the measure cannot be cumulated with any other aid.
- (41) The Belgian authorities confirm that the beneficiary cannot receive aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, and that the overall maximum cap per undertaking, as set out in point 23(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (42) 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 10 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁰).

⁹ All amounts referred to are gross, that is, before any deduction of tax or other charge.

¹⁰ Referring to information required in annex III to Commission Regulation (EU) No 702/2014.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (43) 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

- (44) 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.
- (45) The measure is imputable to the State, since it is administered by the Department of Agriculture and Fisheries of the Flemish Ministry of Agriculture and Fisheries (recital (8)) and it is based on decisions of the Flemish Government (recital (7)). It is financed through State resources, since it is financed by public funds (recital (9)).
- (46) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (47) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the potato and floricultural sectors, excluding the financial sector (recital (14)).
- (48) 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.
- (49) 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

- (50) 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.
- (51) 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*”.
- (52) 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”.

- (53) The measure aims at combatting the liquidity problems caused by the COVID-19 outbreak, thus contributing to the preservation of the viability, production infrastructure and social stability in rural areas, at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (54) The measure is one of a series of measures conceived by the Belgian authorities to remedy a serious disturbance in their economy. The importance of the measure to ensure the viability of primary producers in the potato and floricultural sectors is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the targeted agricultural subsectors in Flanders. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*limited amounts of aid in the form of direct grants*”) described in section 3.1 of the Temporary Framework.
- (55) 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)), which is in compliance with point 23(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 will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019 (recital (12)). The measure therefore complies with point 22(c) of the Temporary Framework;
 - Aid will be granted under the measure no later than 31 December 2020 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework;
 - The overall nominal value of direct grants does not exceed EUR 100 000 per undertaking active in the primary production of agricultural products; all figures must be gross, that is, before any deduction of tax or other charges (recital (34)). The measure therefore complies with point 23(a) of the Temporary Framework;
 - Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (35)). The maximum aid amount of EUR 50 per ton potatoes (recital (18)) is determined on the basis of the available budget and will be reduced on a pro-rata basis if the budget is not sufficient (recitals (17) and (21)). The aid is granted for the unsaleable stock of potatoes (recital (7)). It follows, that the aid to potato growers does not lead to aid being fixed on the basis of the price or quantity of products put on the market. The measure therefore complies with point 23(b) of the Temporary Framework;

- Since the measure is applicable only to undertakings active in the primary agricultural sector (recital (14)), points 22(e) and 23bis of the Temporary Framework do not apply.

(56) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (42)). The Belgian authorities further confirm that the aid under the measure cannot be cumulated with other aid (recitals (40) and (41)).

(57) 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

<p>CERTIFIED COPY For the Secretary-General,</p> <p>Jordi AYET PUIGARNAU Director of the Registry EUROPEAN COMMISSION</p>
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