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**Subject: State Aid SA.56919 (2020/N) – Belgium**
**The COVID-19- loan guarantee – Flemish Region**

Excellency,

## 1. PROCEDURE

(1) By electronic notification of 2 April 2020, Belgium notified aid in the form of loan guarantees ("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) The Belgian authorities confirm that the notification does not contain confidential information.

(3) Belgium exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958,[2] and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

(4) 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

1 Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, C/2020/1863, OJ C 91I, 20.3.2020, p. 1-9., OJ C 112I , 4.4.2020, as amended on 3 April 2020.

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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ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(5) The economic impact of the COVID-19 outbreak in Belgium can be observed in many ways. Many sectors are affected because of measures taken by the federal government to contain the spread of COVID-19. Even businesses that can continue to work are affected by a serious slowdown in economic activity. Moreover, the interdependence of Belgium in the world economy strengthens the economic impact of the COVID-19 outbreak.

(6) The objective of the measure is to remedy the liquidity shortages that undertakings are currently facing and to facilitate their access to loans at a time when the COVID-19 outbreak has affected the Belgian economy.

(7) The measure is expressly based on Article 107(3)(b) TFEU, as interpreted by Section 2 of the Temporary Framework.

### 2.1. The nature and form of aid

(8) The measure provides aid in the form of guarantees on loans.

### 2.2. Legal basis

(9) The legal basis for the measure are Articles 22/4/1 and 22/4/2 which will be inserted in the Act of the Flemish Parliament of 6 February 2004 regarding a guarantee scheme for small, medium-sized and large enterprises (*Decreet betreffende een waarborgregeling voor kleine, middelgrote en grote ondernemingen*, “the Guarantee Act”). The Guarantee Act will be amended by the notified Act of the Flemish Parliament, (*Decreet tot wijziging van het decreet van 6 februari 2004 betreffende een waarborgregeling voor kleine en middelgrote ondernemingen*, “the COVID-19 Guarantee Act”), which will introduce Articles 22/4/1 and 22/4/2, as well as modify a number of other provisions in the Guarantee Act. A second set of changes will be carried out to the Decree of the Flemish Government of 15 April 2009 implementing Chapter III/1 of the Guarantee Act to implement and operationalise the measure, through the adoption of a new Flemish Government Decree, which has equally been notified (“the COVID-19 Government Decree).

### 2.3. Administration of the measure

(10) The guarantees are financed through the budget of the Flemish Region. The Flemish region represents 59.2% of Belgium's GDP and the majority of its workforce.[3]

(11) The scheme will be administered by the guarantee fund Gigarant NV. Gigarant NV is a subsidiary of the Flemish Region and Participatiemaatschappij Vlaanderen, the public investment company of the Flemish Region. The Flemish Region owns all the shares of Gigarant NV, except for one share, which is held by Participatiemaatschappij Vlaanderen.

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[3] Eurostat 2019

### 2.4. Budget and duration of the measure

(12) The Belgian authorities confirm that no more than EUR 3 billion in aid will be granted under the measure. The budget refers to the maximum amount of guarantees that can be granted under the Guarantee Act.

(13) Aid may be granted under the measure as from the date of State aid approval until 31 December 2020.

### 2.5. Beneficiaries

(14) The final beneficiaries of the measure are all undertakings active in the Flemish region, with the exception of financial intermediaries. Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[4], the Agricultural Block Exemption Regulation ("ABER")[5] or the Fisheries Block Exemption Regulation ("FIBER")[6] on 31 December 2019. Aid is granted under the measure through credit institutions and other financial institutions as financial intermediaries.

### 2.6. Sectoral and regional scope of the measure

(15) The measure is open to all sectors, with the exception of financial intermediaries. It applies to the whole territory of the Flemish Region.

### 2.7. Basic elements of the measure

(16) The measure will be open to undertakings whose loans are not eligible for a guarantee under the forthcoming Belgian loan guarantee scheme[7]. Therefore, the measure is a second line instrument, which will come into play only if at the federal level a guarantee cannot be granted.

(17) The measure covers both working capital and investment loans.

(18) The loans covered by the measure may be new loans or existing loans after they are restructured with the consent of the borrower. As part of a restructuring, the financial intermediary will have to adjust the conditions applicable to the loan by, for instance, granting longer maturities, lower interest rates or lower collateral.

(19) The maturity of the loans is not limited under the measure.

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[4] As defined in Article 2(18) of the 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.

[5] 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.

[6] As defined in Article 3(5) of the 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 of 24 December 2014, p. 37.

[7] The Belgian authorities have pre-notified this scheme under State aid number SA.56919.

(20) Under the measure, beneficiaries may submit an application until the latest date on which the guarantee can be granted, i.e. 31 December 2020. The measure will ensure that, in any event, no guarantee is granted after 31 December 2020,

(21) For loans with a maturity beyond 31 December 2020, the overall amount of loans per beneficiary shall not exceed:

(a) double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

(b) 25% of the beneficiary's total turnover in 2019; or

(c) with appropriate justification –for reasons of administrative simplicity where the situation of the beneficiary requires a fast guarantee approval process, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises, which is determined through self-certification by the beneficiary of its liquidity needs.

(22) For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under point 25(d) of the Temporary Framework with appropriate justification and provided that the proportionality of the aid remains assured. The Belgian authorities have confirmed that the level of financial measures provided for under the measure will always be based on the beneficiary's liquidity needs. The actual liquidity needs, which must be presented in the application with reasons and plausibility checks, therefore always limit the actual amount of the financial measure. In other words, since the financial measure ends before 31 December 2020, it can never be higher than the beneficiary's liquidity needs for that period.

(23) Guarantee premiums are set per individual loans at a minimum level which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table. Specifically, the amount of the guarantee premium will be determined by the duration of the guarantee and the category of borrower (SME or Large Enterprise). The guarantee premiums are set per individual loan and shall increase progressively as the duration of the guaranteed loan increases.

| *Type of recipient* | *For 1st year* | *For 2nd-3rd year* | *For 4th -6th years* |
|---|---|---|---|
| *SMEs* | *25bps* | *50bps* | *100bps* |
| *Large enterprises* | *50bps* | *100bps* | *200bps* |

(24) The duration of the guarantee is limited to a maximum of six years.

(25) Under the measure, the guarantee coverage shall not exceed 80% of the loan principal. Furthermore, losses are sustained proportionally and under the same conditions by the financial intermediaries and Gigarant NV. When the size of the

loan decreases over time, e.g., because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally, so the measure does not cover more than 80% of the outstanding loan.

(26) The mobilisation of the guarantee is linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted.

(27) The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. More specifically, all financial intermediaries have, in principle, access to the guarantee scheme, creating competition between the financial intermediaries. With regard to new loans, the undertakings are free to compare the offers from different financial institutions and select the most advantageous one. This will allow the undertakings to benefit in full from the guarantee. With regard to refinancing loans, only restructured loans are eligible for the guarantees. As the restructuring needs the consent of the borrower, this should in principle ensure that the aid is passed, to the largest possible extent, to the borrowers. Financial institutions shall make an effort as part of a restructuring process by e.g. accepting longer maturities, lower interest rates, lower collateral etc. Finally, Gigarant has an active role in granting the guarantees.

### 2.8. Cumulation

(28) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(29) The Belgian authorities confirmed that aid granted under Section 3.2 of the Temporary Framework shall not be cumulated with other aid granted for the same underlying loan principal under Section 3.3 of the Temporary Framework, and vice versa, if the overall loan amount per undertaking exceeds the thresholds set out in point 25(d) of the Temporary Framework. In so far as one and the same beneficiary may benefit from multiple measures under the Temporary Framework in parallel, the Belgian authorities commit to ensure that the maximum thresholds concerning overall amount of loans per beneficiary as specified in points 25(d) of the Temporary Framework are respected.

### 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 (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

## 3. ASSESSMENT

### 3.1. Legality 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.

(33) The measure is imputable to the State, since it is administered by Gigarant NV (recital (10)), which is controlled by the Flemish Region and it is based on COVID-19 Guarantee Act (recital (9)). It is financed through State resources, since it is financed by public funds (recital (10)).

(34) The measure confers an advantage on its beneficiaries in the form of guarantees on loans. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(35) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the Flemish Region that are not financial intermediaries and whose loans are not eligible for a guarantee under the forthcoming Belgian loan guarantee scheme.

(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.

### 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 (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 *facilitating the access of firms to external finance* 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.

(42) 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 stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects for the Flemish Region, which, as explained in recital (10)), is important for the entire Belgian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid "*Aid in the form of guarantees on loans*" described in Section 3.2 of the Temporary Framework and the requirements for aid in the form of guarantees channelled through credit institutions or other financial institutions described in Section 3.4 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:

- The measure sets minimum levels for guarantee premiums in line with the table provided in point 25(a) of the Temporary Framework (see recital (23)).

- Guarantees may be granted under the measure by 31 December 2020 at the latest (recital (20)). The measure therefore complies with point 25(c) of the Temporary Framework.

- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (21)). For loans with a maturity until 31 December 2020, the measure may provide for a guarantee on higher loan amounts than that laid down in point 25(d) of the Temporary Framework. In that case, the loan amount may not exceed the company's actual liquidity needs. This is done to ensure the proportionality of the aid granted under the measure. and is justified for reasons of administrative simplicity. Given the current context, in which it is important that guaranteed loans are swiftly disbursed, it would be unjustified to impose additional burdens on the beneficiaries of those guarantees, in particular, since the guaranteed loans in question are short-term loans with a maturity not going beyond 31 December 2020.

- The measure limits the duration of the guarantees to maximum 6 years (recital (24)). Those guarantees cover only 80% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State (recital (25)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (25)). The measure therefore complies with point 25(f) of the Temporary Framework.

- Guarantees granted under the measure relate to investment and working capital loans (recital (17)). The measure therefore complies with point 25(g) of the Temporary Framework.

- Firms in difficulty (situation as of 31 December 2019) within the meaning of the GBER, ABER and FIBER are excluded from benefitting from the measure (recital (14)). The measure therefore complies with point 25(h) of the Temporary Framework.

- The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. The Commission takes note that all financial intermediaries have, in principle, access to the guarantee scheme, creating competition between the financial intermediaries. With regard to existing loans, only restructured loans may be eligible for the guarantees. As the restructuring needs the consent of the borrower, this should in principle ensure that the aid is passed, to the largest possible extent, to the borrowers. Financial institutions shall make an effort as part of a restructuring process by e.g. accepting longer maturities, lower interest rates, lower collateral etc. Finally, Gigarant has an active role in granting the guarantees. Such safeguards ensure that financial institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (27)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

- The Belgian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (30)).

- The applicable cumulation rules are respected (recitals (28) to (29)).

- Lastly, the mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (26)).

## 4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(44) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[8] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[9] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(45) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[10] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial

8 OJ L 173, 12.6.2014, p. 190-348.

9 OJ L 225, 30.7.2014, p. 1-90.

10 Points 6 and 29 of the Temporary Framework.

institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(46) Moreover, as indicated in recital (27) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(47) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD and of SRMR.

## 5. 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

**Jordi AYET PUIGARNAU**
**Director of the Registry**
**EUROPEAN COMMISSION**