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CORONAVIRUS: BELGIAN STATE AID MEASURES TO HELP COMPANIES IN NEED

The recent outbreak of COVID-19 is a major economic shock to the global economy. Against this background, the European Commission announced to facilitate the granting of state aid by the EU member states. In Belgium, the federal and regional governments announced several aid packages. Parts of the packages will likely need to be approved by the Commission under its new framework before they can be implemented.

Key issues

- To tackle the economic impact of the COVID-19 crisis the EU and its member states make state aid more easily accessible.
- The Belgian federal government announced payment arrangements for taxes and social security contributions and temporary unemployment schemes.
- The Ministry of Economy and Febelfin are currently examining the conditions for implementing a system of state guarantees.
- At regional level, governments have already announced measures to support the cash flow of the affected companies such as lump-sum allowances as well as loans and guarantees by public institutions.
- Most of the announced measures will need to be further clarified.
- It is unclear to what extent the measures will need to be cleared by the European Commission before they can be implemented.
- The European Commission has relaxed the requirements for state aid granted by the EU member states.

INTRODUCTION

The Coronavirus Disease 2019 ("**COVID-19**") is currently spreading over the world with serious consequences for the health of citizens as well as for economies. The pandemic leads to disruption of global supply chains, volatility in financial markets, consumer demand shocks and negative impact in key sectors like travel and tourism, and, thus, a major economic shock. The European Union ("**EU**") and its member states are taking measures to mitigate the consequences of this pandemic and are willing to support firms that are hit by the economic impact of COVID-19.

One possibility to mitigate the impact of COVID-19 on firms is to grant state aid. The European Commission ("**Commission**") has stated that it is willing to facilitate the granting of state aid by the EU member states. Belgium and other member states have already announced several measures in this regard.

BELGIAN AID MEASURES

The Belgian federal government announced a package of supportive measures for companies to limit the economic impact of the COVID-19 pandemic. While the main measures, such as payment arrangements for taxes and social security contributions and temporary unemployment schemes are unlikely to give rise to state aid considerations, insofar as they appear to apply indiscriminately to all companies, certain financial measures may be qualified as state aid. Additional measures have also been announced at the regional level.

1. Federal support measures

On Tuesday, 17 March 2020, the Belgian Financial Sector Federation (Febelfin) and the Belgian Minister of Finance suggested that businesses in financial difficulty should immediately contact their banks so as to find solutions. The banks have announced they will take measures to support all the companies that were healthy and financially viable before the COVID-19 outbreak.

Febelfin and the ministry are currently examining the conditions under which a system of guarantees could provide further support. Therefore, there is still uncertainty about additional federal measures and to what companies they could apply.

On Friday, 20 March 2020, the Belgian Federal Government announced a series of additional measures of €8 to 10 billion part of which will be gradually recovered later though. This is the case for the €4.5 billion which will cover the tax payment deferrals of businesses and self-employed as announced by the Belgian Minister of Finance. Most of the complementary measures comprise allowances to unemployed people and self-employed, while the Minister of Finance stated that it will be up to the regional governments to allocate the additional funds to the companies. Therefore, more measures for companies may be announced by the regional governments.

2. Support measures in Brussels

The Brussels government decided to strongly support the cash flow of affected companies by granting public guarantees (via le Fonds bruxellois de garantie/Brussels Waarborgfonds) for bank loans for a total of €20 million. The government stated that it will soon provide further information on the amounts, eligibility criteria and application process.

In addition, a moratorium will be imposed on the reimbursement of loans granted to affected companies by finance&invest.brussels (a public entity providing equity or quasi-equity capital to Brussels SMEs). Support to businesses in financial difficulty by the *Center for businesses in difficulty* (CED) will also be reinforced.

3. Support measures in Flanders

Aside from payment arrangements for taxes and social security contributions, and temporary unemployment schemes, the Flemish government has elaborated a series of measures in support of the companies affected by the COVID-19 outbreak.

For example, all businesses that were forced to close shop can obtain a one-time allowance of €4,000. This allowance is reduced to €2,000 for companies that only have to close over the weekend. Companies with more than one operational office may request multiple premiums (with a maximum of five premiums per company). Restaurants with a take-away service are also eligible to apply for this premium. If companies are forced to remain closed after 5 April 2020, they will be entitled to a daily compensation of €160.

The Flemish government has also expanded the existing crisis guarantee scheme. While under the existing scheme, companies can have 75% of their loan amount guaranteed for a one-time premium of 0.5%, this premium has now been reduced to 0.25%. The maximum guaranteed amount is €1.5 million. In addition, companies can have their bridging loan for existing debts guaranteed for 12 months instead of 3 months.

4. Support measures in Wallonia

On 18 March 2020, the Walloon government announced the creation of an extraordinary support fund of €350 million. €233 million will be allocated to SMEs and self-employed in the catering, accommodation, travel agencies, travel booking and related services, and retail trade sectors, that have completely or partially closed down due to the decisions taken by the National Security Centre. The support will be granted as a one-time allowance of €5,000 or €2,500, depending on whether the beneficiary had to close down completely or partially. The methodology to apply for support has not been communicated yet, but it is expected that the payment of aid will start as of April.

€115 million will be used to support undertakings in the healthcare and social and employment services sector, principally hospitals and retirement homes.

In addition, the Walloon financial institutions (SRIW, GROUPE SOGEPA, SOWALFIN, Invests) announced a number of financial aid measures. These measures include, in particular, guarantees of existing and new credit lines, as well as increases in credit lines or suspensions of the obligations to repay interest on existing loans. The guarantees cannot exceed 75% of the loan amount. The amounts eligible vary, but can reach €2.5 million by the combination of interventions from different institutions. The Walloon financial institution will also grant loans equivalent to existing bank loans to help companies meet their ongoing obligations towards the lending banks as well as short term loans to companies facing significant cash-flow difficulties.

APPROACH OF THE EUROPEAN COMMISSION

Although the details of the measures announced are not clear yet, it is likely that there are parts that will need to be cleared by the European Commission before they can be implemented, as they constitute State aid under Article 107(1) of the Treaty on the Functioning of the European Union ("**TFEU**").

The Commission has set out a number of ways in which it will apply and adapt its State aid framework in order to be able to clear aid packages that are put in place by EU governments in response to the coronavirus outbreak.

Special legal framework

The Commission issued a special legal framework for the assessment of coronavirus-related aid measures on 19 March 2020 (see separate briefing). The framework based on Article 107(3)(b) TFEU, permitting the Commission to clear aid for the purpose of remedying "a serious disturbance in the economy" of Member States, refers to allowing:

- schemes for direct grants, repayable advances or tax advantages up to €800,000 per company (specific rules applies for agricultural, fisheries and aquacultural sectors);
- subsidised State guarantees on bank loans; and
- subsidised interest rates for bank loans.

Other changes

Article 107(2)(b) TFEU allows the Commission to clear aid "to make good the damage caused by natural disasters or exceptional occurrences". In a Communication issued on 13 March, the Commission stated that the coronavirus outbreak qualifies as such an exceptional occurrence and, thus, compensation measures for companies in sectors that have been hit particularly hard, such as transport, tourism and hospitality, will be permissible under this provision.

The Commission also indicated that it is prepared to accept exceptions on its usual requirement that State aid can only be granted to rescue companies if they have not previously been the subject of a State rescue within the last ten years.

Where State aid measures have already been approved by the Commission, EU governments have the possibility to increase the budget of these measures by up to 20% without any involvement of the Commission. For increases of more than 20%, the Commission has established a simplified assessment procedure.

Quick clearance

Under usual circumstances, State aid clearances take several months, if not years. However, in its Communication the Commission announced that approvals for coronavirus-related State aid measures can be granted within days of receiving a state aid notification. For example, when Denmark notified a measure to compensate organisers of large events that have been cancelled due to the virus outbreak, the Commission was able to approve it within 24 hours.

COMMENT

The measures announced at the federal and regional levels still lack detail, and it is unclear to what extent they would need to be notified to the European Commission. However, a number of measures, such as direct allowances or loans on terms not available from private banks, could qualify as State aid, so that it can be expected that at least part of the measures will require a prior notification. Consequently, businesses looking to make decisions based on the announced funding should take this possibility into account. Failure to secure prior clearance can lead to aid recipients being required to pay it back and the legal validity of related contractual arrangements being called into question, and, indeed, an expectation from the business that the State has duly secured the clearance, will not shelter it from the negative consequences if the aid measured is found unlawful by the European Commission after it has been implemented.

On a positive note, the Commission is highly experienced in similar crisis situations (e.g. the financial crisis of 2008/2009) and the Commission's first actions demonstrate it is committed to act quickly.

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