ALERT MEMORANDUM

Belgium's Response to Mitigate the Effects of COVID-19

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On April 24, 2020, the Federal Government announced a roadmap for gradually scaling back various lock-down measures that had been in place since March 18, 2020.

As of May 4, although teleworking remains the norm wherever possible, it is no longer mandatory and companies that were closed have been allowed to reopen if they are able to provide for safe working conditions. Similarly, as of May 11, stores and shops that do not provide essential services have also been allowed to be reopened, provided that they can do so safely. Travel restrictions may be partially lifted as of May 18, but most travel will be limited and the border is expected to remain closed, at least until June 8. Bars and restaurants will also remain closed until at least June 8. The wearing of a protective mask (or scarf) covering nose and mouth is strongly recommended in public spaces and, as of May 4, has become mandatory on public transport for everyone above the age of 12.

For more details on these measures and the main points of attention for Belgian employers who are faced with partial or full closure of a site or dealing with decreased workload, please see our Alert Memorandum "Latest Practical Guidance for Belgian Employers in respect of COVID-19".

This memorandum sets out the key measures issued by the Belgian authorities to date, both on the federal level as well as the regional level (Flanders, Wallonia and Brussels-Capital Region), and outlines certain legal considerations for businesses, including in relation to State aid. The measures described herein may be further enhanced or phased out again, at which point an update of this memorandum may be warranted.

We are here to help interpreting and applying these rules. If you have any questions, whether large or small, please get in touch with your usual contact at Cleary Gottlieb or any of the lawyers listed above.

I. BANK LOAN GUARANTEE SCHEMES

A. Federal

The Royal Decree of April 14, 2020 further details the federal guarantee scheme announced on March 22, 2020 (and approved by the European Commission (the "Commission") under EU State aid rules on April 11, 2020) to support access to credit and a continued financing of the Belgian economy throughout the COVID-19 crisis.

The guarantee scheme provides for a total guaranteed amount of EUR 50 billion. The main goal is to ensure that credit institutions continue to grant loans to viable non-financial companies who are temporarily suffering from the effects of the COVID-19 crisis.

— ***Eligible loans***. The federal scheme is intended to create liquidity and consequently only covers "new money," namely short-term loans and facilities granted between April 1 and September 30, 2020 (subject to any further extension) with a maturity of maximum twelve months (or 18 months for SMEs).

- *Types of loans*. The federal scheme covers amortizing loans, bullet loans, revolving credit facilities and overdraft facilities and any other similar payment arrangements, provided that these are not granted to refinance existing loans granted prior to April 1, 2020. Such loans could be granted as part of a larger syndicated facility agreement, even if certain banks of the syndicate do not qualify as eligible lenders, as long as such loans are structured as a separate tranche granted by eligible lenders.

  Undrawn amounts of existing credit lines, leasing and factoring arrangements are not eligible for the federal scheme.

- *Use of proceeds*. Eligible loans must be principally used in connection with the Belgian activities of the borrower. Nevertheless, a maximum amount of 10% of the loans is eligible for use in connection with the borrower's foreign activities (provided that such use is not at the expense of the borrower's Belgian activities).

- *Maximum loan amount*. Eligible loans are capped at the lower of (i) the borrower's liquidity needs for the upcoming twelve months (or 18 months for SMEs) and (ii) EUR 50 million (per borrower and its affiliates). Exceptions to the EUR 50 million cap are possible subject to prior approval by royal decree.

- *Maximum interest rate and guarantee fee*. Eligible loans are subject to a maximum guaranteed interest rate of 1.25% per annum (in addition to the guarantee fee collected on behalf of the State by the banks).

  The guarantee fee is equal to 25 bps of the facility amount (for credit extended to SMEs) or 50 bps of the facility amount (for credit extended to large companies) per annum.

  The guarantee fee is payable by the eligible lenders on all qualifying loans granted by them. Failure to pay the guarantee fee would result in exclusion of the relevant banks from the federal guarantee scheme. The exact procedure for the payment of the guarantee fees will be defined by ministerial decree at a later stage.

  The Royal Decree does not oblige eligible lenders to grant eligible loans. However, lenders may only exclude 15% of the total eligible loans from the scope of the federal scheme. In case of violation of this threshold, eligible lenders may lose the benefits from the federal scheme.

— ***Eligible borrowers***. The scheme is designed to solely benefit viable non-financial companies (including listed companies) with a branch in Belgium (*i.e.*, registered with the Belgian Crossroads Bank for Enterprises).

- *Viable*. Companies with financial difficulties that predate the COVID-19 crisis are excluded from the scheme.

  A viable company is a company which: (i) had no payment arrears for tax and social security contributions, nor outstanding liabilities under credit agreements at February 1, 2020, and had no more than 30 days of such arrears on February 29, 2020; (ii) was not subject to an ongoing debt restructuring at January 31, 2020; and (iii) is not an "undertaking in difficulty" within the meaning of in the General Block Exemption Regulation ("GBER", *see* section VII below).

- *Non-financial companies*. Financial companies (including credit institutions, investments firms, insurance and reinsurance undertakings, UCITS, AIF, payment or electronic money institutions or securitization vehicles) cannot make use of the guarantee scheme.

  Banking and insurance intermediaries as well as holding companies whose main activity consists in holding shares in non-financial undertakings are however eligible for the scheme.

— ***Eligible lenders***. The scheme is compulsory for Belgian credit institutions and Belgian branches of foreign credit institutions.

Lenders are not entitled to transfer or grant security interests over any loan benefitting from the guarantee scheme, except as collateral to financing granted by the National Bank of Belgium.

— ***Loss allocation***. Aggregate losses incurred on all eligible loans will eventually be allocated between the financial sector and the public authorities as follows:

- a first tranche of losses (equal to 3% of all losses suffered under the entire eligible loan portfolio) would be borne entirely by the financial sector;
- a second tranche of losses (equal to 2% of all losses suffered under the entire eligible loan portfolio) would be borne equally (50-50) by the financial sector and public authorities; and
- 80% of any further losses suffered under the entire eligible loan portfolio would be borne by the public authorities, and for 20% by the financial sector.

The guarantee scheme follows the guidance issued by the Commission in its Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework", described in more detail under section VII below), and was approved on that basis on April 11, 2020.

B. Flemish Region

1. *Guarantees above EUR 1.5 million: COVID-19 Gigarant guarantee scheme*

The Flemish Government decided to increase the guarantee capacity of Gigarant, a pre-existing instrument of Participatiemaatschappij Vlaanderen ("PMV"), with EUR 1.5 billion (to EUR 3 billion). The guarantee scheme covers liabilities resulting from financing agreements entered into by SMEs or large companies with regard to the activities of a seat of exploitation based in Flanders or an investment in Flanders.

— ***Beneficiaries***. The scheme is designed for companies that are considered "viable" companies which, as is the case for the federal guarantee scheme, is construed by reference to the criteria set out by the Commission in the GBER regarding "undertakings in difficulty" (*see* section VII below).

— ***Scope***. The scheme may be used for any agreement (with a financial institution or leasing company as lender) for the purpose of financing, in whatever form, investments or activities of SMEs and large companies.

— ***Conditions.*** The principal amount of the financing guaranteed by Gigarant cannot exceed an aggregate amount per undertaking (including its affiliates) of (i) twice the total annual gross wage bill of the undertaking for 2019, (ii) 25% of the undertaking's total turnover in 2019 or (iii) subject to appropriate justification being provided, the undertaking's total liquidity needs for the next 18 (for SMEs) or twelve months (large companies).

The guarantee will cover a maximum of 80% of the principal amount of the financing (and will decrease proportionally with the outstanding principal amount, as to never reach more than 80% of such amount), and should at least amount to EUR 1.5 million (for guarantees up to EUR 1.5 million, *see* section 2 below).

— ***Premium***. The cost of the COVID-19 Gigarant guarantee scheme will be an annual cash payment of:

  - *For SMEs*: 25 basis points per annum for the first year of the financing, 50 basis points per annum for the second and third year, and 100 basis points per annum for the fourth, fifth and sixth year; and
  - *For large companies*: 50 basis points per annum for the first year of the financing, 100 basis points per annum for the second and third year and 200 basis points per annum for the fourth, fifth and sixth year.

— ***Duration***. The duration of the guarantee is limited to maximum six years.

The Flemish Government is still to announce the further conditions and procedural guidelines for the use of the COVID-19 Gigarant guarantee scheme. Any financing agreements that fall within the scope of the federal guarantee scheme (*see* section I.A above) are excluded from the COVID-19 Gigarant guarantee scheme.

This guarantee scheme follows the guidance issued by the Commission in the Temporary Framework (described in more detail under section VII below), and was approved on that basis on April 9, 2020.

2. Guarantees up to EUR 1.5 million: PMV Corona Crisis Guarantee

The Flemish Government also decided to extend the EUR 300 million guarantee scheme currently offered by PMV with a Corona Crisis Guarantee (*Waarborg coronacrisis*). This guarantee can cover liabilities resulting from financing agreements entered into by SMEs and large companies with regard to the activities of a seat of exploitation based in Flanders or an investment in Flanders. For this purpose, an additional EUR 100 million will be made available.

Under the existing guarantee scheme, enterprises unable to receive credit for lack of guarantees could benefit from a guarantee by PMV for up to 75% of the credit commitments (capped at EUR 1.5 million), provided they comply with certain viability criteria, which, as is the case for the federal and Gigarant guarantee schemes, are construed by reference to the criteria set out by the Commission in the GBER regarding "undertakings in difficulty" (*see* section VII below).

— ***Beneficiaries***. The benefit of the Corona Crisis Guarantee will be granted on a case-by-case basis, upon receipt of evidence that the beneficiary will make use of the guaranteed bridge loan to solve liquidity issues resulting from the current COVID-19 outbreak.

— ***Scope***. The Corona Crisis Guarantee may be used in case a bridge loan is entered into to repay existing working capital liabilities (*e.g.*, supplier debts or arrears, rent arrears, wages of more than 3 months old, *etc.*) which originated up to twelve months prior to the date of signing of the bridge loan agreement.

In addition, liabilities under existing overdraft facilities and working capital lines that are not yet due and that do *not* benefit from the existing PMV guarantee scheme are eligible for the Corona Crisis Guarantee (for a maximum of up to 50%) subject to additional conditions, such as the bank agreeing to maintain and not declare payable the overdraft facility or working capital line for a minimum of three months.

— ***Conditions***. The Corona Crisis Guarantee can be granted for an aggregate amount per undertaking (including its affiliates) of up to EUR 750,000.

— ***Premium***. The cost of the Corona Crisis Guarantee scheme will be a one-off premium of 25 basis points (instead of 50 basis points under the regular PMV guarantee scheme), calculated in accordance with the following formula: 25 basis points *multiplied by* the guaranteed amount of principal *multiplied by* the duration of the guarantee (in years). The premium will be payable at signing of the (new) bridge loan agreement.

— ***Duration***. The duration of the guarantee is limited to a maximum of ten years for guarantees up to EUR 750,000, and a maximum of five years for guarantees up to EUR 1.5 million.

Guarantees under the Corona Crisis Guarantee scheme cannot be included in the portfolio of commitments benefiting from the federal guarantee scheme (*see* section A above), nor may they be covered by the banks' commitment to grant a six month grace period, as agreed between the Federal Government, the National Bank of Belgium and the financial sector (*see* section II.A below).

C. Walloon Region

The Walloon Region also decided to intervene to ensure access to liquidity to undertakings facing a sudden liquidity shortage as a result of the COVID-19 outbreak. As part of the measures announced by the Walloon Government on March 18, 2020, Sogepa and Wallonie Santé, two investment vehicles owned by the Region, will operate a new guarantee scheme.

The guarantee may cover new investment and working capital loans as well as increases of existing short-term loans.

— ***Beneficiaries.*** The guarantee scheme is available to non-financial companies, who are not eligible to the federal guarantee scheme, provided they were not "in difficulty" within the meaning of the GBER (*see* section VII below) on December 31, 2019, whether or not they became "in difficulty" as a result of the COVID-19 outbreak.

Undertakings eligible to the federal guarantee scheme (*see* section A above) are not eligible to the Walloon guarantee scheme.

Scope. The guarantee scheme is applicable to new loans and increased commitments under existing loans contracted before December 31, 2020. It covers both investment and working capital needs of the undertakings concerned.

The guarantee will sustain up to 75% of the loan principal in losses, subject to a maximum amount of EUR 2.5 million per beneficiary.

— ***Conditions***. Eligible loans are capped at the higher of (i) twice the annual wage bill of the beneficiary or (ii) 25% of the beneficiary's 2019 turnover.

— ***Duration***. The duration of the guarantee and of the underlying loan cannot exceed six years.

The Walloon Region will also extend the current GELICAR guarantee scheme, which is targeted to non-SME undertakings, from EUR 50 to 250 million, with an intervention cap set at EUR 1.5 million per beneficiary.

This guarantee scheme follows the guidance issued by the Commission in the Temporary Framework (described in more details under section VII below), and was approved on that basis on April 30, 2020.

D. Brussels-Capital Region

The government of the Brussels-Capital Region has announced liquidity support measures in favor of enterprises in the form of guarantees (through the Brussels Guarantee Fund) on bank loans for an aggregate amount of EUR 20 million.

Details on these measures have not been made public yet.

II. PAYMENT DEFERRALS

A. Bank loan payment deferrals

The Belgian financial sector agreed to grant viable non-financial companies the ability (if required by such companies) to defer payments under existing loans without any associated costs or fees. The details of the measure are set forth in a "Charter" adopted by Febelfin on March 31, 2020. The aim of the measure is to help non-financial companies, SMEs and self-employed entrepreneurs to mitigate the impact of the COVID-19 crisis on their liquidity position, allowing them to rely on a temporarily enhanced cash flow.

— ***Scope***. The measure is limited to credit institutions which are members of Febelfin, and will therefore not benefit corporate borrowers under large syndicated loans including lenders that are not providing banking services in Belgium. Belgian credit institutions and Belgian branches of foreign credit institutions that would fail to comply with this payment deferral scheme, would not be eligible to benefit from the federal guarantee scheme (described under section I.A above).

— ***Beneficiaries.*** Eligible companies must actively apply for deferred payment terms with their bank, and demonstrate that: (i) they are facing difficulties to satisfy upcoming payment obligations due to the COVID-19 crisis; (ii) they have a permanent establishment in Belgium; (iii) they were current on all their credit facilities and on all tax or social security contributions as of February 1, 2020 (or such payments were not more than 30 days overdue as of February 29); and (iv) they fulfilled all of their contractual obligations under credit facilities with all their lender banks during the twelve month period immediately prior to January 31, 2020 and are not undergoing any active debt restructuring procedure.

— ***Eligible loans.*** Only loans with a fixed repayment plan (*les crédits avec un plan de remboursement fixe* / *kredieten met een vast aflossingsplan*), cash credits (*les crédits de caisse* / *kaskredieten*) and fixed advances (*les avances fixes* / *vaste voorschotten*) are eligible for payment deferral. Bullet repayment loans, factoring and (financial) leasing agreements are, among others, excluded.

— ***Principal amounts***. The Febelfin Charter provides that payments of principal amounts under qualifying loans can be deferred as from April 1, 2020, for a maximum period of 6 months ending no later than October 31, 2020. Interest remains payable during this period.

— ***No moratorium***. The measure is not a mandatory moratorium on all existing loans and does not prohibit lenders to accelerate defaulting loans for reasons unrelated to a payment default (*e.g.*, due to breach of applicable financial covenants).

In addition to the Febelfin initiative, payment deferrals will also apply on loans granted by Walloon local investments vehicles (SRIW, Sogepa, SOWALFIN) to companies until the end of March, with a possible extension until April 30, 2020, and on loans granted by finance&invest.brussels until further notice.

B. Insurance premium payment deferrals

The Belgian insurance sector has adopted similar guidelines as the banking sector indicating that companies who must suspend their operations due to the COVID-19 measures adopted by the Federal Government may request a payment deferral with respect to insurance premiums that would otherwise be due and payable between March 30, 2020 and September 30, 2020.

III. JUDICIAL PROCEEDINGS AND NOTARIES

A. Judicial proceedings

The Federal Government introduced specific measures to ensure the proper functioning of the judiciary during the current COVID-19 lockdown.

— ***Judicial deadlines.*** All limitation periods and other deadlines to take legal action before civil courts, as well as all procedural deadlines and deadlines to file appeals before civil courts, that lapse between April 9 and May 17 (May 3 in respect of deadlines to file appeals), are automatically extended by one month as of May 17 (May 3 in respect of deadlines to file appeals), so that they will expire on June 17 (June 3 in respect of deadlines to file appeals). Subsequent related deadlines are adapted accordingly. The court can decide not to extend a deadline only upon request of a party in case of urgency and if there is a risk of harm. The court's decision in this regard cannot be appealed.

— ***Hearings and written procedures.*** Cases for which a hearing is scheduled to take place between April 11 and June 17, and for which briefs have already been exchanged, are automatically taken under advisement by the court (*prise en délibéré / in beraad genomen*), without oral pleadings, on the basis of the parties' briefs and exhibits (*i.e.*, written procedure). The court may however request the parties to provide oral explanations on certain issues, possibly by video conference.

  If all parties object to the written procedure, the hearing is postponed. If some (but not all) parties object, the court may either decide to hold the hearing, possibly by video conference, postpone it or still apply the written procedure. A party's objection must be filed at the latest one week before the date on which the hearing is scheduled. The court's decision cannot be appealed.

  In case the written procedure applies, parties which have not yet filed their exhibits have one week to do so, running either as of the date initially scheduled for the hearing, or as of the decision of the court on the objection of one or more parties to the written procedure.

In light of these specific measures, court registries offer a limited service, allowing access to their offices only if absolutely necessary and with prior notice. Courts and tribunal allow procedural documents (including summons and requests for appeal) to be filed electronically (via the e-Deposit system)[1].

On May 1, 2020, the College of Courts and Tribunals issued recommendations to the attention of jurisdictions, aimed at ensuring compliance with social distancing rules.

B. Notaries

Notaries have also restricted the scope of their activities. All notary appointments are postponed until social distancing restrictions will no longer apply, unless required for the passing of a deed in urgent matters (including (i) if a person's life is at risk, (ii) in order to meet a tax deadline (unless tax authorities have granted an extension), or (iii) if the financial consequences are significant for the parties). Corporate actions that have an impact on a company's equity and restructurings are considered as urgent matters (these actions include capital increases, capital reductions, contributions, mergers, acquisitions and similar transactions).

A law in relation to the operations of notaries has been adopted by Parliament on April 23, 2020[2]. This law provides that, in the context of the COVID-19 pandemic, as many notarial deeds as possible should be executed by proxy. To that effect, the proposal enables clients to execute, free of charge, notarial proxies (required, for example, for certain real estate transactions) remotely by videoconferencing or to sign (regular) proxies for the passing of notarial deeds electronically, provided in each case that certain conditions are met, including the (relatively stringent) existing requirements for e-signatures.

IV. SHAREHOLDERS' MEETINGS

Royal Decree No. 4 of April 9, 2020 regarding various provisions on co-ownership and company and associations law within the framework of the fight against the COVID-19 pandemic ("Royal Decree No. 4") provides additional flexibility for the organization of board and shareholders' meetings of Belgian companies. Such additional flexibility was especially welcome in light of the annual shareholders' meetings of various companies and given that many companies were also looking to align their articles of association to the new Belgian Code on Companies and Associations at the same time.

[1] It is expected that this judicial practice will soon be reflected in the law (a legislative proposal to that effect has been filed with Parliament).

[2] The provisions will enter into force on the day of publication in the Belgian Official State Gazette.

- ***Shareholders' meetings.*** Companies may elect to defer their annual shareholders' meetings until ten weeks after June 30. If they decide not to defer, companies can require their shareholders to exercise their rights exclusively by way of (i) remote voting and (ii) proxy voting, even if the company does not have the required authorization in its articles of association. For proxy voting, companies can require that the proxies are given to a specific person designated by the company (rather than a third person elected by the shareholder), provided that the shareholder gives voting instructions to the proxy holder. Companies are also entitled to prohibit the physical presence of shareholders at the shareholders' meeting if they are unable to ensure compliance with applicable social distancing rules. For such "behind closed doors" meetings, shareholders will be obliged to exercise their right to ask questions by submitting written questions in advance. Alternatively, companies may allow shareholders to participate remotely, through the organization of a "virtual" shareholders' meeting, even if the company does not have the required authorization in its articles of association.
- ***Board meetings***. All board decisions can be approved by unanimous written consent and board meetings may validly take place through any means of telecommunication (such as telephone or video conferences) that permit a joint deliberation among the directors, regardless of the provisions contained in the articles of association.
- ***Application in time.*** Royal Decree No. 4 applies to all shareholders' meetings (so not only the upcoming annual shareholders' meetings but also any special or extraordinary shareholders' meetings) and board meetings to be held or convened between March 1 and June 30, 2020. The Federal Government may decide to extend this term.

V. TAX AND OTHER ECONOMIC MEASURES

A. Federal

At the federal level, the government announced as from March 6, 2020 a series of measures to support companies affected by the consequences of the COVID-19 outbreak.

Some of these measures were geared towards the benefits receivable by the employees due to temporary unemployment, and facilitated the possibility for companies to put their employees on temporary unemployment on grounds of force majeure (please see our Alert Memorandum "Latest Practical Guidance for Belgian Employers in respect of COVID-19").

Other important measures include:

- ***Payment plan for employers' social security contributions***. Amicable payment deadlines can be requested from the tax authorities in relation to the payment of social security contributions due by employers for the first and second quarters of 2020.
- ***Payment deferral plan for VAT***. Companies that demonstrate payment difficulties can request a deferral of the VAT payments until end of April, while benefitting from an exemption from the usual fines.
- ***Accelerated VAT credit refund***. Companies subject to VAT in Belgium are able to request an accelerated refund of their respective VAT credits. Companies submitting their February VAT return prior to April 4 should have received a refund by April 30 (*i.e.*, two months sooner than would otherwise have been the case). The request for an accelerated refund had to be made by the company in its VAT return.
- ***Payment plan for taxes***. Companies that demonstrate payment difficulties can request a deferral of payments of various taxes, including corporate income tax and withholding tax.

— ***Flexibility in the execution of federal public procurement agreement***. Companies bound by an ongoing federal procurement agreement will not face any sanctions or penalties in case the delay or failure to perform their obligations originates from the outbreak.

— ***Deferral of VAT returns filing deadline***. The deadline for the filing of VAT returns has been deferred.

— ***Periodic returns and intra-EU returns***. For periodic returns and intra-EU returns due in April 2020, the filing deadline has been deferred until June 5, 2020.

— ***Deferral of social security contributions payments***. The payment of social security contributions may be deferred until December 15, 2020. Companies that are subject to a mandatory closure are automatically entitled to this deferral while other companies have to submit a honorary statement.

— ***Deferral of VAT and withholding tax payments***. For the payment of VAT and withholding tax, an additional two-month payment deferral will be granted, without any charge of fines or interest being due. More in particular:

- *VAT*. For VAT, the payment deadline for the monthly declaration of February has been deferred until May 20, 2020. For the monthly declaration of March 2020, as well as the quarterly declaration for Q1 2020, the payment deadline has been deferred until June 20, 2020. The payment deadline for the monthly declaration of April has been deferred until July 20, 2020.
- *Withholding tax*. For withholding tax, the payment deadline for the monthly declaration of February was deferred until May 13, 2020. For the monthly declaration of March 2020, as well as the quarterly declaration for Q1 2020, the payment deadline has been deferred until June 15, 2020. The payment deadline for the monthly declaration of April has been deferred until July 15, 2020.

— ***Deferral of corporate income tax, non-resident and legal entity tax payments***. For the payment of corporate income tax, non-residents' tax and legal entity tax, an additional two-month payment deferral will automatically be granted, on top of the regular payment deadline and without any charge of fines or interest being due. This measure applies to the settlement of these taxes for assessment year 2019, which have been or will be established between March 12, 2020 and October 31, 2020. The payment of these debts established *before* March 12, 2020 is subject to the support measures announced on March 6, 2020 (see above).

— ***Moratorium on creditors' enforcement rights and bankruptcy proceedings***. The Federal Government adopted a Royal Decree on April 24, 2020 releasing companies who became insolvent after March 18, 2020 as a result of COVID-19 crisis from the obligation to file for bankruptcy (and preventing creditors or the public prosecutor thereof to file for such companies' bankruptcy).

Such companies automatically benefit from a stay on creditors' enforcement rights up to June 17, 2020 and payment terms granted under current judicial reorganization proceedings are automatically extended for a term equal to the term of the moratorium. Moreover, agreements entered before May 24, 2020 (other than employment agreements) cannot be unilaterally or judicially terminated in case of payment default.

Creditors who consider that a company unduly takes advantage of the moratorium to delay payments of its debts have the possibility to apply to the president of the enterprise court to lift the moratorium.

The Federal Government has also announced a number of sector-specific measures, among others, with regard to the travel, events, cultural and agricultural sectors.

On April 3, 2020, the Federal government clarified that it will not levy income tax on premiums and other economic advantages obtained by companies through support measures of the Communities and Regions.

B. Flemish Region

The Flemish Government has taken a number of measures such as (i) making available subordinated loans, (ii) granting a nuisance premium, (iii) granting a compensation premium, (iv) extending the scope of application of the incentive premium for employees, (v) announcing certain tax measures and (vi) extending the deadlines for certain of the VLAIO grants.

— ***Subordinated loans.*** The Flemish Government approved a capital increase of EUR 250 million for PMV to grant subordinated medium-term loans (*i.e.*, up to three years). These loans are only available for SMEs, and are mainly targeting start-ups and scale-ups. Only companies which (i) were financially healthy before the COVID-19 crisis and (ii) bring their effective employment to at least 80% of their workforce in the short term or continue to employ their workforce, will be eligible.

— ***Nuisance premium***. The Flemish Government will award a lump-sum subsidy (*forfaitaire subsidie*) to all enterprises with a seat of exploitation in Flanders that were forced to shut down. Enterprises subject to a complete shutdown are eligible to receive a one-off subsidy of EUR 4,000. For each additional day the mandatory shut down continues after April 5, enterprises will be eligible to receive an additional closure premium (*bijkomende sluitingspremie*) of EUR 160 per additional day of mandatory closure coinciding with a regular opening day.

The lump-sum subsidy and the additional closure premium will be increased if the enterprise has multiple seats of exploitation[3], where at least one registered FTE employee is employed, that are closed due to the COVID-19 measures. Enterprises have until 30 calendar days after the end of the mandatory closure period to file an application for aid on the website of the Flanders Innovation & Entrepreneurship Agency ("VLAIO").

— ***Compensation premium.*** Enterprises with a seat of exploitation in Flanders that were allowed to continue their operations or shops that remained open but, due to the restrictive measures imposed by the National Security, were confronted with a decrease in turnover of at least 60% in the period between March 14 and April 30, 2020, are entitled to a one-off compensation premium of EUR 3,000 (with a maximum of five premiums if the enterprise has multiple seats of exploitation). The compensation premium cannot be cumulated with any other aid measures such as the nuisance premium or the Flemish guarantee schemes.

— ***Extended scope of application of the incentive premium for employees***. The pre-existing Flemish incentive premium (*aanmoedigingspremie*) for employees, intended to promote the reduction of working time (and thus avoiding redundancies), was extended to employees employed at a seat of exploitation in Flanders of enterprises which, as a result of the COVID-19 crisis, experience a decrease of at least 20% in turnover, production or orders. In order to be eligible for the premium, the relevant employees must be employed in the private sector under a joint committee (*paritair comité*) and maintain at least a half-time working schedule. The company-employer must file a specific plan with the Department of Work and Social Economy, setting out (i) the decrease in turnover, production or orders, (ii) which labor redistribution measures are being undertaken and the link with the COVID-19 virus, (iii) the number of jobs that are the subject of the measures, (iv) the time period of the measures and (v) the VAT declarations for all relevant months.

— ***Commercial rent.*** Companies which were obliged to close down as a result of the federal measures,

[3] The increase is calculated by multiplying the lump-sum subsidy and additional closure premium by the aforementioned number of exploitation seats, but with a maximum of five.

will be able to obtain a loan from PMV for the payment of a maximum of two months' commercial rent on the condition that the landlord also waives at least one or two months' rent. Such loan could amount to a maximum of EUR 25,000, and will be repayable after six months, with an interest rate of 2%. Only companies that did not have rent arrears on March 15, 2020 are eligible.

This measure has been approved by the Flemish Government, but PMV and the banks still have to work out the practical arrangements.

— ***Tax measures***. In order to avoid liquidity issues for companies, the Flemish Government has taken two measures related to tax relevant to companies:

- *Postponed mailing of property tax assessment notices*. Legal entities will only receive the property tax (*onroerende voorheffing*) assessment notices for the assessment year 2020 as from September 2020 (instead of May).
- *Extension of payment period for annual traffic taxes*. Legal entities will be granted an additional four-month payment deferral on the annual traffic taxes.

— ***Extension of VLAIO grant deadlines***. Beneficiaries who, as a result of the COVID-19 crisis, are struggling to meet the deadlines provided for in certain types of grants awarded by VLAIO can contact their case handler at VLAIO to discuss the potential extension of these deadlines.

The Flemish Government has also announced a number of sector-specific measures, among others, with regard to the tourist, agricultural, cultural, youth and media sectors.

C. Walloon Region

On March 18, 2020, the Walloon Government announced measures in relation to (i) the establishment of a "Solidarity Fund", (ii) liquidity measures, (iii) a post-crisis fund and (iv) tax, which were followed by additional measures on April 22, 2020, mainly to extend the coverage of the measures to self-employed and small enterprises.

— ***Solidarity Fund***. The most important economic measure taken at this stage consists of the creation of an exceptional Solidarity Fund of EUR 350 million, to be split between (i) lump-sum compensations ranging from EUR 2,500 to 5,000 to SMEs located in the Walloon Region active in sectors affected by the COVID-19 crisis (total of EUR 518 million), (ii) financial support of EUR 115 million to the healthcare and social sector and (iii) financial support of EUR 2 million to local authorities.

— ***Liquidity measures.*** The Walloon Region has adopted a number of measures to assist undertakings by ensuring liquidity. The Walloon Region's investment vehicles Sogepa/Wallonie Santé will set aside a budget of EUR 100 million dedicated to granting (i) unsecured loans up to EUR 200,000 with a one-year repayment period and a 2% fixed interest rate, (ii) loans on an equal basis with the banks (Sogepa/Wallonie Santé will double the amount of the loan principal granted by the bank) and (iii) loan guarantees under certain conditions discussed in more details under section I.C above.

The Walloon Government announced on April 20, 2020 that it will grant, through Sowalfin, loans "*par ricochet*" of up to 45,000 euros for self-employed and small businesses. Such loans would be mixed products as Sowalfin would provide a guarantee of maximum 75% on the envisaged credit amount of maximum EUR 30,000 and directly grant a subordinated loan of maximum EUR 15,000 at 0% interest. Such loan mechanism cannot be combined with the lump sum payments.

— ***Post-crisis fund***. The Walloon Government announced the creation of a EUR 100 million fund for the "*redéploiement économique post-coronavirus*". The exact scope, possible beneficiaries and financial mechanisms of this fund remain unclear at this stage.

— ***Tax measures***. A number of decisions are aimed at relieving tax pressure on companies: (i) suspension or postponement of the payment deadline, allowing taxpayers to pay outstanding taxes only after the crisis has ended, (ii) freezing of the deadlines for filing a fiscal administrative claim to the Walloon Tax Administration, in order to safeguard companies' rights despite temporary containment measures, (iii) suspension of the executions of tax decisions taken by the Walloon Tax Administration which would negatively impact companies will be temporarily frozen (tax decision which would have a positive impact on companies will, however, be implemented) and (iv) mitigation of fiscal recoveries launched by the Walloon Government, including through bailiffs, and facilitation of payments plans.

D. Brussels-Capital Region

The Government of the Brussels-Capital Region has announced a number of sector-specific measures, among others, with regard to the hospitality, cultural, taxi and touristic sectors.

In particular, companies with less than 50 employees (FTE) may apply for a nuisance premium of EUR 4,000 per active establishment in the Brussels-Capital Region that had to close as a result of the COVID-19 restrictive measures. Eligible companies with multiple establishments may receive up to five premiums.

VI. FEDERAL SPECIAL POWERS

The measures outlined above are likely to be further supported by additional actions relating to public health, public order, social affairs and protection of citizens and the economy. On March 26 (Chamber) and 27 (Senate), 2020, the federal parliament adopted a legislative proposal authorising the King to take measures to combat the spread, and mitigate the impact of, COVID-19 ("Special Powers Law"), which received broad support from almost all political parties (*i.e.*, also from several parties who are not part of the current minority Federal Government).

— ***Special powers***. The use of "special powers" is, although exceptional, not unknown in Belgium. In essence, through a special powers law, the legislator will temporarily grant the government legislative powers, including the power to issue new laws and change existing ones within certain areas. The government will make use of such powers through the adoption of "numbered" royal decrees (*i.e.*, to distinguish them from "regular" royal decrees), which are subject to ratification by the legislator.

— ***Scope of powers***. The Special Powers Law grants the King sweeping powers to (i) limit the further spread of COVID-19, (ii) safeguard or increase the necessary logistical and storage capacity, (iii) provide direct or indirect support or protective measures for the financial sectors, economic sectors, profit and non-profit sectors, businesses and households to mitigate the effects of the pandemic, (iv) ensure the continuity of the economy, financial stability of the country and the protection of consumers, (v) adjust labour law, and social security law, with a view to protecting the workers and the population, the due organisation of enterprises and public authorities, while safeguarding the country's economic interests and the continuity of critical sectors, (vi) suspend or extend time limits provided for by or pursuant to the law, (vii) ensure the proper functioning of the courts and the continuity of justice, including by adjusting the organisation of the courts, jurisdiction and procedure (including with respect to time limits), (viii) adjust the competence, functioning and administration of justice of the Council of State and the administrative courts and (ix) comply with the decisions taken by the EU in the framework of joint management of the crisis. The royal decrees adopted pursuant to the Special Powers Law may impose administrative, civil and criminal sanctions and may have retroactive effect (although not beyond March 1, 2020).

— ***Limitations***. There are only a few limitations that curtail the King's powers under the Special Powers Law. The royal decrees may not (i) undermine the purchasing power of families and the existing social protection and (ii) adjust, abolish, modify or replace the social security contributions, taxes and duties (they may, however, allow a deferral of payment).

— ***Duration***. The special powers have been granted for a period of three months. Of course, Parliament could always decide to, if necessary, renew these powers but it seems unlikely that this will happen.

VII. CLEARANCE REQUIREMENTS UNDER STATE AID RULES

Since March 19, 2020, the Commission adopted a series of initiatives under the umbrella of a Temporary Framework aimed at relaxing State aid rules in order to allow Member States to support their economy in the context of the COVID-19 outbreak. The Temporary Framework is based on Article 107(3)(b) TFEU, which allows the Commission to clear aid aiming at remedying "*serious disturbance in the economy of a Member State*". The Commission had used the same legal basis (and adopted a similar framework) to allow exceptional aid measures following the 2008 financial crisis. Additional measures aimed at companies directly involved in the fight against COVID-19 were added on April 3, 2020 on the basis of Article 107(3)(c) TFEU, which allows the Commission to "*facilitate the development of certain economic activities or of certain economic areas*". On May 8, 2020, the Commission further relaxed State aid rules for COVID-19-related equity injections by Member States into non-financial companies.

The Temporary Framework allows Member States to implement aid schemes (subject to prior notification and clearance by the Commission) in six different forms, which can be cumulated with each other under this regime: (i) direct grants, repayable advances and tax advantages; (ii) public guarantees on bank loans and subsidized public loans; (iii) short-term export credit insurance; (iv) aid aimed at combating the COVID-19 outbreak; (v) aid aimed at preserving employment; and (vi) equity or hybrid capital injections.

— ***Direct grants, repayable advances or tax advantages***. The Temporary Framework enables Member States to set up schemes granting to each individual company up to EUR 800,000 in direct grants, repayable advances or tax advantages for its urgent liquidity needs. On April 3, 2020, the Commission extended this measure to guarantees, loans and equity injections. The aid amount should be calculated in gross terms (*i.e.*, before any tax deductions or surcharge). Specific (lower) thresholds and conditions apply for the fishery and aquaculture sector and the primary production of agricultural products.

— ***Guarantees and subsidized loans***. Member States can provide guarantees on bank loans or issue loans with subsidized interest rates, provided the beneficiary was not in financial difficulties as of December 31, 2019.[4] Both investment and working capital loans are eligible to the schemes. The main conditions are: (i) minimum remuneration (*i.e.*, guarantee fee or credit risk premium) ranging from 25 to 200 basis points depending on the company's size and the loan maturity (for loans, on top of one-year EURIBOR); (ii) amount of the loan principal capped at twice the company's 2019 wage bill (or 25% of its 2019 turnover, or the total amount of its liquidity needs for the next twelve months for large enterprises, and 18 months for SMEs), with the possibility to exceed that cap for loans expiring before the end of the year; (iii) guarantee and loan duration limited to six years; and (iv) guarantee amount limited to 90% of the underlying loan (or 35% in case of a first-loss guarantee).

— ***Short term export credit insurance***. By way of derogation to standard State aid rules on export credit insurance, the Temporary Framework allows Member States to support export credit insurance relating to "marketable risks" (*i.e.*, commercial and political risks with a maximum risk period of two

[4] Under the meaning of the GBER. In essence, an undertaking is considered to be "in difficulty" if more than half of its capital has disappeared as a result of losses, it is subject to insolvency proceedings or restructuring, or, for large companies, has a debt-to-equity ratio higher than 7.5 and interest coverage ratio below one.

years). In light of the rarifying private provision of export credit insurance, the Commission will temporarily deem as non-marketable (and therefore eligible for State support) all commercial and political risks related to countries that were considered as marketable under the Communication on short term export credit (which includes all Member States and certain OECD countries).

— ***Aid aimed at combating the COVID-19 outbreak***. This category introduced on April 3, 2020 covers three types of aid, available to companies that were viable as of December 31, 2019:

- Aid for COVID-19 and other antiviral relevant research and development (including vaccines, medicinal products and treatments, medical devices, disinfectants or protective clothing). Member States may provide direct grants, repayable advances or tax advantages covering up to 100% of the eligible costs for fundamental research and 80% of eligible costs for industrial research or experimental development. The beneficiary of the aid must commit to granting non-exclusive licenses under non-discriminatory market conditions to third parties in the EEA.

- Investment aid for testing and upscaling infrastructures required to develop COVID-19 related medicinal products (such as vaccines, medical devices and raw material, as well as data collection/processing tools). This covers direct grants, repayable advances or tax advantages covering up to 75% of the eligible costs. Any project supported must be completed within six months after the grant date, or must be reimbursed. Loss cover guarantees may be granted, with the amount of compensation to be determined five years after completion of the investment. The aid beneficiary must commit to charge market prices and to open infrastructure on a transparent and non-discriminatory basis.

- Aid for the production of COVID-19 relevant products, such as medicinal products, devices or equipment, pharmaceutical ingredients, and raw materials, as well as data collection/processing tools. Member States may provide direct grants, repayable advances, or tax advantages covering up to 80% of the eligible costs necessary for the production and trial runs of these products. Again, the project supported must be completed within six months after the grant date, or must be reimbursed.

— ***Aid aimed at preserving employment***. Member States may grant sectoral aid aimed at preserving employment in companies particularly affected by the COVID-19 outbreak.[5] The measures envisaged cover:

- Temporary deferrals (no later than December 31, 2022) of tax and/or of social security contributions or obligations to companies particularly affected by the COVID-19 outbreak because of the economic sector in which they operate, their location, or their size; and

- Wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak. The subsidy cannot last longer than twelve months from the application and cannot exceed 80% of the benefitting employees' individual monthly gross salary. Combination with other employment support measures is possible, provided there is no overcompensation, as well as with tax deferrals and deferrals of social security payments.

— ***Recapitalization of non-financial undertakings***. While previous initiatives aimed at relaxing State aid rules were focused on maintaining companies' access to liquidity, this category introduced on May 8 recognizes that the economic effects of

[5] Interestingly, this category does not exclude undertakings in difficulties before the crisis.

COVID-19 will also endanger their solvency and thus require more structural (and potentially competition-distortive) measures such as equity or hybrid capital injections or subordinated loans.[6] Specific conditions apply in order to:

- Provide incentives for the beneficiary to redeem the aid once the economy stabilizes (such as a step-up mechanism for the buy-back of the State shares and the adoption of an exit strategy for the State);
- Lay down safeguards on governance of the recapitalized undertakings (restriction on the distribution of dividends and management compensation); and
- Avoid undue restrictions of competition (limits on the commercial strategy and market expansion of the recapitalized undertaking).

The Temporary Framework complements other public support tools under other legal bases that are already at the Member States' disposal. These include among others: (i) measures that do not qualify as aid in light of their general character (such as wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions to the benefit of all undertakings); (ii) *de minimis* aid up to a maximum of EUR 200,000 per beneficiary over three years; (iii) measures that qualify as rescue or restructuring aid to companies in financial difficulties under Article 107(3)(c) TFEU, in particular schemes aimed a meeting acute liquidity needs; and (iv) measures that are aimed at compensating damage directly caused by the COVID-19 outbreak pursuant to Article 107(2)(b) TFEU (in particular in the health, tourism, transport, retail and culture sectors).

To date, the Commission has adopted more than 110 decisions clearing aid schemes notified across almost all Member States under the Temporary Framework. The vast majority of the measures approved concerned loan guarantees. The total budget allocated across the EU is estimated at an excess of EUR 1 trillion (approx. 5% of the block's GDP).

Further measures are expected to be announced by Member States, in particular based on the additional latitude granted by the Commission on May 8, 2020 regarding recapitalization measures. So far, no Member State appears to have adopted individual aid measures (*i.e.*, targeting one specific undertaking) based on one of the legal bases available.

As to Belgium, aid schemes notified at the Federal, Flemish and Walloon levels were approved by the Commission.[7] Companies seeking financial support for their activities in Belgium will need to assess their eligibility for one or several of these regimes.

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[6] That is, debt instruments that are subordinated to ordinary senior creditors in case of insolvency proceedings.

[7] In addition to the measures described under section I above, the Commission approved on April 11, 2020 a Walloon scheme providing for the temporary deferral of payment of the airport charges owed by the companies operating the Charleroi and Liège airports.