



Brussels, 19.3.2021
C(2021) 1950 final

PUBLIC VERSION

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Subject: **State aid SA.62255 (2021/N) – France**
COVID-19: Compensation for losses suffered by horticulturalists

Excellency,

1. PROCEDURE

- (1) By electronic notification of 9 March 2021, France notified an aid scheme in the form of limited amounts of aid (*“Régime relatif à la compensation des pertes subies par les horticulteurs”*, “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. By email of 15 March 2021, France submitted complementary information.
- (2) France exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958², and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) France 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

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.

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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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) France confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Sections 2 and 3.12 of the Temporary Framework.

2.1. Nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. National legal basis

- (7) Draft decision of the Director General of FranceAgriMer³ on the compensation system for horticulturalists for losses suffered in the context of the health crisis linked to the COVID-19 outbreak⁴.

2.3. Administration of the measure

- (8) The Ministry of Agriculture and Food and FranceAgriMer are responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 25 million.
- (10) Aid may be granted under the measure as from the notification of the Commission's approval until no later than 31 December 2021.
- (11) The French authorities confirmed that the measure is not co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF), Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime and Fisheries Fund (EMFF), the European Union Solidarity Fund (EUSF) or the Coronavirus Response Investment Initiative (CRII).

³ *Établissement national des produits de l'agriculture et de la mer*, is a public administrative establishment placed under the supervision of the ministry in charge of agriculture. FranceAgriMer is a paying agency, recognized by public and local authorities and professionals in the agricultural, agri-food and fishing sectors, both for the management of European and national aid.

⁴ *Projet de décision de la directrice générale de FranceAgriMer sur le dispositif de compensation des horticulteurs pour les pertes subies dans le contexte de la crise sanitaire liée à la pandémie de COVID-19.*

2.5. Beneficiaries

- (12) The beneficiaries of the measure are natural and legal persons carrying out a horticultural production activity. Landscape and reforestation companies, traders, wholesalers, distributors and retailers who do not have a horticultural production activity cannot benefit from the measure. The estimated number of beneficiaries will be 3000.
- (13) Aid may not be granted under the measure to medium⁵ and large enterprises that were already in difficulty within the meaning of the Agricultural Block Exemption Regulation (“ABER”)⁶ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the ABER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and have not received rescue aid⁷ or restructuring aid⁸.

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to producers active in the horticultural sector, as described in recital (12). Financial institutions are excluded as eligible final beneficiaries. The measure applies to the whole territory of France including the overseas regions.

2.7. Basic elements of the measure

- (15) The measure aims to ensure the viability of French agricultural enterprises and in particular to support producers who have suffered severely reduced incomes due to measures taken to limit the spread of the COVID-19, especially in the period during March to May 2020.
- (16) The compensation will be calculated on the basis of the loss of turnover and the period retained as eligible for aid, runs from 16 March to 10 May 2020 inclusive, corresponding to the period of confinement during which all or most of the distribution channels were closed.
- (17) Beneficiaries of the measure must justify a decrease of at least 30% in their turnover over the eligible period compared to the same period in 2019.
- (18) For the calculation of the amount of aid, the loss in 2020 turnover (CA2020 loss) corresponds to the difference between the turnover for the same reference period (16 March to 10 May) in 2020 (CA2020) and in 2019 (CA2019):

⁵ As defined in Annex I to 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, 26.6.2014, p. 1.

⁶ Article 2(14) of 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

⁷ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

⁸ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

$$\text{CA2020 loss} = \text{CA2019} - \text{CA2020}$$

- (19) The applicant is eligible for aid if: $\text{CA2020 loss} > 30\% \text{ CA2019}$.
- (20) A deduction (“*franchise*”) corresponding to 30% of the loss of 2020 turnover, is applied.
- (21) The eligible base corresponds to:

$$\text{Base} = \text{CA2020 loss} - \text{“franchise”} = 70\% \text{ CA2020 loss}$$

- (22) The amount of aid corresponds to this eligible base (70% of the CA2020 loss), after deduction of the difference between the amount of aid or compensation related to the COVID-19 outbreak for the same period of eligibility (called “COVID Aid”) received by the beneficiary and the “*franchise*”, in the case that the “COVID Aid” is greater than this last one, either:

$$\text{Aid} = (70\% \text{ CA2020 loss}) - (\text{COVID Aid} > \text{“franchise”})$$

- (23) The final amount of aid will be determined after the loss has occurred on the basis of audited accounts or fiscal statements. Certification of financial documents by a chartered accountant, auditor or approved management center is required. Any payment in excess of the damage suffered as a direct result of the COVID-19 outbreak will be recovered. In the event of an irregularity detected after payment, the beneficiary will be requested to reimburse all or part of the aid granted. If the irregularity is detected before payment, the aid requested is reduced to the amount of the undue amount.
- (24) The threshold for eligible aid will be EUR 1500 per applicant and the maximum aid will be one million euros. The overall nominal value of direct grants will not exceed EUR 10 million per undertaking; all figures gross, that is, before any deduction of tax or other charges.

2.8. Cumulation

- (25) The French authorities confirmed that aid granted under the measure may be cumulated with *de minimis* aid⁹ and/or with aid under the Block Exemptions Regulations¹⁰ provided the provisions and cumulation rules of those Regulations are respected.
- (26) The French authorities confirmed that aid under the notified measure will not be cumulated with other forms of Union financing.
- (27) The French authorities confirmed that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

⁹ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9).

¹⁰ Commission Regulation (EU) No 651/2014, Commission Regulation (EU) No 702/2014.

- (28) The French authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (29) The French authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (30) The French authorities confirmed 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 State aid website or Commission's IT tool within 12 months from the moment of granting¹¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (31) By notifying the measure before putting it into effect, the French 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 the Ministry of Agriculture and Food and FranceAgriMer, as shown in recital (8), and is based on the draft decision of the Director General of FranceAgriMer on the compensation system for horticulturalists for losses suffered in the context of the health crisis linked to the COVID-19 outbreak, as shown in recital (7). It is financed through State resources, since it is financed by public funds.
- (34) The measure confers an advantage on its beneficiaries in the form of direct grants, as shown in recital (6). The measure 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 will be awarded only to certain undertakings, in particular undertakings active in a specific agricultural production sector, excluding the financial sector, as shown in recital (12).

¹¹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

- (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. The French authorities do not contest that conclusion.

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 (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*”.
- (41) The measure is one of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in their economy. The measure is important to ensure the viability of primary producers of some specific agricultural products and is of a scale, which can be reasonably anticipated to produce effects across the targeted agricultural subsector in France. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of support for uncovered fixed costs*”) described in section 3.12 of the Temporary Framework.
- (42) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- Aid is granted under the measure no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 16 March to 10 May 2020, as shown in recital (16). The measure therefore complies with point 87(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019, as shown in recital (17). The measure therefore complies with point 87(b) of the Temporary Framework.
 - Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs, as shown in recital (22). The losses

of undertakings from their profit and loss statements during the eligible period¹² are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or on the basis of tax accounts. Any payment exceeding the final amount of the aid must be recovered, as shown in recital (23). The measure therefore complies with point 87(c) of the Temporary Framework.

- The aid takes the form of direct grants, as shown in recital (6). The overall nominal value of direct grants will not exceed EUR 10 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges, as shown in recital (24). The measure therefore complies with point 87(d) of the Temporary Framework.
 - The aid under the measure shall not be cumulated with other aid for the same eligible costs, as shown in recital (29). The measure therefore complies with point 87(e) of the Temporary Framework.
 - Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019, as shown in recital (13). Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid or restructuring aid, as shown in recital (13). The measure therefore complies with point 87(f) of the Temporary Framework.
- (43) The French authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA, as shown in recital (4).
- (44) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected, as shown in recital (31). The French authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected, as shown in recitals (25) to (27).
- (45) 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.

¹² One-off impairment losses are not included in the calculation of the losses.

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