EUROPEAN COMMISSION

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Subject: State Aid SA.107474 (2023/N) – France
TCTF: Exceptional scheme to cover the economic losses of the lavender sector caused by the consequences of Russia's military aggression against Ukraine

Excellency,

1. PROCEDURE

(1) By electronic notification of 11 May 2023, France notified aid in the form of limited amounts of aid (TCTF: *"Dispositif exceptionnel de prise en charge des pertes économiques de la filière lavandicole engendrées par les conséquences de l'agression militaire de la Russie contre l'Ukraine"*, "the measure") under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis and Transition Framework") ([1]).

(2) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with

([1]) Communication from the Commission on the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1) ('Temporary Crisis Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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Article 3 of Regulation 1/1958 ([2]) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) France considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken for example by Russia, have economic repercussions on the entire internal market (“the current crisis”). According to the French authorities, the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including fertilisers, highly relevant for the agricultural sector. Those effects taken together have caused a serious disturbance of the economy in all Member States. The French authorities point out that the current crisis is having a severe impact on the agricultural sector. Specifically, for the lavender sector ([3]), the current crisis has caused a significant increase in the cost of inputs in connection with the increase in the price of energy and raw materials and related supply difficulties. The items of expenditure concerned are, in particular, gas, fertilisers, phytosanitary products, as well as certain other items such as glass packaging ([4]). The sustainability of the sector is threatened. In this context, the risk of disappearance is 60 to 70% for producers in so-called "historic" production zones, zones in which few other crops are possible due to the geographical and climatic conditions. Thus, the measure aims at addressing the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.

(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 European Economic Ares (“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), point (b), TFEU, in light of Sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

([2]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

([3]) The lavender sector generates more than 9 000 direct jobs and 17 000 indirect jobs with more than 3 000 farms with lavender and/or lavandin crops in the French general agricultural census of 2020, for a total area of more than 33 000 ha in 2021 (Data: FranceAgrimer).

([4]) The technical institute of the sector, the *Centre régionalisé interprofessionnel d’expérimentation en plantes à parfum aromatiques et médicinales* (CRIEPPAM), conducted a study on the evolution of lavandin production costs between 2021 and 2022. The increase in the price of energy and raw materials resulting from the current crisis has increased production costs by around 40%, going for example from EUR 16/kg of lavandin essential oil at more than EUR 22/kg (CAP aid deducted) for a farm with a yield of 110 kg of essential oil per hectare. The increases in costs are mainly due to the increase in the price of fertilisers (+88%), gas for distillation (+60%), phytosanitary products (+15%) and that of non-road diesel (GNR) (+100%).

2.1. The nature and form of aid

(6) The measure provides aid on the basis of a scheme in the form of direct grants.

2.2. Legal basis

(7) The legal basis for the measure is the draft of the Decision of the Director General of FranceAgriMer No. INTV-GECRI-2023-18 relating to the procedures for implementing the exceptional scheme for covering the economic losses of the lavender sector caused by the consequences of Russia's aggression against Ukraine ([5]).

2.3. Administration of the measure

(8) The public agency FranceAgriMer ([6]) is responsible for administering the measure.

2.4. Budget and duration of the measure

(9) The estimated budget is EUR 9 million, financed from the State budget.

(10) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2023.

2.5. Beneficiaries

(11) The final beneficiaries of the measure are SMEs ([7]) active at the production of lavender or lavandin in France that affected by the current crisis (the "beneficiaries"). The beneficiaries must fulfil the following eligibility criteria ([8])supported by an accounting certificate:

(a) the average turnover from sales of essential oils of lavender and lavandin (excluding flowers, bouquets and plants) for the closed accounting years including the harvests of 2018 and 2019 respectively is greater than or

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([5]) *Projet de décision de la directrice générale de FranceAgriMer n° INTV-GECRI-2023-18 relative aux modalités de mise en œuvre du dispositif exceptionnel de prise en charge des pertes économiques de la filière lavandicole engendrée par les conséquences de l'agression de la Russie contre l'Ukraine*.

([6]) *Établissement national des produits de l'agriculture et de la mer*.

([7]) As defined in Annex I to the Commission Regulation (EU) 2022/2472 of 14 December 2022 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 327, 21.12.2022, p. 1).

([8]) The eligibility criteria will however be assessed differently in the case of beneficiaries recently established in agriculture (creation of a farm with a 2022 lavender harvest). For those who cannot obtain an average for the years 2018 and 2019, due to their recent installation, they must prove their status as a young farmer or newly settled in agriculture, by official proof of the date of installation and the accounting certificates showing the average turnover of two consecutive closed accounting years or the only closed accounting year since their installation; or in the absence of a closed accounting year, the values of the business plan on the theoretical achievement 2022. In the case of takeover, merger, or division of the farm, it is the accounting history of previous operations that must be used.

equal to 40% compared to the average total turnover of operations of the beneficiary over the same period;

(b) the turnover from sales of essential oils of lavender and lavandin (excluding flowers, bouquets and plants) for the closed accounting year including the 2022 harvest is greater than zero;

(c) the losses of turnover from sales of essential oils of lavender and lavandin (excluding flowers, bouquets and plants) is greater than or equal to 30% over the closed accounting year including the 2022 harvest, compared to the average for the years accounts closed including the harvests of 2018 and 2019.

(12) France confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

(13) France confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations ([9]). In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

(14) The measure is open to undertakings active in the primary agricultural sector, specifically in the sector mentioned in recital (11). It applies to the whole territory of France. France confirms that credit institutions or other financial institutions are excluded from being beneficiaries of the aid.

2.7. Basic elements of the measure

(15) The measure aims to provide an exceptional compensation for part of the losses of specialized lavender farms impacted by the economic context resulting from Russia's military aggression against Ukraine. This is to help them overcome this particularly difficult period, which is likely to jeopardize the sustainability of the companies in the sector.

(16) The calculation of the amount of aid is equal to 80% of the decrease of the EBITDA ([10]) of the farm, observed over the closed accounting year including the

([9]) For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

([10]) In French EBE: *Excédent brut d'exploitation* (EBITDA: Earnings before interest, taxes, depreciation, and amortization).

2022 harvest, compared to the average of the closed accounting years including the harvests of 2018 and 2019 ([11]).

(17) The minimum aid under the measure will be EUR 1 000 and the maximum EUR 20 000 ([12]). Therefore, the overall nominal value of the direct grants under the measure will not exceed EUR 250 000 per undertaking per Member State, at any given point in time; all figures are gross, that is, before any deduction of tax or other charges.

(18) The French authorities confirm that the aid is not fixed on the basis of the price or quantity of products put on the market.

2.8. Compliance with relevant provisions of Union law

(19) The French authorities confirm that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law.

2.9. Cumulation

(20) The French authorities confirm that aid granted under the measure may be cumulated with support under *de minimis* Regulations ([13]) or aid under the Block Exemption Regulations ([14]) provided the provisions and cumulation rules of those Regulations are respected.

(21) The French authorities confirm that aid under the measure will not be cumulated with other forms of Union financing.

(22) The French authorities confirm that aid under the measure will not be cumulated with aid under the Temporary Framework for State aid measures to support the

([11]) In the case of beneficiaries newly installed in agriculture which will not be able to provide an average EBITDA for the closed accounting years including the 2018 and 2019 harvests, a reference EBITDA will be established on the basis of the two consecutive closed accounting years or the single closed accounting year since their installation; or, in the absence of a closed accounting year, on the basis of the values of the Business Plan on the theoretical achievement 2022. For applicants subject to the agricultural micro-benefit tax system (micro-BA) without accounting, the EBITDA is replaced by the gross operating margin (income - expenses) to which are added the operating subsidies and aid received on the accounting years used.

([12]) However, by application of the principle of transparency of agricultural groups operating in common (GAEC), enacted in the national corresponding regulation, and which allows the members of the group to retain the rights they could have claimed if they had remained individual farm managers, the maximum amount of aid will before them EUR 40 000, regardless of the number of partners.

([13]) Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p. 1), 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

([14]) 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) and Commission Regulation (EU) 2022/2472.

economy in the current COVID-19 outbreak ([15]) ("COVID-19 Temporary Framework").

(23) The French authorities confirm 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 Crisis and Transition Framework provided the provisions in those specific sections are respected.

(24) France confirms that for aid granted under Section 2.1 of the previous Temporary Crisis Framework and the Temporary Crisis and Transition Framework, the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework are respected at any point in time.

(25) The French authorities confirm that if a beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking per Member State, as set out in points 61(a) and in 62(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under Section 2.1 of the previous Temporary Crisis Framework or under the Temporary Crisis and Transition Framework which has been reimbursed before granting of new aid under that section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.10. Monitoring and reporting

(26) The French authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 10 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within twelve months from the moment of granting ([16])).

3. ASSESSMENT

3.1. Lawfulness of the measure

(27) By notifying the measure before putting it into effect, the French authorities have respected their obligations under Article 108(3) TFEU (recitals (7) and (10)).

3.2. Existence of State aid

(28) 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

([15]) Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

([16]) Referring to information required in Annex III to Commission Regulation (EU) 2022/2472.

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.

(29) The measure is imputable to the State, since it is administered by the public agency FranceAgriMer (recital (8)) and it is based on the draft legal act mentioned in recital (7). It is financed through State resources since it is financed by public funds (recital (9)).

(30) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.

(31) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings active in the lavender sector, excluding the financial sector (recital (14)).

(32) 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.

(33) Therefore, 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

(34) 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.

(35) Pursuant to Article 107(3), point (b), TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(36) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in Section 1) that the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agricultural sector.

(37) Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of France. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (b), TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the current crisis.

(38) The measure aims at providing liquidity to certain undertakings active in the primary production of agricultural products at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely

disturbed leading to severe disturbances of the real economy of Member States, including in the economy of France.

(39) The measure is one of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in the French economy. The importance of the measure to ensure sufficient liquidity of the beneficiaries that face cost increases of fertilisers, energy, and other production inputs is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire French economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Limited amounts of aid*") described in Section 2.1 of the Temporary Crisis and Transition Framework.

(40) 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 relevant conditions of the Temporary Crisis and Transition Framework. In particular:

- the aid takes the form of direct grants (recital (6));

- the overall nominal value of the grants does not exceed EUR 250 000 per undertaking active in the primary production of agricultural products per Member State; all figures used are gross, that is before any deduction of tax or other charges (recital (17)). If the beneficiary receives aid on several occasions under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, per Member State, as set out in points 61(a) or 62(a) of that framework, will be respected (recital (25)). The measure therefore complies with point 62(a) of the Temporary Crisis and Transition Framework;

- aid is granted under the measure on the basis of a scheme (recital (6)) with an estimated budget, as indicated in recital (9). The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework;

- aid will be granted under the measure no later than 31 December 2023, as indicated in recital (10). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework;

- aid will be granted only to undertakings affected by the current crisis (recitals (3), (11) and (15)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework;

- aid granted is not fixed on the basis of the price or quantity of products put on the market (recital (18)). The measure therefore complies with point 62(b) of the Temporary Crisis and Transition Framework.

(41) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ([17])

(42) France confirms that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market (see recital (19)).

(43) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.

(44) France confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under Section 2.1 of the previous Temporary Crisis Framework and the Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework at any point in time (see recital (26)).

(45) The French authorities confirm that, pursuant to point 51 of the Temporary Crisis and Transition Framework, 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 (recital (4)).

(46) The French authorities confirm that, pursuant to point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recitals (12) and (13)).

(47) The French authorities confirm that the monitoring and reporting rules laid down in Section 3 of the Temporary Crisis and Transition Framework will be respected (recital (26)). 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 Crisis and Transition Framework and the cumulation rules of the relevant Regulations are respected (recitals (20) to (23)).

(48) 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), point (b), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

([17]) Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

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), point (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