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PUBLIC VERSION

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Subject: State Aid SA.109962 (2023/N) – France
TCTF: Exceptional scheme for fruit and vegetables farms in the French outermost regions due to the price increases of fertilisers and soil conditioners (amendment to SA.108916 (2023/N))

Excellency,

1. PROCEDURE

- (1) By electronic notification of 3 November 2023, France notified an amendment (the “notified amendment”) to the existing aid scheme SA.108916 (2023/N) – “TCF: *Dispositif d’indemnisation exceptionnelle des exploitations agricoles productrices de fruits et légumes dans les départements et régions d’outre-mer et à Saint-Martin touchées par la hausse de leurs charges en engrais et amendements*” (“the existing aid scheme”), which the Commission approved by Commission Decision C(2023) 5884 final of 28 August 2023 ⁽¹⁾ (the “initial decision”), under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia ⁽²⁾.

⁽¹⁾ OJ C 327, 15.9.2023, p. 14.

⁽²⁾ 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 The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

S. E. Madame Catherine COLONNA
Ministre de l’Europe et des Affaires étrangères
37, Quai d’Orsay
F - 75351 PARIS

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

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) The objective of the existing aid scheme is to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the Union or by its international partners, as well as by the economic counter measures taken so far by Russia.
- (4) France wishes to amend the existing aid scheme in order to include the producers of bananas intended for export ⁽⁴⁾ in Guadeloupe and Martinique as beneficiaries of the measure under the same conditions as those presented in recitals (11), (16) and (17) of the initial decision. This production was explicitly excluded from the benefice of the measure as mentioned in recital (16) and footnote 8 of the initial decision ⁽⁵⁾.
- (5) Apart from the notified amendment, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.
- (6) The legal basis of the notified amendment is a draft of the Circular for the implementation of the use of the remainder from the exceptional compensation

⁽³⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

⁽⁴⁾ These are bananas which are not intended for the local Antillean market (which has a consumption of smaller varieties, and which are more difficult to transport, therefore with different storage capacities), which is why they are called “export bananas”, in other words: bananas which leave the Antilles, either towards mainland France, or towards the EU market, or, in a much more marginal way, towards third markets. Producers of this kind of bananas were explicitly excluded from the scope of the original scheme as mentioned in recital 16 and footnote 8 of the initial decision, mainly due to estimations on the necessary budget. With the notified amendment, all producers of bananas (irrespective of the variety or consumption destiny) will be covered by the measure that intends to compensate for the increase on the costs of production provoked by the current crisis, as mentioned in recital 15 of the initial decision.

⁽⁵⁾ Although the sector concerned is structurally supported through the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI) (Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 OJ L 78, 20.3.2013, p. 23), this support is however not commensurate with the additional costs that producers must face due to the consequences of the current crisis. Their economic situation is particularly unfavourable due to the economic shock in 2022, in particular concerning the cost of fertilisers and soil conditioners, which extended into 2023. In fact, the cultivation of bananas requires a significant supply of fertiliser and soil conditioners (18 units of nitrogen per tonne of bananas or 380 units of nitrogen per hectare while this contribution is 50 units of nitrogen/ha for salad, 78 units of nitrogen/ha for melon, 95 units of nitrogen/ha for cabbage and 120 units of nitrogen/ha for tomatoes). Furthermore, with more than 95% of the volumes of bananas produced in the Antilles being transported to mainland France, the rise in energy costs has put a strain on the transport costs of this sector.

scheme for local fruit and vegetable production, for the exceptional compensation for local banana export production in Martinique and Guadeloupe ⁽⁶⁾.

- (7) Aid may be granted under the existing aid scheme, as amended, as from the notification of the Commission's decision approving the notified amendment.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (8) By notifying the amendment before putting them into effect, the French authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (9) 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 be liable to affect trade between Member States.
- (10) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (28) to (33) of the initial decision. The notified amendment does not affect that conclusion. The Commission therefore refers to the assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (11) The existing aid scheme is compatible with the internal market pursuant to Article 107(3), point (b), TFEU, since it met the conditions of section 1 and section 2.1 of the Temporary Crisis Framework for the reasons set out in recitals (34) to (47) of the initial decision. The Commission therefore refers to the assessment in the initial decision.
- (12) The notified amendment does not affect the conclusion that the existing aid scheme is compatible with the internal market pursuant to Article 107(3), point (b), TFEU. In particular, the new aid will be granted only to undertakings affected by the current crisis (recital (4)) in conformity with the requirements of point 61(b) the Temporary Crisis and Transition Framework. Therefore, the Commission considers that the notified amendment does not affect the assessment of the compatibility of the existing aid scheme with the internal market, as carried out in the initial decision.
- (13) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered (recital (5)).

⁽⁶⁾ *Projet de circulaire pour la mise en œuvre de l'utilisation du reliquat issu de ce dispositif d'indemnisation exceptionnelle pour les productions locales de fruits et légumes, pour l'indemnisation exceptionnelle pour les productions locales de banane export en Martinique et en Guadeloupe.*

- (14) The Commission therefore considers that the notified amendment does not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision. The Commission therefore considers that the notified amendment 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 of the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the existing aid scheme, as amended, 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/eojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Didier REYNDERS
Member of the Commission