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Subject: State Aid SA.108916 (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

Excellency,

1. PROCEDURE

- (1) By electronic notification of 3 August 2023, France notified aid in the form of limited amounts of aid ('TCTF: *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 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⁾. On 11 August 2023, France submitted complementary information.
- (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 The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.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, highly relevant for the agricultural sector. Those effects taken together have caused a serious disturbance of the economy in all Member States. In particular, the prices of mineral fertilisers have directly suffered from the increase in the prices of gas and other raw materials (ammonia, etc.) used in their composition, of which Russia is a major supplier. In addition, disruptions to navigation in the Black Sea and restrictions on fertiliser exports decided by Russia have reduced the availability of fertilisers within the Union. The increase in the price of mineral fertilisers has led to price increases of other fertilisers as well, in particular organic fertilisers and soil conditioners. The average price index between March 2021 and December 2021 stood at 120.89 and rose to 209.22 between March 2022 and December 2022, an increase of 73% ⁽³⁾. The French authorities point out that this situation has a strong impact on farms producing fruit and vegetables in the outermost departments and regions and in the outermost collectivity of Saint-Martin (all together hereafter 'the French outermost regions'). Compared to farms in mainland France, overseas farms have to deal with a certain number of structural constraints, which make them all the more vulnerable in the event of economic hazards ⁽⁴⁾. The analysis of the increase in the costs of various inputs provided by the French authorities established that it is fertilisers and soil conditioners that have recorded the most significant increase between 2021 and 2022 ⁽⁵⁾. In view of the significant increase in the price of

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

⁽³⁾ Index IPAMPA (*indice des prix d'achat des moyens de production agricole*) drawn up by the INSEE (*Institut national de la statistique et des études économiques*).

⁽⁴⁾ Due to their geographical location and the crops adapted to their climates, they are subject to severe regional and international competition, particularly from countries with less demanding social and environmental standards. Farms are weakened by recurrent climatic events (tropical storms, drought, floods, etc.) and by particular pedo-climatic and sanitary conditions which impact yields. Due to insularity, the cost of inputs is always higher for these farms compared to those in mainland France due to the cost of freight to transport them. Moreover, this freight cost has itself increased due to the current crisis. Above all, in these territories, the increase in the cost of fertilisers and soil conditioners cannot be passed on to consumer prices, because their purchasing power is modest. In addition, an increase in the prices of locally produced fruits and vegetables would expose them to even stronger competition from imported products from countries where production costs are lower.

⁽⁵⁾ Customs data on fertiliser imports confirm an increase of more than 66% in fertiliser costs between 2021 and 2022 (calculated from the average price over 2021 and 2022), including the cost of freight, with respectively: +70% in Guadeloupe, Guyana and Martinique, +60% in Réunion, +134% in Mayotte. Fertilisers and soil conditioners represent 44% of the supply costs for farms producing fruit and vegetables in these territories.

these products between 2021 and 2022 and the weight that this cost item represents for an overseas farm, the French authorities consider it necessary to offset part of the additional costs linked to these inputs. 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 upon the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area ('EEA') to its territory. 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, read in light of Sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (6) The measure consists in a scheme, which provides for the granting of individual aid in the form of direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is the draft of the Circular relating to the implementation of an exceptional compensation scheme for local fruit and vegetable production (excluding dessert bananas intended for export) in the outermost departments and regions and in Saint-Martin affected by the increase in their charges for fertilisers and soil conditioners caused by the consequences of Russia's aggression against Ukraine ⁽⁶⁾.

2.3. Administration of the measure

- (8) The prefectures will be responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget is EUR 10 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 small and medium-sized enterprises ⁽⁷⁾ active in the primary agricultural production of fruits and vegetables ⁽⁸⁾ located in

⁽⁶⁾ *Projet de circulaire relative à la mise en œuvre d'un dispositif d'indemnisation exceptionnelle pour les productions locales de fruits et légumes (hors banane dessert destinée à l'exportation) dans les départements et régions d'outre-mer et à Saint-Martin touchées par la hausse de leurs charges en engrais et amendements engendrée par les conséquences de l'agression de la Russie contre l'Ukraine.*

⁽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

the French outermost regions that registered purchases of fertilisers and soil conditioners used for their production of fruit and vegetables during 2022 and are affected by the current crisis (the ‘beneficiaries’). The estimated number of beneficiaries is around 10 000.

- (12) France confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, 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 Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, 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 Union 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, more specifically in the fruit and vegetable production, as mentioned in recital (11). It applies to the French outermost regions and departments (French Guyana, Guadeloupe, La Reunion, Martinique and Mayotte) and Saint-Martin. France confirms that credit institutions or other financial institutions are excluded from the scope of the measure.

2.7. Basic elements of the measure

- (15) The measure aims to provide exceptional compensation for part of the additional costs for fertilisers and soil conditioners resulting from the disruption caused by the current crisis and suffered by producers of fruit and vegetables (including food roots and tubers) in the French outermost regions in 2022 compared to 2021. This is to enable these producers to overcome this particularly difficult period, which is likely to call into question their sustainability and thus weaken the maintenance of a local fruit and vegetable sector.
- (16) The aid will be equal to 90% of the increase in the costs of the certified ⁽¹⁰⁾ purchases of fertilisers and soil conditioners used by the beneficiary for the production of fruits and vegetables (excluding bananas intended for export in

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⁾ Including food roots and tubers. In Martinique and Guadeloupe, dessert bananas intended for export are excluded of the benefit of the measure.

⁽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⁾ The amount should be certified by a trusted third party (*Centre de gestion agréé, expert-comptable, commissaire aux comptes identifié, etc.*) or determined on the basis of invoices for the purchase of fertilisers and soil conditioners paid in 2022.

Martinique and Guadeloupe) in 2022, considering that the average increase in the costs of fertilisers and soil conditioners in 2022 has been 60% in comparison with the same costs in 2021. The amount of aid for each beneficiary will be equal to the result of the following formula ⁽¹¹⁾:

$$\text{Amount of aid} = ((\text{total cost of fertilisers and soil conditioners purchased in 2022 for use in the production of fruit and vegetables}) * 0.375) * 90\% \text{ }^{(12)}$$

- (17) The aid will not be paid to the beneficiary if the result of the calculation according to recital (16) is less than EUR 300 (EUR 150 in Mayotte). 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 will not be cumulated with support under the *de minimis* Regulation ⁽¹³⁾ or aid under the Block Exemption Regulation ⁽¹⁴⁾.
- (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⁾ For Mayotte, taking into account the specific situation of this territory where the farms are very small, mostly of the 'Mahorese garden' type, a flat-rate aid may be granted. Thus, for farms that do not have accounts and have filed a CAP 2022 declaration, a flat-rate aid of EUR 240/ha cultivated in fruit or vegetables will be put in place (i.e. 90% of the additional cost per hectare observed between 2021 and 2022). The few farms with accounts will be able to have the aid calculated according to the formula applied in the other territories.

⁽¹²⁾ The 0.375 figure results from the following calculation: the increase in the costs ('S') is the result of the difference between the costs ('C') of 2022 and 2021 ($S = C_{2022} - C_{2021}$). As the average cost increase in 2022 is considered as equal to 60% of the costs in 2021, $C_{2022} = C_{2021} + 0.6 * C_{2021}$; resulting: $C_{2022} = 1.6 * C_{2021}$; and $C_{2021} = C_{2022} * 1/1.6$; resulting: $C_{2021} = C_{2022} * 0.625$. In this case, $S = C_{2022} - C_{2022} * 0.625$; resulting: $S = C_{2022} * (1 - 0.625)$; or: $S = C_{2022} * 0.375$.

⁽¹³⁾ 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).

⁽¹⁴⁾ 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 will be 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 prefectures (recital (8)) and it will be based on the legal act the draft of which is identified in recital (7). It is financed through State resources since it is financed by public funds emanating from the State budget (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. certain undertakings active in the primary agricultural production, 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 in the real economy of Member States, including in the economy of France.

- (39) The measure is one of a series of measures conceived 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 energy cost increases, 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), (16) and (17)). 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 (see recital (19)). 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.
- (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 (24)).
- (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 upon the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the French territory. 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 Union, 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 Union; or c) undertakings active in industries targeted by sanctions adopted by the Union, 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 (25)).
- (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), TFEU.

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