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**Subject: State Aid SA.57367 (2020/N) – France  
COVID-19: Aid for COVID-19 relevant R&D projects, investment  
into relevant testing and upscaling infrastructures, and investment  
into COVID-19 relevant production capacities**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 26 May 2020, amended on 29 May 2020 and on 2, 3 and 4 June 2020, the French authorities notified aid in the form of a temporary umbrella scheme (“*regime cadre temporaire*”) supporting COVID-19 related research and development (“R&D”), testing and upscaling infrastructures, and COVID-19 related investment aid (“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”).<sup>1</sup>
- (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

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1-9 and by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3-15.

Son Excellence Monsieur Jean-Yves Le Drian  
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Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (3) The measure is composed of three sub-measures and aims at supporting (1) COVID-19 relevant R&D activities, (2) testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, as well as (3) investments into production capacities for products needed to respond to the COVID-19 outbreak. According to the French authorities, given the public health crisis surrounding that outbreak and the shortage of certain related products, it is crucial that the State can provide incentives to companies to direct their activities to research and production of certain products which are crucial to address that crisis. France considers that the measure contributes to address the public health crisis.
- (4) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, as interpreted by Sections 3.6, 3.7 and 3.8 of the Temporary Framework.

### **2.1. The nature and form of aid**

- (5) All three sub-measures provide aid in the form of direct grants, repayable advances and tax advantages. The second and third sub-measures (that fall under sections 3.7 and 3.8 of the Temporary Framework) also provide aid in the form of a loss cover guarantee, which may be granted in addition to the direct grant, tax advantage or repayable advance, or as an independent aid.

### **2.2. Legal basis**

- (6) The legal bases for the measure are:
- (a) For State entities, Article 20 of the Constitution of 4 October 1958;
  - (b) For regional and local public entities, the Section defining their economic interventions and in particular Articles L. 1511-1 à L. 1511-8 of the “*Code général des collectivités territoriales*”;
  - (c) For other public entities, their statutes;
  - (d) For all aid granting authorities, the “*régime cadre temporaire pour les aides d’Etat en faveur de la recherche et du développement, ainsi que des aides à l’investissement en faveur des infrastructures d’essai et de développement ou de la fabrication de produits pour faire face à la crise du Covid-19*”.<sup>3</sup>

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>3</sup> The draft “regime cadre” was submitted to the Commission on 3 June 2020 and will be published on <https://www.europe-en-france.gouv.fr/fr/aides-d-etat>

### **2.3. Administration of the measure**

- (7) Authorities at central and decentralised level, including at regional and local level, may grant aid under the measure, within the limits laid down by this Decision.

### **2.4. Budget and duration of the measure**

- (8) The French authorities estimated that aid not exceeding EUR 5 billion will be awarded under the measure. However, since the scheme will be implemented at various administrative levels, it is difficult to establish the precise total budget in advance.
- (9) The measure may be co-financed by the European Structural and Investment Funds (ESIF). The French authorities confirm that the rules applicable under these Funds will be respected.
- (10) Aid may be granted under the measure as from its approval until no later than 31 December 2020. For aid granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen by 31 December 2020<sup>4</sup>.

### **2.5. Beneficiaries**

- (11) The beneficiaries of the measure are undertakings active in France, irrespective of their size, location and sector of activity. However, financial institutions and undertakings active in the agricultural, fishery and aquaculture sectors are not eligible for aid under the measure.
- (12) Aid may not be granted under the measure to undertakings that were in difficulty on 31 December 2019 within the meaning of the General Block Exemption Regulation (“GBER”)<sup>5</sup>.
- (13) The French authorities estimate the total number of beneficiaries of the measure at more than one thousand.

### **2.6. Sectoral and regional scope of the measure**

- (14) The measure is open to all sectors except the financial, the agricultural, fishery and aquaculture sectors. It applies to the whole territory of France.

### **2.7. Basic elements of the measure**

#### *2.7.1. Sub-measure “R&D Aid for COVID-19 relevant R&D projects”*

- (15) This sub-measure supports COVID-19 and other antiviral relevant research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into

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<sup>4</sup> See footnote 17 of the Temporary Framework.

<sup>5</sup> As defined in Article 2(18) of 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 of 26.6.2014, p. 1.

relevant process innovations for an efficient production of the required products, including projects which were awarded a COVID-19 Seal of Excellence quality label under the Horizon 2020 SME instrument.

- (16) The aid shall be granted in the form of direct grants, repayable advances or tax advantages by 31 December 2020. When the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020.
- (17) Where aid is granted in the form of a repayable advance, the conditions for its repayment are laid down in the aid granting act or a comparable contractual agreement that is concluded with the aid beneficiary before the aid is granted. This contract may include provisions that entitle the State to obtain reimbursement of the repayable advance in a monetary form or by acquiring, below market price, the obtained research results, or, in the case of successful commercialisation of products resulting from the supported research activity, a certain quantity of the products (“repayment *in natura*”)<sup>6</sup>.
- (18) For R&D projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, the aid is deemed to have an incentive effect if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.
- (19) The eligible costs are the following cost components used for the duration of the project:
  - (a) personnel costs;
  - (b) costs of instruments and equipment, including costs of digital and computing equipment, diagnosis tools, data collection and processing tools;
  - (c) costs of contractual research and other relevant research services, including costs for digital and computing services;
  - (d) costs for pre-clinical and clinical trials (trial phases I-IV);
  - (e) costs for obtaining, validating and defending patents and other intangible assets;
  - (f) costs incurred for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and improved personal protective equipment.

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<sup>6</sup> The French authorities confirm that in case of a reimbursement of the repayable advances *in natura*, the production will not be sold exclusively to the state, and that products will be made available for purchase to third parties in the EEA on non-discriminatory market conditions.

- (20) Only costs directly related to and necessary for the R&D project during its duration, respectively for the subsequent IPR protection, clinical trial and regulatory procedures, are eligible for aid. Costs related to phase-IV trials are eligible as long as they allow further scientific or technological advance.
- (21) No aid shall be granted to undertakings carrying out contract research on behalf of other undertakings.
- (22) Assets (instruments, equipment etc.) that are not used for the full duration of the R&D project and/or are used for other purposes than the R&D projects covered by the sub-measure are taken into account only pro rata (depreciation over period of duration of the R&D project or pro rata of the capacity used for the R&D project).
- (23) The categories of research eligible for aid are fundamental research, industrial research and experimental development<sup>7</sup>. The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research and shall not exceed 80% of eligible costs for industrial research and experimental development. If the aided projects consist of different work packages which fall partly under fundamental research and partly under industrial research or experimental development, the respective maximum aid intensities apply separately for eligible costs falling under fundamental research (i.e. 100%) and for eligible costs falling under industrial research/experimental development (i.e. 80%).
- (24) The aid intensity for industrial research and experimental development may be increased by 15 percentage points if more than one Member State supports the research project, or if it is carried out in cross-border collaboration with research organisations or other undertakings.
- (25) The aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA<sup>8</sup>.

2.7.2. *Sub-measure “Investment aid for testing and upscaling infrastructures”*

- (26) This sub-measure provides investment aid for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; as well as data collection/processing tools.

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<sup>7</sup> As defined, respectively, in paragraph (84), (85) and (86) of Article 2 of 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 of 26.6.2014, p. 1.

<sup>8</sup> The French authorities confirm that this condition will also be met in situations where the State acquires the research results and relevant intellectual property rights in the context of the reimbursement of the repayable advance.

- (27) Aid will be granted in the form of direct grants, tax advantages, repayable advances or loss cover guarantees by 31 December 2020. When the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020.
- (28) A loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee shall be issued within one month after the undertaking has applied for it. The amount of loss to be compensated shall be established five years after completion of the investment. The compensation amount shall be calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost, on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project, on the other.
- (29) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect. For projects started before 1 February 2020, the aid is deemed to have an incentive effect if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.
- (30) The investment project shall be completed within six months after the date of granting the aid. An investment project is considered completed when accepted by the French authorities as completed. Where the six-month deadline is not met, 25% of the amount of aid awarded in form of direct grants or tax advantages shall be reimbursed per month of delay, unless the delay is due to factors outside the control of the aid beneficiary.
- (31) Where the six months deadline is respected, aid in the form of repayable advances shall be transformed into grants. Where the six-month deadline is not met and aid is awarded in the form of repayable advance, the repayable advance shall be reimbursed in equal annual instalments within a maximum period of five years after the date of granting the aid.
- (32) Eligible costs are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in recital (26) above (e.g. the costs of purchasing or transforming machines and equipment).
- (33) Assets that are not used for the full lifetime of the infrastructure are taken into account only pro rata (i.e. depreciation over the lifetime, if applicable, or pro rata of the capacity used for the infrastructure).
- (34) The aid intensity shall not exceed 75% of the eligible costs. The maximum allowable aid intensity of the direct grant or tax advantage may be increased by an additional 15 percentage points, either if the investment is concluded within two months after the date of aid granting or date of application of the tax advantage, or if the support comes from more than one Member State. The maximum allowable aid intensity of aid awarded in the form of a repayable advance may be increased by an additional 15 percentage points if the investment is completed within two months, or if the support comes from more than one Member State.
- (35) The price charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price.

- (36) The testing and upscaling infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings and public entities, which have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions.

2.7.3. *Sub-measure “Investment aid for the production of Covid-19 relevant products”*

- (37) This sub-measure targets investment projects to set up new production capacities to produce COVID-19 relevant products or to adjust existing production facilities to enable them to produce COVID-19 relevant products and technologies, including:
- medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials;
  - medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials;
  - disinfectants, protection products, equipment and machinery required to sanitise products and environments and their intermediary products and raw chemical materials necessary for their production;
  - data collection/processing tools.
- (38) For the purpose of this sub-measure, projects that have started on or after 1 February 2020 will be considered as eligible. Projects that started before 1 February 2020 may be deemed eligible if the aid is necessary to accelerate or widen the scope of the project.
- (39) Eligible costs incurred after 1 February 2020 in relation to the approved projects must be those necessary to develop, manufacture and provide COVID-19 relevant products and costs incurred for trial runs of the new production facilities.
- (40) In case of projects that commenced before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the production shall be eligible for aid.
- (41) The aid can be provided in the form of a grant, a tax advantage, or a repayable advance and a loss cover guarantee. Where the aid is granted in form of a repayable advance, the conditions for the repayment, if any, shall be laid down in the aid granting act, or in a comparable contractual aid granting agreement.
- (42) Aid under this sub-measure will be granted before 31 December 2020; where the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen by 31 December 2020.
- (43) The investment project is to be completed within six months from the date when the aid is granted. A project is considered completed when accepted by the French authorities as completed.
- (44) The intensity of the aid should not exceed 80% of the eligible costs to support undertakings to carry out investment projects to manufacture COVID-19 relevant products. If the project is completed within two months of the aid being awarded

or approved or if the support comes from more than one Member State, an additional bonus of 15 percentage points may be awarded to the beneficiary.

- (45) A loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project.
- (46) Where aid is granted in the form of direct grants or tax advantage and the six-month deadline is not met, 25% of the amount of aid awarded shall be reduced for every month of delay, unless the delay is due to factors beyond the control of the aid beneficiary.
- (47) Where aid is granted in the form of repayable advances, the following modalities shall be applied:
- Where the investment is completed within the six-month deadline, the repayable advance shall be transformed into a grant. Where provided in the individual aid granting agreement (*convention d'aide*), a repayment of the advance can however be required in the form of rebates on prices charged by the aid beneficiary for sales to the State of products concerned by the investment project<sup>9</sup>.
  - Where the six-month deadline is not respected, the repayable advance shall be reimbursed by the beneficiary in equal annual instalments, within five years after the date of granting the aid in monetary form or alternatively, where provided for in the individual aid granting agreement (*convention d'aide*) in the form of rebates on prices as above.

## **2.8. Cumulation**

- (48) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the European Structural and Investment Funds (ESIF).
- (49) The French authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>10</sup> or the General Block

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<sup>9</sup> The French authorities confirm that the supply of products resulting from the supported investment to the State will not be exclusive, and that such products will be made available for purchase to third parties in the EEA on non-discriminatory market conditions.

<sup>10</sup> 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) 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 of 26.4.2012, p. 8).



Exemption Regulation<sup>11</sup> provided the provisions and cumulation rules of those Regulations are respected.

- (50) 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 Framework provided the provisions in those specific sections are respected.
- (51) The French authorities confirm that aid for COVID-19 related R&D projects granted under the first sub-measure may be combined with support from other sources for the same eligible costs, provided the total amount of combined aid does not exceed the aid ceilings approved in this Decision.
- (52) The French authorities confirm that investment aid granted under the second sub-measure for testing and upscaling infrastructure and aid granted under the third sub-measure for the production of COVID-19 relevant products shall not be combined with other investment aid for the same eligible costs.

### **2.9. Monitoring and reporting**

- (53) The French authorities confirm 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 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>12</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (54) 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**

- (55) 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.

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<sup>11</sup> 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 of 26.6.2014, p. 1.

<sup>12</sup> Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For direct grants, repayable advances and loss-cover guarantees, the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

- (56) The measure is imputable to the State, since it is administered by public authorities. It is financed through State resources, since it is financed by public funds.
- (57) The measure confers an advantage on its beneficiaries in the form of direct grants, repayable advances, tax advantages and/or loss-cover guarantees. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (58) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings involved in COVID-19 relevant research, testing, development or production activities, with the exclusion of financial institutions and undertakings active in the agricultural, fishery and aquaculture sectors.
- (59) 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.
- (60) 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**

- (61) 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.
- (62) Pursuant to Article 107(3)(c) TFEU, the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (63) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to address the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research, testing and upscaling, and at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. The measure has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development”, “Investment aid for testing and upscaling of infrastructure”, and “Investment aid for the production of COVID-19 relevant products”) described in Sections 3.6, 3.7 and 3.8 of the Temporary Framework.
- (64) The Commission accordingly considers that the measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. The Commission notes in particular:

#### *3.3.1. Sub-measure “Aid for R&D projects”*

- (65) This sub-measure meets all the conditions provided by Section 3.6 of the Temporary Framework for COVID-19 relevant R&D, in particular:

- Aid granted under the sub-measure is limited to the eligible research areas listed in point 35 of the Temporary Framework (see recital (15)).
- Aid is granted under the sub-measure in the form of direct grants, tax advantages or repayable advances (see recital (16)). The measure therefore complies with point 35(a) of the Temporary Framework.
- For R&D projects started as of 1 February 2020 and for projects having received a COVID-19-specific Seal of Excellence, aid granted under the measure is deemed to have an incentive effect; for R&D projects started before 1 February 2020, aid granted under the measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project (see recital (18)). The sub-measure therefore complies with point 35(b) of the Temporary Framework.
- Eligible costs are defined under the sub-measure in accordance with point 35(c) of the Temporary Framework (see recital (19)). All costs necessary for the duration of the R&D aided project are eligible for aid under the measure. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid under the sub-measure, in line with point 35(b) of the Temporary Framework (see recital (18)).
- The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research<sup>13</sup> and shall not exceed 80% of eligible costs for industrial research<sup>14</sup> and experimental development<sup>15</sup>. Where aided projects consist of different work packages which fall partly under fundamental research and partly under industrial research or experimental development, the respective maximum aid intensities apply separately for eligible costs falling under fundamental research and for eligible costs falling under industrial research/experimental development (see recital (23)). The sub-measure therefore complies with point 35(d) of the Temporary Framework. The cooperation/collaboration bonus for industrial research and experimental development shall not exceed 15 percentage points and is thus limited in accordance with the conditions laid down by point 35(e) of the Temporary Framework (see recital (24)).
- Aid granted under the sub-measure may be combined with support from other sources for the same eligible costs, provided the total combined amount of aid does not exceed the aid ceilings laid down in points 35(d)

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<sup>13</sup> As defined in paragraph (84) of Article 2 of 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 of 26.6.2014, p. 1.

<sup>14</sup> As defined in paragraph (85) of Article 2 of 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 of 26.6.2014, p. 1.

<sup>15</sup> As defined in paragraph (86) of Article 2 of 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 of 26.6.2014, p. 1.

and (e) of the Temporary Framework (see recital (52)). The sub-measure therefore complies with point 35(f) of the Temporary Framework.

- Beneficiaries of aid under the sub-measure shall commit to grant non-exclusive licences under market conditions to third parties in other EEA states (see recital (25)). The sub-measure therefore complies with point 35(g) of the Temporary Framework.
- Aid may not be granted under the sub-measure to undertakings that were already in difficulty on 31 December 2019 (see recital (12)). The sub-measure therefore complies with point 35(h) of the Temporary Framework.

### 3.3.2. *Sub-measure “Investment aid for testing and upscaling of infrastructure”*

(66) This sub-measure meets all the conditions provided by Section 3.7 of the Temporary Framework for COVID-19 relevant research and development, in particular:

- Aid granted under the sub-measure is limited to the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to the first industrial deployment prior to mass production, COVID-19 relevant products listed in point 37(a) of the Temporary Framework (see recital (26)).
- Aid is granted under the sub-measure in the form of direct grants, tax advantages or repayable advances; in addition, or alternatively, aid may be granted in the form of loss cover guarantees (see recital (27)). The sub-measure therefore complies with point 37(b) and (h) of the Temporary Framework. If the investment is finalised within six months from the moment the aid is granted, aid in the form of repayable advances may be transformed into grants in accordance with point 37(d) of the Temporary Framework.
- For investment projects started as of 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect; for projects started before 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project (see recital (29)). The sub-measure therefore complies with point 37(c) of the Temporary Framework.
- The costs eligible for aid under the sub-measure are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in point 37(a) of the framework (see recital (32)). The sub-measure therefore complies with point 37(e) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the sub-measure in line with point 37(c) of the Temporary Framework (see recital (29)).
- The aid intensity shall not exceed 75% of the eligible costs. The sub-measure therefore complies with point 37(e) of the Temporary

Framework. A bonus of up to 15 percentage points may be granted under the conditions laid down in point 37(f) of the Temporary Framework, *i.e.* if the investment is finalised within two months or if the aid comes from more than one Member States (see recital (34)).

- The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted (see recital (52)). The sub-measure therefore complies with point 37(g) of the Temporary Framework.
- Investment projects must be completed within six months after the investment aid is granted. If that deadline is not respected, the beneficiary of the sub-measure shall reimburse 25% of the amount of the aid awarded in form of direct grants or tax advantages per month of delay, unless the delay is due to factors outside the control of the beneficiary (see recital (30)). If that deadline is not respected, the beneficiary shall reimburse the repayable advances in equal annual instalments within five years after the date the aid was granted (see recital (30)). The sub-measure therefore complies with point 37(d) of the Temporary Framework.
- Loss cover guarantees shall be issued within one month after they were applied for. The amount of loss to be compensated shall be established five years after the completion of the investment. The compensation amount shall be calculated as the difference between the sum of the investment costs, a reasonable profit of 10% p.a. on the investment costs over five years, and operating costs, on the one hand, and the sum of the direct grant received, the revenues recorded over the five year period, and the terminal value of the project, on the other (see recital (28)). The sub-measure therefore complies with point 37(h) of the Temporary Framework.
- The prices charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price (see recital (35)). The sub-measure therefore complies with point 37(i) of the Temporary Framework;
- The testing and upscaling infrastructures shall be open to several users and access shall be granted on a transparent and non-discriminatory basis (see recital (36)). Undertakings that have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions (see recital (36)). The sub-measure therefore complies with point 37(j) of the Temporary Framework.
- Aid may not be granted under the sub-measure to undertakings that were already in difficulty on 31 December 2019 (see recital (12)). The sub-measure therefore complies with point 37(k) of the Temporary Framework.

3.3.3. *Sub-measure “Investment aid for the production of COVID-19 relevant products”*

(67) This sub-measure meets all the conditions provided by Section 3.8 of the Temporary Framework for investment aid for the production of COVID-19 relevant products , in particular:

- Aid granted under the sub-measure is limited to investments for the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework (see recital (37)).
- Aid is granted under the sub-measure in the form of direct grants, tax advantages, repayable advances and, in addition, or alternatively, loss cover guarantees (see recital (41)). The sub-measure thus complies with point 39(b) and (h) of the Temporary Framework. If the investment is finalised within six months from the moment the aid is granted, aid in the form of repayable advances may be transformed into grants in accordance with point 39(d) of the Temporary Framework (see recital (47)).
- For investment projects started as of 1 February 2020, the aid granted under the sub-measure is deemed to have an incentive effect; For projects started before 1 February 2020, the aid granted under the sub-measure is deemed to have an incentive effect, provided the aid is necessary to accelerate or widen the scope of the project (see recital (38)). The sub-measure therefore complies with point 39(d) of the Temporary Framework.
- Costs eligible for aid under the sub-measure consist of all investment costs necessary for the production of the products listed in point 39(a) of the Temporary Framework as well as the costs of trial runs of the new production facilities (see recital (39)). The sub-measure therefore complies with point 39(e) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the sub-measure in line with point 39(c) of the Temporary Framework (see recital (40)).
- The aid intensity shall not exceed 80% of the eligible costs. The sub-measure therefore complies with point 39(e) of the Temporary Framework (see recital (44)). A bonus of up to 15 percentage points may be granted under the conditions laid down in point 39(f) of the Temporary Framework (i.e. if the investment is finalised within two months or if the aid comes from more than one Member States) (see recital (44)).
- The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted (see recital (52)). The sub-measure therefore complies with point 39(g) of the Temporary Framework.
- Eligible investment projects must be completed within six months after the grant of the investment aid. If this deadline is not respected, the beneficiary shall reimburse 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the

beneficiary (recital (46)); in case of repayable advances, if this deadline is not respected, the beneficiary shall reimburse, as required by point 39(d) of the Temporary Framework, the repayable advances in equal annual instalments within five years after the date the aid was granted (see recital (47)).

- Loss cover guarantees shall be issued within one month after they were applied for. The amount of loss to be compensated shall be established five years after the completion of the investment. The compensation amount shall be calculated as the difference between the sum of the investment costs, a reasonable profit of 10% p.a. on the investment costs over five years, and the operating costs, on the one hand, and the sum of the direct grant received, the revenues recorded over the five year period, and the terminal value of the project, on the other (see recital (45)). The sub-measure therefore complies with point 39(h) of the Temporary Framework.
- Aid may not be granted under the sub-measure to undertakings that were already in difficulty on 31 December 2019 (see recital (12)). The sub-measure therefore complies with point 39(i) of the Temporary Framework.

#### 3.3.4. *Generally applicable requirements*

- (68) As required by point 49 of the Temporary Framework, the French authorities confirm that individual aid awards shall not be granted under the measure after 31 December 2020 (see recital (10) of this decision).
- (69) The Commission notes that beneficiaries in the agriculture, fisheries and aquaculture sectors are excluded from benefitting from the measure. In accordance with points 35(h), 37(k) and 39(i) of the Temporary Framework, undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>16</sup> on 31 December 2019 are not eligible for aid under this measure (see recital (12)). In addition, in accordance with point 20bis of the Temporary Framework, credit and financial institutions are excluded from the benefit of the measure.
- (70) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (see recital (53)). 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 (see recitals (50) and (51)).
- (71) The French authorities also confirm that the rules applicable to the European Structural and Investment funds will be respected.
- (72) In the light of the elements above, the Commission considers that the measure complies with the compatibility conditions laid down by the Temporary

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<sup>16</sup> As defined in Article 2(18) of the 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 of 26.6.2014, p. 1.

Framework. The Commission has taken due consideration of the common objective pursued by the measure and its positive effects on tackling the health crisis provoked by the COVID-19 outbreak when balancing those effects against the potential negative effects of the measure on the internal market. The Commission concludes that those positive effects of the measure outweigh its potential negative effects on competition and trade.

#### **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)(c) 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