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Subject: **State aid SA.62568 (2021/N) – France**
COVID-19: Exceptional tax credit to support the elimination of glyphosate in connection with the difficulties encountered by the agricultural sector due to the COVID-19 outbreak

Excellency,

1. PROCEDURE

- (1) By electronic notification of 31 March 2021, France notified an aid scheme in the form of limited amounts of aid (*“Crédit d'impôt exceptionnel d'accompagnement à la sortie du glyphosate en lien avec les difficultés rencontrées par les entreprises agricoles en raison de la crise de la COVID-19”*, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹. By emails of 7 and 29 April 2021, France submitted complementary information.
- (2) France exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958², and to have this Decision adopted and notified in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, (OJ C 91I, 20.3.2020, p. 1), 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) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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

Son Excellence Monsieur Jean-Yves LE DRIAN
Ministre de l'Europe et des Affaires étrangères
37, Quai d'Orsay
F - 75351 PARIS

2. DESCRIPTION OF THE MEASURE

- (3) France considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) France confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Sections 2 and 3.1 of the Temporary Framework.

2.1. Nature and form of aid

- (6) The measure provides aid in the form of a tax advantage applicable to the corporate tax and the income tax.

2.2. National legal basis

- (7) Article 140 of the Finance Law for 2021, Law No 2020-1721 of 29 December 2020³.

2.3. Administration of the measure

- (8) The Ministry of Economy and Finance is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 100 million.
- (10) Aid may be granted under the measure as from the notification of the Commission's approval decision until no later than 31 December 2021. The triggering event is set on 31 December 2021, this being the commitment of the beneficiaries not to use glyphosate in 2021⁴.
- (11) The French authorities confirmed that the measure is not co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF), Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime and Fisheries Fund (EMFF), the European

³ *Article 140 de la Loi n° 2020-1721 du 29 décembre 2020 de finances pour 2021.*

⁴ The tax liability in relation to which the aid is granted must have arisen no later than 31 December 2021, in line with footnote 23 of the Temporary Framework.

Union Solidarity Fund (EUSF) or the Coronavirus Response Investment Initiative (CRII).

2.5. Beneficiaries

- (12) The beneficiaries of the measure are SMEs⁵ and micro undertakings active in the agricultural primary production, exercising their activity in the permanent crops sector (excluding nurseries), short rotation coppices (viticulture and fruit trees) and arable land excluding fallow or greenhouse areas (field crops and field vegetables). Livestock farmers and polyculture-livestock farms that exercise significant part of their activity in these crops can also benefit from the measure. Undertakings active in the processing or marketing of agricultural products are not eligible for aid.
- (13) Aid may not be granted under the measure to medium enterprises that were already in difficulty within the meaning of the Agricultural Block Exemption Regulation (“ABER”)⁶ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the ABER on 31 December 2019, provided that they are not, at the moment of granting the aid, subject to collective insolvency proceedings under national law and have not received rescue aid⁷ or restructuring aid⁸.

2.6. Sectoral and regional scope of the measure

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

2.7. Basic elements of the measure

- (15) The continuing COVID-19 pandemic has substantially weakened the financial situation of the French farming sector. This situation has been caused by the loss of outlets, restrictive measures put in place in order to stop spreading the virus, necessity to adapt the production means to health measures in place and to find alternative solutions to the shortage of seasonal labour following the closures of borders. Overall, this situation has caused financial difficulties of many agricultural enterprises and made it difficult to implement the glyphosate phase-out plan, adopted by France in 2018.

⁵ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

⁶ Article 2(14) of Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

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

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

- (16) The French authorities explained that the implementation of this plan induces rather significant additional costs.
- (17) The objective of the aid is thus to offset part of the losses suffered by the agricultural enterprises due to the COVID-19 crisis and related restrictive measures, in order to make it financially possible for farmers to bear, in the short term, the additional costs incurred by the use of glyphosate alternatives and possible economic losses linked to the glyphosate-free farming. The aid is thus designed to provide aid to farmers hit by the COVID-19 crisis, facing shortage or unavailability of liquidity, in order to make it financially possible to abandon the use of products containing the active substance of glyphosate and try out alternative practices in year 2021.
- (18) According to the French authorities, given that the COVID-19 pandemic has significantly weakened the agricultural primary production sector, in the absence of aid farmers may not be able to move towards new, more expensive practices. The aid in the form of a tax advantage has, in view of the French authorities, a strong potential to incentivize a large number of farms to try out alternative practices.
- (19) Aid is conditional on the cessation of the use of plant protection products containing the active substance of glyphosate during the year 2021.
- (20) The aid will amount to a tax advantage of EUR 2500 per year in respect of the income tax due for the year in which the products containing glyphosate was not used and, in respect of the corporate tax, on the results of the closed financial year during which these products were not used. The amount of the tax credit will only cover part of the costs and losses incurred by farmers forgoing glyphosate.
- (21) The maximum amount of aid will be EUR 2500 per beneficiary, i.e. the overall nominal value of the tax advantages will not exceed EUR 225 000 per undertaking active in the primary production of agricultural products as set out in point 23(a) of the Temporary Framework. All figures are gross, that is, before any deduction of tax or other charges.
- (22) France confirms that aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market.

2.8. Cumulation

- (23) The French authorities confirmed that aid granted under the measure will not be cumulated with *de minimis* aid⁹ and/or with aid under the Block Exemptions Regulations¹⁰.
- (24) The French authorities confirmed that aid under the notified measure will not be cumulated with other forms of Union financing.

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

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

- (25) The French authorities confirmed that aid granted under the measure will not be cumulated with other aid granted under other measures approved by the Commission under other sections of the Temporary Framework.
- (26) The French authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 23(a) of that Framework, will be respected.
- (27) Moreover, where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, France will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking.

2.9. Monitoring and reporting

- (28) The French authorities confirmed that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 10 000 granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting¹¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (29) 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

- (30) 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.
- (31) The measure is imputable to the State, since it is administered by the Ministry of Economy and Finance, as shown in recital (8), and is based on the Financial Law for 2021, as shown in recital (7). It is financed through State resources, since it is financed by public funds.

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

- (32) The measure confers an advantage on its beneficiaries in the form of a tax benefit, as shown in recital (6). The measure relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (33) The advantage granted by the measure is selective, since it will be awarded only to certain undertakings, in particular undertakings active in some specific agricultural subsectors, excluding the financial sector, as shown in recital (12).
- (34) 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.
- (35) 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

- (36) 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.
- (37) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (38) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (39) The measure is one of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in their economy. The measure is important to ensure the viability of primary producers of some specific agricultural products, make it financially possible for them to bear the additional costs incurred by the use of glyphosate alternatives and possible economic losses linked to the glyphosate-free farming and is of a scale, which can be reasonably anticipated to produce effects across the targeted agricultural subsectors in France. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 3.1 of the Temporary 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 conditions of the Temporary Framework. In particular:
- The aid takes the form of a tax advantage, as shown in recital (6).

- The overall nominal value of the tax advantage does not exceed EUR 225 000 per undertaking active in the primary production of agricultural products, all figures must be gross, that is, before any deduction of tax or other charges, as shown in recital (21). The French authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 23(a) of that Framework, will be respected, as shown in recital (26). The measure therefore complies with point 23(a) of the Temporary Framework.
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (9). The measure therefore complies with point 22(b) of the Temporary Framework.
- Aid can be granted under the measure only to micro, small and medium-sized enterprises, as shown in recital (12). Aid may not be granted under the measure to medium enterprises that were already in difficulty on 31 December 2019, as shown in recital (13). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to a collective insolvency procedure under national law, and they have not received rescue aid or restructuring aid (unless the rescue aid was reimbursed or the restructuring plan completed) as shown in recital (13). The measure, therefore, complies with points 22(c) and 22(c)bis of the Temporary Framework.
- Aid will be granted under the measure no later than 31 December 2021. For aid in form of tax advantages, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2021, as shown in recital (10). The measure therefore complies with point 22(d) of the Temporary Framework.
- Aid granted to undertakings active in the processing and marketing of agricultural products is excluded, as shown in recital (12). The measure therefore complies with point 22(e) of the Temporary Framework.
- Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market, as shown in recital (22). The measure therefore complies with point 23(b) of the Temporary Framework.
- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, France will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking, as shown in recital

(27). The measure therefore complies with point 23bis of the Temporary Framework.

- (41) The French authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA, as shown in recital (4).
- (42) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected, as shown in recital (28). The French authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected, as shown in recitals (23) to (26).
- (43) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President