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Subject: State Aid SA.63656 (2021/N) – France
COVID-19: Transition Fund for certain enterprises affected by the COVID-19 outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 7 September 2021, France notified an aid scheme comprising of three measures to be implemented through a Transition Fund for enterprises affected by the COVID outbreak (*régime d'aides sous la forme d'un fonds de transition,* "the scheme") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").[1]

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

[1] Communication from the Commission - 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).

Son Excellence Monsieur Jean-Yves LE DRIAN
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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 MEASURES

(3) France considers that the COVID-19 outbreak affects the real economy. The measures form part of an overall package of measures and aim 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) According to the French authorities, the purpose of the aid scheme is to support the solvency of viable companies which are experiencing temporary difficulties due to the impact of the COVID-19 outbreak.

(5) Following the national health emergency established by Law on 23 March 2020, with the implementation of the first administrative and lockdown measures until 11 May 2020, the activity of the French enterprises registered an estimated decline of 17% on average across all sectors in the first half of 2020. The French economy was further impacted by the epidemic rebound in the autumn of the same year, in the wake of the adoption of new administrative measures between 30 October 2020 and 15 December 2020.

(6) Against this background, the French GDP decreased by 7.9% in 2020[3] and, in the first quarter of 2021, at 4.7% in comparison with the last quarter of 2019. Notwithstanding further alleviation of the sanitary measures since May 2021, the maintenance of certain restrictions (e.g. in terms of limits on attendance) continues to weigh on many economic sectors.

(7) France considers the aid scheme to be compatible with the internal market on the basis of Article 107(3)(b) TFEU, in the light of the Temporary Framework and in particular its section 3.11.

2.1. The nature and form of aid

(8) The aid scheme involves the creation of a fund without any legal personality within the French Ministry of Economy, Finance and Recovery (“the Fund”). The Fund will provide financing to non-financial, large and certain small or medium-sized enterprises. Such undertakings are established and active in France and are suffering temporary financial difficulties due to the COVID-19 pandemic, but are viable in the medium to long term.

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

[3] Source : https://www.insee.fr/fr/statistiques/5018361

(9) Operations financed from the Fund may take the form of (i) subordinated or participating loans ("*prêts participatifs*") under "Measure A", (ii) hybrid capital instruments in the form of deeply subordinated notes which do not give access to the share capital of the issuer ("*Titres subordonnés à durée indéterminée*" or TSDI) under "Measure B", and (iii) preferred shares without voting rights under "Measure C". The instruments used ("the Measures" when jointly referred to), will have to be the most appropriate to accommodate the beneficiary recapitalisation needs whilst at the same time being the least distortive of competition.

2.2. Legal basis

(10) The legal bases which enable the creation of the financial instruments for establishing the aid scheme comprise, *inter alia*, the following:

a. The French Law n°2005-1719 of 30 December 2005 of Finances for 2006 (in particular articles 46 and 48);

b. The Ministerial Orders of 21 December 2020 and of 13 January 2021 on credits' reports; and

c. Articles L. 313-13 to L. 313-20 of the French Monetary and Financial Code.

2.3. Administration of the Measures

(11) The granting authority is the French Ministry of the Economy, Finance and Recovery ("the Ministry"), which will be responsible for administering the Measures through the Fund and the *Comité Interministériel de Restructuration Industriel* (CIRI), a committee of the *Direction Générale du Trésor*. The latter is more specifically in charge of the development, implementation and follow-up of the State's intervention projects under the Fund.

(12) In terms of governance, any intervention by the Fund shall be authorized by the Ministry or, where appropriate, the General Secretary of the CIRI, following a non-binding advisory opinion by the advisory committee of the Fund (composed of representatives of the State services and external personalities). Before submitting any investment proposal to the advisory Committee and the Ministry, the Fund will assess the compliance by potential beneficiaries with the eligibility criteria, as referred to in recital (20). The CIRI will subsequently ensure that the commitments associated with the public support are properly complied with by the undertakings which receive financing. Ahead of any investment authorization, "Know Your Customer" due diligences will also be conducted.

2.4. Budget and duration of the Measures

(13) The estimated budget of the Measures is EUR 3 billion, financed by the State budget.

(14) More specifically, the special purposes account "*Participations financières de l'Etat*", which registers the activities of the State as shareholder, will mobilize up to EUR 1.8 billion, under the "*Renforcement exceptionnel des participations financières de l'Etat dans le cadre de la crise financière*". Additionally, as far as the support in the form of subordinated or participating loans is concerned, the

account "*Prêts et avances à des particuliers et à des organismes privés*" will finance up to EUR 1.2 billion from the *Fonds de développement économique et social* (FDES).

(15) Aid may be granted under the scheme as from the notification of the Commission's decision approving the scheme until no later than 31 December 2021.

2.5. Beneficiaries

(16) The final beneficiaries of the Measures are SMEs and large enterprises[4], undertakings established and active in France. However, financial institutions are excluded as eligible final beneficiaries.

(17) Aid will not be granted under the Measures to medium and large enterprises that were already in difficulty on 31 December 2019, within the meaning of the General Block Exemption Regulation ("GBER")[5,] the Agricultural Block Exemption Regulation ("ABER")[6] and the Fishery and the Aquaculture Block Exemption Regulation ("FIBER")[7].

(18) The number of beneficiaries is expected to be comprised between 50 and 100. Undertakings will have to comply with the criteria set out by section 3.11.2 of the Temporary Framework. The scheme targets enterprises which were viable prior to the COVID-19 outbreak and which have demonstrated the long-term sustainability of their business model. In the absence of State intervention, the targeted undertakings would cease their activities or would not be in a position to finance themselves on the market to cover their liquidity needs nor to strengthen their own funds, due to their high indebtedness or the deterioration of their solvency.

(19) The Measures aim at supporting enterprises belonging to all sectors, excluding the financial sector. The Fund aims to support undertakings which continue to be particularly affected by the sanitary crisis since January 2021, following the set-up of administrative measures in the form of lockdown or access restrictions to the undertakings' locals, hence impeding directly or indirectly the economic activity of such undertakings. These undertakings may have benefitted from public support in the form of fixed costs, under the scheme SA.61330 (2021/N) "*COVID-19: Régime d'aides destinées à compenser les coûts fixes non couverts des entreprises*", as approved by the Commission Decision C(2021) 1706 final of 9 March 2021.

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5 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, 26.6.2014, p. 1.

6 As defined in Article 2(14) of Commission 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, OJ L 193, 1.7.2014, p. 1.

7 As defined in Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37.

2.6. Basic elements of the Measures

2.6.1. Eligibility criteria for the beneficiaries and support award decisions

(20) The support operations financed by the Fund may be granted by 31 December 2021 at the latest to viable non-financial undertakings established and active in France that are facing solvency difficulties of a temporary nature due to the COVID-19 outbreak. Such undertakings must, after verification, be found to meet *inter alia* the following conditions:

a. The beneficiary is not able to find financing on the markets at affordable terms. In this respect, the French authorities will notably check whether the undertaking had solicited public investment funds. They will also conduct a test aimed at assessing the enterprise's ability to finance itself through banking debt.

b. The horizontal measures existing in France to cover the undertaking's liquidity needs are insufficient to ensure its viability.

c. The beneficiary must demonstrate that without the State intervention, it would go out of business or would face serious difficulties to maintain its operations, during and after the sanitary crisis.

d. The beneficiary must have encountered difficulties directly linked to the sanitary crisis, in terms of decline of turnover, or a deterioration of its liquidity situation or own funds. Furthermore, the beneficiary's debt-to-equity ratio must have substantially deteriorated in comparison with 31 December 2019.

e. The beneficiary must provide a financial analysis performed by an independent auditor in order to assess the amount of aid necessary as well as the recovery perspectives and reimbursement capabilities of the enterprise, in light of a treasury forecast, a business plan and a debt and own funds' situation established on an independent basis.

f. The beneficiary must not have been an undertaking in difficulty on 31 December 2019, as defined in Article 2(18) of the GBER, Article 2(14) of the ABER and Article 3(15) of the FIBER, respectively.

g. The beneficiary activity should be linked to the broader recovery perspective, as a result of the sanitary crisis.

h. The beneficiary is of systemic or strategic importance for the French economy and employment, because of its role in a given economic sector or its substantial economic footprint (on the value chain, a specific know-how or technologies or in terms of employment). Such a central significance will be assessed in light of the enterprise's size or location, the difficulty to replace it due to its positioning on the value chain of a sector or expertise and its strategic importance for the French industry, with the production, for instance, of high added-value goods and services.

i. The beneficiary should contribute to the EU objectives linked to the green and digital transformation. In this respect, the undertaking will report on the way the aid received supports its activities, in line with such EU objectives, including that of climate neutrality by 2050.

(21) France confirms that the aid under the aid scheme 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.

(22) The initiation of the procedure for the use of the Fund is subject to the prior express request in writing of the legal representatives of the undertaking to the French Ministry of the Economy, Finance and Recovery. Such a request shall notably justify the eligibility and the financing needs of the undertaking. Potential beneficiaries will also commit to respect the conditions associated to the financial support and the reporting obligations pointed out in recital (61).

2.6.2. Description of the Measures

2.6.2.1. Measure A

(23) Subordinated and participating loans are direct loans from the French State, through the Fund.

(24) Participating loans are a category of subordinated loans, as defined by article L. 313-13 of the French Monetary and Financial Code. They carry a participation right to the net benefits of the borrower, under the conditions laid down by article L. 313-17 of the French Monetary and Financial Code, which foresee priority withhold on the distributable earnings, before any profits' allocation. The subordinated nature of participating loans is specified by article L. 313-15 of the French Monetary and Financial Code. The granting of participating loans is subject to specific business and financial commitments from the borrower, in compliance with article L. 313-18 of the French Monetary and Financial Code.

(25) The measure is designed in order to fall under the scope of point 27bis of section 3.3 of the Temporary Framework as regards subordinated debt insofar as the loans' amounts exceed the ceilings referred to in point 27bis i) and ii) of the Temporary Framework. The measure is therefore treated as a form of hybrid capital instrument.

(26) The maximum maturity of subordinated loans is 8 years.

(27) The reimbursement of subordinated loans is subordinated to the reimbursement of other lenders, privileged or not, in case of an insolvency procedure.

(28) The remuneration of subordinated loans will be EURIBOR 12 months plus margins, in basis points (bp) as follows:

Table 1:

Type of beneficiary	*1st year*	*2nd year*	*3rd year*	*4th year*	*5th Year*	*6th year*	*7th year*	*8th year*
SMEs	*225*	*287.5*	*287.5*	*375*	*375*	*450*	*500*	*650*
Large enterprises	*275*	*350*	*350*	*475*	*475*	*575*	*625*	*800*

The margins referred to in table 1 correspond to the average between the remuneration levels for hybrid capital instruments pointed out in the table in point 66 of the Temporary Framework and the margin levels, as established (and extended to 8 years) for subordinated loans under point 27a) of the Temporary Framework. Such remuneration levels aim at reflecting the specific risks of subordinated loans under Measure A, with amounts above the ceilings referred to in point 27bis i) and ii) of section 3.3 of the Temporary Framework and the extended duration to 8 years.

(29) Partial or full repayment of the measure is possible at any time before maturity.

2.6.2.2. Measure B

(30) *Titres subordonnés à durée indéterminée* ("TSDI") are hybrid capital instruments. They are perpetual, deeply subordinated notes, which do not give access to the share capital of the issuer.

(31) Under the current scheme, TSDI bear floating interest rate. Payment on TSDI is discretionary, with deferred interest being cumulative. The French authorities confirm that, in line with point 77 of the Temporary Framework, beneficiaries cannot make dividend payments nor make non-mandatory coupon payments, nor buy back shares, other than in relation to the French State as long as the Measures have not been fully redeemed.

(32) TSDI would be classified as Equity under IFRS and Other Equity ("*autres fonds propres*") under the French accounting standards.

(33) The minimum remuneration of TSDI under Measure B will be EURIBOR 12 months plus the margins referred to in point 66 of the Temporary Framework and a top-up of 90 basis points for all beneficiaries, as follows:

Table 2:

Type of beneficiary	*1st year*	*2nd and 3rd year*	*4th and 5th year*	*6th and 7th year*	*Year 8*
SMEs	*315 bp*	*415 bp*	*540 bp*	*690 bp*	*890 bp*
Large enterprises	*340 bp*	*440 bp*	*590 bp*	*790 bp*	*1040 bp*

(34) The French authorities explained that in order to adequately factor the characteristics of the instruments in their overall remuneration, the systematic top-up of 90 basis points is established with a view to reflect the additional risk borne by the State. Such a risk is threefold: (i) the instrument is not convertible into shares, (ii) it bears coupons only payable at the beneficiary's discretion and (iii) it is a perpetual instrument, whose coupons can be deferred.

(35) The French authorities aim at setting the instrument's characteristics such as to allow for full or partial repayment of the instrument at every interest payment date by the beneficiary, through the inclusion of beneficiaries' call options. Such structure corresponds to having full flexibility for the beneficiaries to fully or partially repay the instrument at every interest payment date. As an alternative, on a case-by-case basis, full or partial repayment of the instrument may be allowed at any point in time.

(36) Under IFRS, TSDI coupons are treated as interest payment.

(37) TSDI are fully senior to all other equity instruments, on a going and gone-concern basis.

(38) The French authorities confirmed that the governance restrictions referred to in recital (56) and as defined in section 3.11.6 of the Temporary Framework will apply until the instrument is fully redeemed. Such governance restrictions are triggered by the issuance of the instrument. It is only if the outstanding (i.e. non-redeemed) instrument is sold to a third party at nominal value or above, including accrued interest, that the governance restrictions would no longer apply. Moreover, in accordance with the Temporary Framework, TSDI, as hybrid instruments, need to be redeemed in order for the behavioural commitments imposed on the beneficiaries to end.

2.6.2.3. Measure C

(39) Preferred shares without voting rights will have the same rank and would absorb losses as ordinary shares.

(40) As regards the maximum entry price for preferred shares with respect to listed entities, it will be based on the volume weighted average trading price of the ordinary shares over the 15 trading days preceding the date of the request for the capital injection. If it is not possible to determine a price for the preferred shares, the maximum price will be determined by reference to a market value of the relevant undertaking determined by an independent expert. With respect to non-listed entities, the maximum price will be determined by reference to a market value of the relevant undertaking determined by an independent expert.

(41) The French authorities point out that the entry price will include a minimum discount of 10% to the reference price of ordinary shares, namely either (i) the volume weighted average trading price of the shares over the 15 days preceding the date of the request for the capital injection or (ii) the price per share determined by reference to a market value of the relevant undertaking determined by an independent expert. The discount will be applied to take into account the difference between the valuation of preferred shares without voting rights and ordinary shares on the French market. Moreover, France commits not to use

preferred shares without voting rights for participations on the subscribed capital over 20%.

(42) The French State will receive a remuneration equivalent to an additional 10% shareholding after 4 and 6 years from the date of the recapitalisation if, at those dates, 40% and 100% of the equity participation subscribed by the French State, respectively, have not been redeemed by the relevant undertaking or sold by the French State. That step-up remuneration will be equal to the market value of the shares that are necessary to achieve a 10% increase of the COVID-19 capital injection that is still outstanding at years 4 and 6 after the State recapitalisation.

(43) The compensation for the French State will be an amount denominated in euro corresponding to a 10% increase in the French State's COVID-19 shareholding for each of the step-up steps. The compensation will be paid either in additional shares, a corresponding amount of cash, or in the form of a debt instrument for the same value in line with market conditions at the date of triggering of the step-up mechanism at the discretion of the relevant undertaking.

(44) The pricing and conditions of the debt instrument mentioned in recital (43) will take into account the seniority of debt and the risk profile of the beneficiary, so that they will not offer more favourable conditions than the same or similar debt instruments recently issued by the beneficiary and/or still outstanding. Recently issued debt instruments or still outstanding and used for comparison will be examined in relation to their pricing, either at issuance if recently issued or on the basis of their recent trading value on the secondary market for earlier instruments still outstanding.

(45) The relevant undertaking will have the ability, at any time, to buy back shares that the State has acquired. The buy-back price will be the higher amount of (i) the nominal investment by the State increased by an annual interest remuneration 200 basis points higher than that presented in the table mentioned in point 66 of the Temporary Framework, or (ii) the market price at the moment of the buy-back.

(46) The French State would sell its participation at market price. Existing shareholders would not have priority rights in case of sale by the French State of its participation.

(47) The preferred shares would neither provide a fixed nor step-up dividend. Preferred shares would in principle benefit from dividend paid to ordinary shares (if any). The French authorities specified however that in light of the Temporary Framework requirements, the relevant undertaking shall not be able to pay dividend.

(48) The instrument will be recognized as equity under French GAAP or IFRS.

(49) The preferred shares may be converted, at any time, into ordinary equity, on a case-by-case basis at the request of the French State only.

(50) Partial repayment of preferred shares would be possible if the instrument has not yet been fully replenished after being written down, pursuant to conditions set by point 63 of the Temporary Framework.

(51) The French State will be in a position to resell the instrument to third parties, through an open and non-discriminatory consultation of potential purchasers or a sale on the stock exchange, as specified in point 64 of the Temporary Framework.[8]. The planned exit strategy will be determined on a case-by-case basis, in compliance with potential application of points 64bis and 64ter of the Temporary Framework.

2.6.3. Maximum amount of the Measures

(52) The support granted under the scheme is limited to EUR 250 million per beneficiary for the period over which aid can be granted. Individual aid measures falling under the scope of the scheme but exceeding this amount will be notified individually to the Commission.

(53) When calculating the amount of the "recapitalisation", France agreed that subordinated and participating loans under Measure A are assimilated to hybrid instruments under section 3.11 Temporary Framework, and should therefore be counted as equity.

(54) The amount of "recapitalisation" support from the Fund will not exceed the minimum necessary to restore the viability of the beneficiary and will be calculated as follows:

a. The aid amount granted under the Measures will be limited to the amount of losses incurred or expected in the period from 1 January 2020 to 31 December 2021.

b. The aid amount granted under the Measures will not lead to a lower debt-to-equity ratio of the beneficiary company on 31 December 2021 than the debt to equity ratio declared for that company on 31 December 2019.

c. The aid will not result in the beneficiary company having a ratio of net debt to EBITDA at 31 December 2021 above 3.0 to 3.5. In case of negative EBITDA, an equity ratio of at least 15% in the target balance sheet will be the benchmark used by France, meaning that the Fund would recapitalise undertakings up to the target equity ratio of 15%.

(55) All other COVID-19 measures not falling under the scope of the present scheme, that are granted or planned to be granted to the same beneficiary, will be taken into account in the calculation of the maximum amount of aid.

2.6.4. Governance, avoidance of undue distortions of competitions and exceptions

(56) Until the beneficiary definitively reimburses the support received under the Fund, the French authorities will ensure that the beneficiary will comply, inter alia, with the following restrictions:

a. Prohibition to announce for commercial purposes the status of a beneficiary.

[8] The French authorities note that, in the case of preferred shares with no voting rights, the sale of the instrument may remain theoretical.

b. In order to avoid undue distortions of competition, not to engage in aggressive commercial expansion financed with State aid or to take excessive risks.

c. As long as at least 75% of the Measures in the context of COVID-19 have not been repaid, beneficiaries other than SMEs will be prevented from acquiring shares in excess of 10% of undertakings active in the same sector or upstream or downstream markets, except if the acquisition is necessary to maintain such beneficiaries’ viability and subject to prior approval from the Commission.

d. Integrated undertakings will establish a separation of accounts to ensure that the support received under the Fund does not result in support for activities that were in difficulties on 31 December 2019.

e. Prohibition of distribution of dividends, payment of non-mandatory coupons or acquisition of own shares, other than those under State ownership through the Fund, as long as the Measures have not been fully redeemed.

f. As long as at least 75% of the COVID-19 recapitalisation measures has not been redeemed, the remuneration of each member of the beneficiaries’ management will not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the fixed remuneration of the members of the management with the same level of responsibility on 31 December 2019. Under no circumstances, bonuses, other variable or comparable remuneration elements will be paid.

(57) In line with point 78bis of the Temporary Framework, in cases where the State is an existing shareholder, i.e. before the COVID-19 equity injection and

a. the State injects new equity under the same conditions as private investors and pro rata to its existing shareholding (or below); and

b. the private participation is significant (in principle at least 30% of the new equity injected), and

c. this State’s new equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefitting the company,

the French authorities confirm that all conditions from section 3.11 of the Temporary Framework apply, except for points 61 and 62 and section 3.11.7 (excluding point 83, which does apply), while other conditions will apply as follows:

d. by way of derogation from points 74, 75 and 78 of the Temporary Framework, the acquisition ban and the cap on the remuneration of the management are limited to three years;

e. by way of derogation from point 77 of the Temporary Framework, there is no dividend ban for the holders of the new shares. For existing shares, the dividend ban is lifted, provided the holders of those existing shares are altogether diluted to below 10% in the company. If holders of existing shares are not altogether diluted to a share in the company below 10%, the dividend ban applies to existing shareholders for three years. In any event, the remuneration due for COVID-19 hybrid capital and subordinated debt instruments held by the State shall be paid before any dividends are paid to shareholders in a given year;

f. the reporting obligations under point 83 of the Temporary Framework shall apply for three years.

(58) In line with point 78ter of the Temporary Framework, in case where the State injects equity into a company in which it is not an existing shareholder (i.e. before the COVID-19 equity injection measure), and

a. it injects new equity under the same conditions as private investors, and

b. the private participation is significant (in principle at least 30% of the new equity injected), and

c. where the State's equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefiting the company,

the French authorities commit to ensure that all conditions in section 3.11 of the Temporary Framework apply except that the dividend ban is lifted for all holders of new shares. For existing shares, the dividend ban is lifted, provided the holders of such existing shares are altogether diluted to a share in the company below 10%. In any event, the remuneration due for COVID-19 hybrid capital and subordinated debt instruments held by the State shall be paid before any dividends are paid to shareholders in given a year.

2.6.5. Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations

2.6.5.1. Exit strategy

(59) The French authorities confirm that beneficiaries other than SMEs that have received support under the Measures of more than 25% of equity at the moment of intervention must demonstrate a credible State's exit strategy for the participation of the State, unless the State's intervention is reduced below the level of 25% of equity within 12 months from the date of the granting of the aid (in this context, for calculating the level of equity, hybrid instruments granted by the State should be counted as equity). The French authorities confirm that this comprises:

a. a plan on the continuation of its activity and the use of the funds invested by the State, including a payment schedule of the remuneration and of the redemption of the State investment (together 'the repayment schedule'); and

b. the measures that the beneficiary and the State will take to abide by the repayment schedule.

(60) The French authorities confirm that the exit strategy presented by the beneficiary to the Fund, in compliance with the conditions pointed out in point 79 of the Temporary Framework, must be endorsed by the State.

2.6.5.2. Reporting obligations for all beneficiaries

(61) The French authorities confirm the obligation for the beneficiaries to report to the State on the progress in the implementation of the repayment schedule and the compliance with the conditions concerning the Governance and prevention of undue distortions of competition (section 3.11.6 of the Temporary Framework) within 12 months of the schedule's presentation, and thereafter periodically every 12 months.

2.6.5.3. Publication obligation for large enterprises

(62) The French authorities confirm that as long as the Measures have not been fully redeemed, beneficiaries of the Measures, other than SMEs, shall, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this will include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

2.6.5.4. Reporting obligation for the State

(63) The French authorities commit to report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions in section 3.11.6 of the Temporary Framework. Where the beneficiary received above EUR 250 million under the Measures (because it has also been awarded individual aid), the report shall include information on compliance with the conditions concerning the amount of the recapitalisation set in point 54 of the Temporary Framework.

2.6.5.5. Restructuring plan

(64) The French authorities confirm that if six years after the Measures (or seven years in case of companies not publically listed or SME) the State's intervention has not been reduced below 15% of beneficiary's equity (in this context, for calculating the level of equity, hybrid instruments granted by the State should be counted as equity), a restructuring plan in accordance with the Rescue and Restructuring Guidelines[9] will be notified to the Commission for approval. For that case, France commits that the actions envisaged by the restructuring plan will ensure the beneficiary's viability in accordance with the Rescue and Restructuring Guidelines and with a view of:

a. Meeting EU objectives and national obligations linked to the green and digital transformation; and

b. The exit of the State without adversely affecting trade to an extent contrary to the common interest.

[9] Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1–28).

2.7. Cumulation

(65) The French authorities confirm that aid granted under the Measures may be cumulated with aid under *de minimis* Regulations[10], the GBER, the ABER or the FIBER, provided the provisions and cumulation rules of those Regulations are respected.

(66) The French authorities confirm that aid under the Measures may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(67) The French authorities confirm that aid granted under the Measures 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.

2.8. Monitoring and reporting

(68) 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 above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[11]).

3. ASSESSMENT

3.1. Lawfulness of the Measures

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

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[10] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8), the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1 and the Commission Regulation (EU) No 1388/2014 of 16 December 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.

[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 to Commission Regulation (EU) No 1388/2014.

3.2. Existence of State aid

(70) 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.

(71) The Measures are imputable to the State, since they are administered by the French Ministry of the Economy, Finance and Recovery, through the Fund and the CIRI within the Ministry (see recitals (11) and (12)) and are based on the Ministerial Orders of 21 December 2020 and of 13 January 2021 on credits' reports (see recital (10)b). Moreover, interventions by the Fund are authorized by the Ministry or by the General Secretariat of the CIRI (see recital (12)). They are financed through State resources, since they are financed by public funds (see recital (13)).

(72) The Measures confer an advantage on its beneficiaries in the form of subordinated loans (Measure A), hybrid capital instruments (Measure B) and equity instruments (Measure C) at terms that they would not have otherwise been able to obtain on the market. The Measures thus confer an advantage on those beneficiaries which they would not have had under normal market conditions.

(73) The advantage granted by the Measures is selective, since it is awarded only to certain undertakings, in particular SMEs and large enterprises, excluding the financial sector. Moreover, among undertakings active in all sectors of the economy, only those having a systemic or strategic importance for the French economy and employment, because of their role in an economic sector or have substantial economic footprint, are eligible to obtain public funding (recital (20)h).

(74) The Measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(75) In view of the above, the Commission concludes that the Measures constitute aid within the meaning of Article 107(1) TFEU. The French authorities do not contest that conclusion.

3.3. Compatibility

(76) Since the Measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether these Measures are compatible with the internal market.

(77) 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".

(78) 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".

(79) The Measures aim at facilitating the access of undertakings to external finance and restoring their capital at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(80) The Measures are one of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in their economy. The importance of the Measures to preserve employment and economic continuity 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 Measures have been designed to meet the requirements of a specific category of aid ("Recapitalisation measures for non-financial undertakings") described in section 3.11 of the Temporary Framework. Measure A has been also designed to meet the requirements mentioned in point 27bis of section 3.3 of the Temporary Framework as regards subordinated debt which exceeds the ceilings mentioned in point 27bis i) and ii) of "Recapitalisation Measures for non-financial undertakings" described in section 3.11 of the Temporary Framework, which fully applies to subordinated debt which exceeds those ceilings.

(81) The Commission accordingly considers that the Measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework.

3.3.1. Applicability

(82) The Measures are to be granted at the latest by 31 December 2021 (recital (15)). Therefore, the Measures comply with point 48 of the Temporary Framework.

3.3.2. Eligibility of beneficiaries and entry conditions

(83) The Measures are only provided to companies that would otherwise go out of business or would face serious difficulties to maintain their operations and showing deterioration of, in particular, the beneficiary's debt to equity ratio (recital (20)d). Therefore, the Measures comply with point 49(a) of the Temporary Framework.

(84) The Measures will only be provided where it is in the common interest to intervene, as investments are only provided to companies whose failure would likely involve social hardship or market failure due to significant loss of employment, the exit of an innovative company, the risk of disruption to an important service (recital (20)h) or the role in achieving the objectives of

digitalisation and green transition (recital (20)i).[12] Therefore, the Measures comply with point 49(b) of the Temporary Framework.

(85) The Fund will provide public support through the Measures to companies which have exhausted the possibilities of finding financing on the markets (recital (20)a) and the aid measures existing in France to help cover their liquidity needs are insufficient to ensure the survival of such enterprises (recital (20)b). Therefore, the Measures comply with point 49(c) of the Temporary Framework.

(86) Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the Measures (recital (20)f). Therefore, the Measures comply with point 49(d) of the Temporary Framework.

(87) Financing will be granted only on the basis of the written request by the beneficiary[13] and as a result of a positive assessment that the eligibility conditions are met (recital (22)). Therefore, the Measures comply with point 50 of the Temporary Framework. The financing will be granted in the form of subordinated loans, hybrid capital instruments and equity instruments, which is in line with points 52 and 53 of the Temporary Framework.

(88) A separate notification will be made for individual aid above the threshold of EUR 250 million (recital (52)). The Measures therefore comply with point 51 of the Temporary Framework.

3.3.3. Amount of the recapitalisation

(89) The financing under the Measures will not exceed the minimum needed to ensure the viability of the beneficiary, and will not go beyond restoring the capital structure of the beneficiary to that predating the COVID-19 outbreak. France committed that the cap for recapitalisation[14] will be limited to the amount of losses incurred or expected in the period 1 January 2020 to 31 December 2021, and the aid will not lead to a lower debt-to-equity ratio of the beneficiary company on 31 December 2021 than the debt to equity ratio declared for that company on 31 December 2019. Moreover, the aid will not result in the beneficiary company having a ratio of net debt to EBITDA at 31 December 2021 above 3.0 to 3.5. According to the French authorities, if the projected EBITDA is negative, this criterion shall be replaced by a ratio of equity to balance sheet total, which shall not be less than 15 % (recital (54)).

(90) France notified that subordinated and participating loans under Measure A are assimilated to hybrid instruments under section 3.11 Temporary Framework, and should therefore be counted as equity, as other hybrid instruments, when calculating the amount of the recapitalisation as explained in recital (89).

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[12] The French authorities state that the systemic importance of an undertaking will be analysed on a case-by-case basis, focusing on the value chain or economic sector relevant to the applicant undertaking.

[13] The French authorities state that undertakings have been able to submit their applications since 1 June 2021. However, although the aid may be granted by 31 December 2021 at the latest, applications will no longer be accepted as from December 2021.

[14] When calculating the amount of the "recapitalisation", subordinated and participating loans under Measure A are assimilated to hybrid instruments under section 3.11 Temporary Framework, and should therefore be counted as equity, as other hybrid instruments.

(91) In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak will be taken into account (recital (55)). Therefore, the Measures comply with point 54 of the Temporary Framework.

3.3.4. Remuneration and exit of the State

(92) As regards Measure A:

a. The Measure A, described in recitals (23) to (29), has been designed to meet the requirements mentioned in point 27bis of section 3.3 of the Temporary Framework as regards subordinated debt which exceeds the ceilings referred to in point 27bis i) and ii) of category of aid ("Recapitalisation Measures for non-financial undertakings"), described in section 3.11 of the Temporary Framework (recital (25)).

b. Therefore, the Commission will next assess whether the measure meets the requirements of section 3.11 of the Temporary Framework, pursuant with point 47 of the Temporary Framework.

c. The financing (subordinated loans) under the measure A will be granted in the form of hybrid capital instruments (as described in recital (23)), which is in line with points 52 and 53 of the Temporary Framework.

d. The Commission notes that subordinated loans can be fully or partially reimbursed at any time before maturity (recital (29)) and that their remuneration includes the built-in of exit incentives through step-ups (recital (28)). The margins pointed out in table 1 take into consideration the ones included in the remuneration table referred to in point 66 of the Temporary Framework, which was adapted in order to reflect the specific risks of the subordinated loans, as required by point 70 of the Temporary Framework. Therefore, remuneration of subordinated loans below the minimum provided in point 66 of the Temporary Framework is justified by the lower risk and the fact that the subordination of the loans will only have an impact on the State in a gone concern scenario. Furthermore, the limited maturity of subordinated loans to 8 years and their level of subordination undermine the risks embedded in these instruments. The Commission considers that in accordance with point 59 of the Temporary Framework, taking into account the characteristics of the subordinated loans that the Fund may provide, the remuneration, as described in recital (28), is appropriate.

(93) As regards Measure B:

a. The Commission notes that the instruments under Measure B or TSDI, as described in recitals (30) to (38), are hybrid capital instruments insofar as they are perpetual, deeply subordinated notes, which do not give access to the share capital of the issuer. They therefore fall under the scope of the recapitalisation measures referred to in point 52b of the Temporary Framework.

b. TSDI are remunerated by taking into account the minimum margin levels referred to in point 66 of the Temporary Framework and an additional top-up of 90 basis points applied to each relevant remuneration step (recital (33)). Such a top-up is designed to reflect the specific risks borne by the instrument, as highlighted in recital (33). In addition, the instruments can be fully or partially repaid at every interest payment date (recital (35)). As an alternative, on a case-by-case basis, full or partial repayment of the instrument may be allowed at any point in time.

c. In light of the above, the Commission is of the view that TSDI remuneration includes appropriate built-in exit incentives and takes into consideration the characteristics of the instrument chosen, as required by point 65 of the Temporary Framework.

(94) As regards Measure C:

a. Preferred shares without voting rights under Measure C, as described in recitals (39) to (51), fall under the scope of the recapitalisation measures referred to in point 52a of the Temporary Framework.

b. A capital injection by the Fund in the form of preferred shares will be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection or an estimation of its market value by an independent expert if the beneficiary is not publicly listed (recital ((40)). The entry price will include a minimum discount of 10% to the reference price (recital (41)). Moreover, information provided by France shows that the difference in share price between preferred shares without voting rights and ordinary shares in undertakings that have both classes of shares traded is approximately between 11-13%. Furthermore, France has committed not to purchase more than a 20% stake in any individual undertaking by the use of preferred shares without voting rights (recital (41)). Given that France has limited the use of the instrument to a maximum 20% stake, the discount rate reflects the pricing characteristics of preferred shares without voting rights, when compared to ordinary shares, the Commission considers it as proportionate. Therefore, Measure C complies with point 60 of the Temporary Framework.

c. Point 61 of the Temporary Framework requires that step-up mechanisms, which may be implemented through additional shares or other forms, increase the remuneration of the State up to a minimum of 10%. The measure includes a remuneration equivalent to an additional 10% shareholding after 4 and 6 years that can be paid either in additional shares, a corresponding amount of cash or in the form of a debt instrument if, at those dates, 40% and 100% of the equity participation subscribed by the French State respectively, have not been redeemed by the relevant undertaking or sold by the French State (recitals (42) to (43)). The debt instrument held by the Fund will also be adequately remunerated with interest determined according to debt seniority and risk profile of the beneficiary (recital (44)). Therefore, the Commission considers that the remuneration of the shareholding held by the Fund with debt instruments, instead of additional shares, complies with point 61 of the Temporary Framework.

d. The capital injection can be bought back by the beneficiary at any time, while making an appropriate remuneration (recitals (45)). Furthermore, the Fund may sell at any time its preferred shares at market prices to purchasers other than the beneficiary, following an open and non-discriminatory consultation (recital (51)). Therefore, Measure C complies with points 63 and 64 of the Temporary Framework.

e. In case the French State resells the instruments to third parties, France commits to do so through an open and non-discriminatory consultation of potential purchasers or a sale on the stock exchange, as specified in point 64 of the Temporary Framework. The planned exit strategy will be determined on a case-by-case basis, in compliance with potential application of points 64bis and 64ter of the Temporary Framework (recital (51)).

3.3.5. Governance and prevention of undue distortions of competition

(95) Beneficiaries are not allowed to take excessive risks and to engage in aggressive commercial expansion financed by State aid (recital (56)b). Therefore, the Measures comply with point 71 of the Temporary Framework.

(96) Beneficiaries are not allowed to advertise the investment by the State for commercial purposes (recital (56)a). Therefore, the Measures comply with point 73 of the Temporary Framework.

(97) Until at least 75% of the Measures have not been redeemed, beneficiaries other than SMEs will not acquire a stake of more than 10% in competitors or other operators in the same line of business, including upstream and downstream operations. In exceptional circumstances, and without prejudice to merger control, beneficiaries may acquire a more than 10% stake in operators upstream or downstream in their area of operation or even competitors, only if the acquisition is necessary to maintain the beneficiary's viability and upon Commission's prior approval (recital (56)c). Therefore, the Measures comply with points 74 and 75 of the Temporary Framework.

(98) Beneficiaries are prohibited from using the funds received via the Measures to cross-subsidise other economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019 and will introduce clear account separation to ensure no cross-subsidisation (recital (56)d). Therefore, the Measures comply with point 76 of the Temporary Framework.

(99) As long as the investments of the Fund through the Measures have not been fully repaid, beneficiaries cannot make dividend payments, or non-mandatory coupon payments, or buy back shares, other than in relation to the State (recitals (31), (47) and (56)e). Therefore, the Measures comply with point 77 of the Temporary Framework.

(100) Until the volume of the investments of the Fund through the Measures have not been redeemed by at least 75%, no member of the beneficiaries' management may receive total remuneration exceeding his/her basic remuneration on 31 December 2019. In the case of persons who become members of the management at or after the time when the Measures are taken, the ceiling is the lowest basic remuneration of any member of the management on 31 December 2019. In addition, France commits that under no circumstances will bonuses or other variable or comparable remuneration elements be paid (recital (56)f). Therefore, the Measures comply with point 78 of the Temporary Framework.

(101) Restrictions related to the governance of the beneficiaries referred to in recital (56), as well as the obligation to increase the amount to be reimbursed to the State in accordance with point 61 and 62 of the Temporary Framework, are lifted in circumstances corresponding to those described in points 78bis and 78ter of the Temporary Framework (recital (58)). Therefore, the Measures comply with points 78bis and 78ter of the Temporary Framework.

3.3.6. *Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations*

(102) The French authorities undertake to ensure that the beneficiaries of the Fund — other than SMEs — who have obtained a COVID-19 recapitalisation equivalent to more than 25% of the equity held at the time of the intervention, provide proof of the existence of a credible exit strategy with regard to the French State's participation, unless the latter's intervention is reduced to less than 25% of the capital during the 12 months following the date on which the aid was granted (recital (59)).

(103) The exit strategy has to specify: (i) the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the State, in particular a timetable for payment of the remuneration and a repayment schedule for the State's investment (together the "repayment schedule"); and (ii) the measures that the beneficiaries and the State will take to abide by the repayment schedule (recital (59)).

(104) The French authorities undertake that the exit strategy presented by the beneficiaries must be approved by the State within 12 months after the aid is granted (recital (60)). Therefore, the Measures comply with points 79 to 81 of the Temporary Framework.

(105) Beneficiaries of the Measures will have to report to the French authorities on the progress in the implementation of the repayment schedule as well as compliance with the obligations described in recital (56) within 12 months of the submission of the repayment schedule, and thereafter periodically every 12 months. Therefore, the Measures with point 82 of the Temporary Framework.

(106) As long as the investments of the Fund through the Measures have not been fully redeemed, beneficiaries, other than SMEs, will, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, such publications will include information on how their use of the aid received supports their activities in line with Union objectives and national obligations linked to the green and digital transformation, including the Union objective of climate neutrality by 2050 (recital (62)). Therefore, the Measures comply with point 83 of the Temporary Framework.

(107) France will report annually to the Commission on the implementation of the repayment schedules and compliance with the obligations described in recitals (95) to (101). Therefore, the Measures comply with point 84 of the Temporary Framework.

(108) The French authorities confirm that, if after six years from the application of the Measures, the State's shareholding is not reduced below 15% of the beneficiary's

equity, the State will have to submit a restructuring plan to the Commission for approval, in accordance with the Rescue and Restructuring Guidelines (recital (64)). If the beneficiary is not a publicly listed company, or is an SME, France may decide to notify a restructuring plan only if the State's intervention has not been reduced below the level of 15% of equity seven years after the COVID-19 recapitalisation. The restructuring plan shall take into account Union objectives and national obligations related to the green and digital transition, including the Union's 2050 climate neutrality target. Exit from the State should not affect the internal market in such a way that the Measures would be contrary to the common interest. Therefore, the Measures comply with point 85 of the Temporary Framework.

3.3.7. Monitoring, cumulation, and relocation

(109) The French authorities confirm that, in line with point 16ter of the Temporary Framework, the aid under the Measures is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (21)).

(110) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (68)). Therefore, the Measures comply with section 4 of the Temporary Framework. The French authorities further confirm that the aid under the Measures may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (65) to (67)). Therefore, the Measures comply with point 20 of the Temporary Framework.

(111) The Commission therefore considers that the Measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of France pursuant to Article 107(3)(b) TFEU and meet 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

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION