



EUROPEAN COMMISSION

Brussels, 9.3.2021
C(2021) 1706 final

PUBLIC VERSION

This document is made available for information purposes only.

**Subject: State Aid SA.61330 (2021/N) – France
COVID-19: Régime d’aides destinées à compenser les coûts fixes non couverts des entreprises**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts¹, by electronic notification of 23 February 2021, France notified aid in the form of support for uncovered fixed costs (*“Régime d’aides destinées à compenser les coûts fixes non couverts des entreprises”*, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).²
- (2) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

¹ The French authorities pre-notified the measure on 19 January 2021. Additional information was submitted on 8 and 16 February 2021.

² 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).

³ 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 economy⁴. 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, in light of sections 2 and 3.12 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (7) The legal bases for the measure are the following:
 - (a) Article 20 of the Constitution of 4 October 1958, published in the Official French Gazette, as last amended on 1 December 2009.
 - (b) Finance Act n° 2020-1721 for 2021 (“Loi n° 2020-1721 du 29 décembre 2020 de finances pour 2021”), published in the Official French Gazette on 30 December 2020 (*Journal officiel de la République Française n° 0315 du 31 décembre 2020*).
 - (c) Government Decree n° 2020-371 of 30 March 2020 “On the solidarity fund for undertakings particularly affected by the economic, financial and social consequences of the spread of the COVID-19 outbreak and the measures taken to limit that spread” (“Décret n° 2020-371 du 30 mars 2020 relatif au fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l'épidémie de covid-19 et des mesures prises pour limiter cette propagation”, the “Decree”) published in the

⁴ The French authorities submit that, due to the first wave of COVID-19, in the first half of 2020 the economic activity in France was reduced by approximately 17% in all sectors, with a quarter of French firms experiencing a decline in activity of at least 30%. In addition, and despite the easing of the restrictive measures in the summer of 2020, the decline in activity continued in the year 2020. In the context of the second, more acute, wave of COVID-19, a new round of restrictive measures was introduced. An average decline of around 13 % in business activity was observed compared with the same period in 2019. As a result, economic sectors such as accommodation, restauration and catering, sports, culture, tourism and organisation of events, along with activities intrinsically linked to offering services to the public have been particularly affected. In this context, the French authorities consider that they should continue to support the businesses affected during 2021.

official French Gazette on 31 March 2020 (*Journal officiel de la République Française* n° 0078 du 31 mars 2020), which will be amended by another decree of the French authorities following the notification of the present decision to France;

- (d) Any other administrative or legislative act that may be issued by the French authorities, insofar as they amend the list of eligible sectors or the threshold of turnover decline as described in recitals (11) and (16).

2.3. Administration of the measure

- (8) The Directorate-General for Public Finance (“Direction générale des Finances Publiques”) is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is around EUR 2 billion.
- (10) Aid may be granted under the measure as from the notification of the Commission’s approval until no later than 31 December 2021.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are micro, small and medium enterprises (SMEs) and large enterprises⁵ that have a registered establishment in France. The measure is open to undertakings active in all sectors, whose economic activities were particularly affected by the restrictive health measures, by being suspended or reduced. These sectors include, but are not limited to: accommodation, catering and restauration, tourism, events, culture, sports, as well as any sector directly linked and therefore equally affected from the restrictions. The French authorities submit that they will issue lists, where the eligible economic sectors will be identified. In view of the ever-changing health and economic situation, the French authorities intend to keep the sectors of beneficiaries under constant review; therefore, they will retain the right to amend the lists of eligible sectors by means of national administrative or legislative acts. However, they commit that the eligible sectors will always be those most affected by the COVID-19 restrictive measures, thus in need of support. Financial institutions are excluded as eligible final beneficiaries. In addition, undertakings whose principal activity is holding activities, and in particular headquarter and management services (belonging to the national NACE code: 70) are excluded as eligible final beneficiaries⁶.
- (12) Aid may not be granted under the measure to medium⁷ and large enterprises that were already in difficulty within the meaning of the General Block Exemption

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 The French authorities clarify that, according to national legislation, each undertaking is attributed only one principal activity indicated by the respective NACE code. Therefore, for the purposes of this measure, undertakings that exercise holding activities (NACE code: 70) as a principal activity are excluded. However, undertakings exercising multiple activities, among which holding activities belonging to NACE code 70 but not as a principal activity, may be eligible for the measure.

⁷ As defined in Annex I to Commission Regulation (EU) No 651/2014.

Regulation (“GBER”), the Agricultural Block Exemption Regulation (“ABER”) and the Fisheries Block Exemption Regulation (“FIBER”) ⁸ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, ABER and FIBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid⁹ or restructuring aid.¹⁰

2.6. Sectoral and regional scope of the measure

- (13) The measure is open to the undertakings identified in recital (11), with the exception of the financial sector. It applies to the whole territory of France.

2.7. Basic elements of the measure

- (14) The objective of the scheme is to support undertakings that have suffered significant losses as a result of the constantly aggravating COVID-19 crisis and the restrictive measures implemented by the French authorities in order to mitigate the impact of the epidemic. The purpose of the measure is to partially compensate for the uncovered fixed costs incurred by those undertakings over the period from 1 January 2021 to 30 November 2021 (the “eligible period”).
- (15) Eligible undertakings must have suffered a turnover decline of at least 30% during the eligible period, i.e. from January 2021 to November 2021, compared to the same period in 2019, i.e. January 2019 to November 2019.
- (16) The French authorities submit that, while keeping the measure under constant review, they intend to adapt it to the current economic needs and environment. Therefore, they consider likely that, in case the restrictive measures are gradually lifted in the following months, they may adapt the eligibility condition as to the minimum percentage of the turnover decline. However, they commit that, in such a case, the adjustment will take place only upwards and under no circumstances will it be lower than 30%, as required by point 87(b) of the Temporary Framework. Indicatively, the French authorities submit that they may increase the percentage to 50%. This adjustment will be put into effect by means of national administrative or legislative acts.

⁸ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014, 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, and 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.

⁹ 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.

¹⁰ 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.

- (17) The overall maximum aid amount per undertaking will not exceed EUR 10 million. All figures used are gross, that is, before any deduction of tax or other charges.
- (18) The applications for aid will take place on a monthly basis, in accordance with the procedure that will be established by the national legal basis. Along with the application, the potential beneficiaries will have to submit all documents proving their eligibility and the calculation of aid. All figures will be verified by the Directorate-General for Public Finance.
- (19) The aid intensity will not exceed 70% of the uncovered fixed costs in the relevant period, except for micro and small companies, where the aid intensity will not exceed 90% of those costs.
- (20) The French authorities submit that they intend to use the “*excédent brut d'exploitation*” (EBE)¹¹ as the figure reflecting the uncovered fixed costs of the undertaking. In practice, the EBE corresponds to the undertaking’s EBITDA less any impact of provisional expenses.
- (21) The French authorities explain that the EBE is the financial figure that most accurately reflects the profits or losses of the commercial activity of an undertaking for a given period, as well as the specific liquidity issues that the Temporary Framework seeks to address.
- (22) Points 86 and 87 of the Temporary Framework aim at compensating uncovered fixed costs, i.e. the fixed costs that undertakings continue to sustain during the COVID-19 outbreak, when the normal course of a business activity is disrupted and when those costs are not covered by the profit contribution, nor by other sources. The EBE takes into account all revenue of a business activity, including insurance, subsidies and any State aid measures¹², as well as all fixed costs and variable costs of the activity. Thus, the EBE includes all financial results pertaining to the business activity. It however excludes depreciation, amortisation and provisions, which reflect the impact of investments and do not directly affect the liquidity of the business activity, as well as the financing and extraordinary income and charges, which are independent of the core business activity of an undertaking. As such, the French authorities explain that the EBE is a suitable figure to represent the uncovered fixed costs targeted by point 86 and 87 of the Temporary Framework.
- (23) The French authorities additionally submit, in view of point 87(c) of the Temporary Framework which refers to “the losses of undertakings from their profit and loss statements” (excluding one-off impairments) as an appropriate proxy for uncovered fixed costs, that the EBE of an undertaking is generally

¹¹ The French authorities explain that the EBE is calculated as follows: revenue + subsidies (including grants and other State aid measures) – cost of goods sold and SG&A (Selling, General and Administrative) expenses – non-income taxes. The EBE does not take into account depreciation & amortisation, provisions for expenses, financial or extraordinary income and charges, and income tax and employee profit sharing.

¹² The French authorities submit that any other grants or measures given by the State in the same period are reflected in the calculation of EBE.

higher than its net result¹³. After performing a research on the financial results of enterprises active in various sectors from the years 2016 to 2018 (i.e. the most recent results publicly available before the COVID-19 crisis), the French authorities observed that the EBE was on average higher than the corresponding net profits accounted for at the end of the fiscal year among various sectors. The only exception to this rule (for all the years examined) were undertakings active in holding activities, namely in management and headquarter services. Undertakings whose principal activity is management and headquarter services are not eligible to receive aid under the present measure (recital (11)). Additionally, the French authorities evaluate that the COVID-19 crisis should negatively impact not only the commercial income reflected in the EBE, but also the financial income (as a result of lower expected dividends and high indebtedness) and the extraordinary income (as a result of lower capital gains and higher impairments). As a result, the French authorities evaluate that the (negative) difference between the net results and EBE of undertakings will increase due to the crisis. Thus, the (negative) EBE is expected to not lead to a higher compensation amount than the corresponding net losses.

- (24) From the perspective of reliable accounting data, the French authorities submit that, since the aid will be granted on the basis of monthly applications, the EBE is best suited to reflect the undertaking's losses on a monthly basis. Indeed, the EBE is always reflected in the monthly accounts of undertakings and objectively represents the undertaking's financial situation for a given period, since they rely on objective accounting data (such as invoices and payments).
- (25) For the purpose of the measure, the monthly accounts will be verified by certified accountants ("experts-comptables") before submitting the application for aid: the verification of the accounts will take place on the basis of the actual economic result of the undertaking for the relevant month (not on the basis of forecasts) and a statement of verification prepared by the certified accountant will be submitted along with the application for aid.
- (26) The French authorities explain that certified accountants are independent professionals, subject to strict legal and regulatory requirements¹⁴ as to the exercise of their activities. In case they are found to have breached their professional and legal obligations, they are subject to disciplinary measures (e.g. suspension of their ability to exercise the profession) or even to civil and criminal law liability. For the purposes of this measure, the certified accountants will be bound by their professional responsibility to provide accurate financial data to the public sector.

¹³ According to the French authorities, the net result is calculated as follows: EBE – depreciation & amortisation and provisions for expenses + financial and extraordinary income and charges - income tax and employee profit sharing.

¹⁴ The profession of "experts-comptables" is established and regulated in the « Ordonnance n°45-2138 du 19 septembre 1945 portant institution de l'ordre des experts-comptables et réglementant le titre et la profession d'expert-comptable ».

They will also be required to perform the verification of monthly accounts by following the standards of “reasonable level of assurance”, which is the higher level of assurance provided in the pertinent legislation¹⁵. By providing this level of verification by the certified accountants, the French authorities submit that they have selected a guaranteed and reliable method of calculation of the amount of aid.

- (27) The French authorities further submit that the amount of EBE reflected in the (audited) annual accounts¹⁶ will be the same as the sum of the EBE reflected in those verified monthly accounts. In this context, the French authorities confirm that the EBE is drawn up on a monthly basis on the basis of objective accounting data (such as invoices and payments). According to national legislation, as well as commercial and accounting practice, the procedure by which this amount of EBE would be reviewed by a certified accountant on a monthly basis, or upon establishing the annual accounts (including, as the case may be, auditing procedures), are the same, since they rely on the verification of the underlying accounting data and the appropriateness of the corresponding accounting entries. Therefore, the French authorities submit that the amount of EBE in the monthly accounts do not constitute “forecasted losses” under point 87(c) of the Temporary Framework, but final losses which will already have been subject to appropriate certification.
- (28) In order to avoid any overcompensation, in view of the reference by point 87(c) of the Temporary Framework to “losses of undertakings from their profit and loss statements”, and to ensure that the aid is granted, as required by the same point, on the basis of audited accounts or, with appropriate justification, of tax accounts, the French authorities commit to put into effect an additional system of *ex post* verification of the amount of (negative) EBE claimed in support of the aid application and the final amount of net losses of undertakings, resulting from their annual accounts. The *ex post* verification system will be performed as follows:
- (a) As regards medium and large enterprises, which are required by law¹⁷ to have their annual accounts audited at the end of the year, the beneficiary will be required to undertake a self-assessment exercise, by which it will be certified and declared whether the amount of the monthly EBE in the months for which the aid was granted is higher than the net losses incurred by the undertaking over the same period. This self-assessment will be performed by the auditor. In case the monthly EBE is lower than the net

¹⁵ The French authorities explain that there are two levels of professional assurance: moderate level of assurance (“niveau d’assurance modéré”) and reasonable level of assurance (“niveau d’assurance raisonnable”), the latter of which is higher and more demanding. These are regulated in the « Arrêté du 1er septembre 2016 portant agrément des normes professionnelles relatives au cadre de référence, au glossaire, à la norme professionnelle de maîtrise de la qualité (NPMQ), à la norme professionnelle relative à la mission de présentation de comptes (NP 2300), à la norme professionnelle relative aux missions d’assurance sur des informations autres que des comptes complets historiques-attestations particulières (NP 3100), élaborées par le Conseil supérieur de l’ordre des experts-comptables ».

¹⁶ It is clarified that the annual accounts may be audited, if this is required by national legislation based on the size or other characteristics of the undertaking.

¹⁷ By virtue of the Article L. 225-218 of the French Commercial Code.

losses (thus resulting in a higher amount of aid), the beneficiary will declare the difference and repay the excess aid to the competent authority.

- (b) As regards small and micro enterprises, which are not required by law to have their accounts audited at the end of the year, the beneficiary will be required to self-assess whether the amount of monthly EBE, in the months for which the aid was granted, is higher than the net losses incurred by the undertaking over the same period, as reflected in their tax accounts. This self-assessment may be prepared by the beneficiaries themselves. In case the monthly EBE is lower than the net losses (thus resulting in a higher amount of aid), the beneficiary will declare the difference and repay the excess aid to the competent authority. The French authorities submit that this simplified method of verification is justified by the fact that small and micro enterprises are not legally obliged to prepare audited accounts; therefore, it would be disproportionately burdensome and costly to impose on them the obligation to hire professional auditors in order to perform the auditing exercise solely for the purposes of the measure. As such, the French authorities consider the use of the net losses resulting from the final annual accounts as an adequate and reliable means in order to perform the additional verification and comply with point 87(c) of the Temporary Framework.
- (29) Therefore, the French authorities submit that the EBE reflects a realistic estimation of uncovered fixed costs, while the procedure set also ensures that the compensation amount will not be higher than the net loss of the undertaking resulting from its annual (audited) accounts. For this reason, the French authorities consider that their method complies with and achieves the same result as the definition of uncovered fixed costs in point 87(c) of the Temporary Framework.

2.8. Cumulation

- (30) The French authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁸ or the Block Exemption

¹⁸ 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), Commission Regulation (EU) No 702/2014 of 25 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.)

Regulations¹⁹ provided the provisions and cumulation rules of those Regulations are respected.

- (31) The French authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (32) 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.
- (33) 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 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected. In particular, the French authorities note in this regard that those aid measures will be taken into account in the EBE of each beneficiary undertaking.
- (34) The French authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (35) 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 granting²⁰).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (36) 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

- (37) 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

¹⁹ Commission Regulation (EU) No 651/2014, Commission Regulation (EC) No 702/2014 and Commission Regulation (EU) No 1388/2014.

²⁰ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014, Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

- (38) The measure is imputable to the State, since it is administered by Directorate-General for Public Finance (recital (8)) and it is based on the legal basis identified in recital (7). It is financed through State resources, since it is financed by public funds (recitals (8) and (9)).
- (39) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers an advantage on those beneficiaries, which they would not have had under normal market conditions.
- (40) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that fulfil the criteria described in recitals (11), (12) and (15) and excluding the financial sector and undertakings whose principal activity is holding activities.
- (41) 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.
- (42) 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

- (43) 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.
- (44) 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*”.
- (45) 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*”.
- (46) The measure aims at ensuring continuity of business activity 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.
- (47) 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 importance of the measure to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale that can

be reasonably anticipated to produce effects across the entire French economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of uncovered fixed costs*") described in section 3.12 of the Temporary Framework.

(48) 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:

- (a) Aid is granted under the measure no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 1 January 2021 to 30 November 2021 (recitals (10) and (14)). The measure therefore complies with point 87(a) of the Temporary Framework.
- (b) Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (15)). The measure therefore complies with point 87(b) of the Temporary Framework.
- (c) The aid intensity under the measure will not exceed 70% of the uncovered fixed costs defined in point 87(c) of the Temporary Framework (recital (19)), except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (19)). To this end, the Commission accepts the explanation provided by the French authorities regarding the use of the EBE for the calculation of the uncovered fixed costs (recitals (20) to (24)). In particular, the Commission considers credible the justification by the French authorities of the EBE as a reliable metric for the calculation of uncovered fixed costs defined in point 86 and 87(c) of the Temporary Framework:
 - As regards the revenue side, the EBE takes into account all revenues of the undertaking, including insurance, subsidies and State aid measures, as well as other sources. However, the EBE does not take into account: (i) depreciation and amortisation and (ii) extraordinary or financial income of an undertaking (recital (22)).
 - On the cost side, the EBE takes into account all charges relating to the economic activity performed by the undertaking. It does not take into account depreciation, amortisation, provisions and financial charges, which would otherwise be taken into account for the definition of uncovered fixed costs (recitals (22) and (23)). In this regard, by excluding certain charges, the EBE follows a more restrictive approach than the one laid down in point 87(c) of the Temporary Framework.
 - The Commission considers that the fact that the EBE does not reflect all types of income (including financial and extraordinary income) does not allow to determine the final amount of aid on the basis of EBE. However, this fact does not negate the validity of the EBE as a proxy for uncovered fixed costs, as the French authorities have shown on the basis of empirical data that the EBE will lead in

practice to lower compensation than the one laid down in point 87(c) of the Temporary Framework. This point is verified by the empirical data submitted by the French authorities (recital (23)). The Commission considers the data pertaining to years 2016 to 2018 credible, as they cover a sufficient period of time (three consecutive years), while also being the most recent years for which financial data is publicly available before the COVID-19 outbreak. The Commission notes that the French authorities performed a research on all economic sectors and excluded the sole sector for which it could not be concluded that the EBE will be higher in general than the net results (i.e. holding activities). The Commission has no reason to challenge the assessment of the French authorities that the COVID-19 outbreak is expected to further increase the divergence between the EBE and the accounting net result (i.e. lead to the EBE being higher than the net result, due to lower expected levels of financial and extraordinary income). The use of EBE will thus lead in principle to a lower amount of compensation (recitals (22) and (23)).

- In view of the procedure set out in the measure for establishing the amount of the monthly negative EBE, the Commission considers that the establishment of monthly accounts verified by certified accountants is a reliable method. In particular, the Commission notes that the verification of the monthly accounts by certified accountants is not a general legal obligation, but has been imposed solely for the purposes of this measure as a means of control of the amounts declared. The Commission agrees with the submission by France that the EBE is drawn up on the basis of objective, dated pieces of accounting data (such as invoices and payments).
- Additionally, certified accountants are independent professionals, performing their activities in accordance with the legal and regulatory requirements, bound by rules on their professional integrity (recital (26)). They will perform the verification of the monthly accounts by following the higher standard of professional assurance provided in national law (reasonable level of assurance), as well as by following the procedure laid down in national legislation and established commercial and accounting practice. The Commission notes that this procedure is reliable, as it abides by the legal requirements of national accounting legislation. Also, according to the French authorities, this procedure follows the same principles and rules both for the monthly accounts and for the annual accounts (recital (27)(25)).
- Finally, the Commission notes that the French authorities have committed to an *ex post* verification of the amounts of aid by the beneficiaries, as described in recitals (28)(a) and (28)(b), which will compare the monthly EBE declared in support of applications of aid to the final net losses of the beneficiaries as reflected in their annual accounts. In case the monthly EBE is lower than the net losses (thus resulting in a higher amount of aid), the beneficiary will repay the excess aid to the competent authority. The

Commission considers that this safeguard complies with the requirements of point 87(c) of the Temporary Framework, since the verification will in principle take place on the basis of audited accounts. As for small and micro enterprises, the verification will take place on the basis of their tax accounts, since those undertakings are not legally required to prepare audited accounts.

- The Commission accepts the justification provided by France, namely that it would be disproportionately burdensome and costly to oblige beneficiaries who qualify as small and micro enterprises to hire professional auditors and prepare audited accounts solely for the purposes of the measure (recital (28)(b)). Therefore, the Commission considers this additional verification method as equivalent to the *ex post* control provided in point 87(c) of the Temporary Framework and accepts that it is suitable to ensure compliance with the maximum amounts of aid provided in that point.
- (d) The aid takes the form of direct grants (recital (6)). The overall nominal value of the measure will not exceed EUR 10 million per undertaking; all figures are used gross, that is, before any deduction of tax or other charges (recital (17)). The measure therefore complies with point 87(d) of the Temporary Framework.
- (e) The aid under the measure shall not be cumulated with other aid for the same eligible costs (recital (34)). The measure therefore complies with point 87(e) of the Temporary Framework.
- (f) Aid may not be granted under the measure to medium²¹ and large enterprises that were already in difficulty on 31 December 2019 (recital (12)). 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 collective insolvency procedure under national law and they have not received rescue aid²² or restructuring aid²³ (recital (12)). The measure therefore complies with point 87(f) of the Temporary Framework.
- (49) 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 (recital (4)). The measure therefore complies with point 16ter of the Temporary Framework.

²¹ As defined in Annex I to Commission Regulation (EU) No 651/2014.

²² 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.

²³ 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.

- (50) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (35)). 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 and the cumulation rules of the relevant Regulations are respected (recitals (30) to (34)).
- (51) 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