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Subject: State Aid SA.109334 (2023/N) – France
TCTF: Tax credit for investments in green industries

Excellency,

1. PROCEDURE

- (1) By electronic notification of 13 December 2023, France notified an investment aid scheme (*crédit d'impôt investissement industries vertes*, the 'measure') under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the 'Temporary Crisis and Transition Framework')⁽¹⁾. France submitted additional information on 15 December 2023.
- (2) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended on 20 November 2023 (OJ C, C/2023/1188, 21.11.2023).

Son Excellence Madame Catherine Colonna
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Article 3 of Regulation 1/1958 ⁽²⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) France considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia, have economic repercussions on the entire internal market ('the current crisis'). The current crisis created in particular exceptionally large and unexpected price increases in France, especially in natural gas (between +150 % and +260 % since 2021) and electricity (between +150 % and +190 % since 2021), which have significantly impacted all industrial sectors. The energy bill for industry increased from about EUR 15 billion in 2021 to about EUR 45 billion in 2023, with possible social consequences as 50 000 industrial jobs are now threatened, highlighting the urgent need to increase energy efficiency and diversify energy sources.
- (4) France considers that the deployment of alternative energy sources to fossil fuels depends on the steady development of certain equipment recognized by the Commission ⁽³⁾ as "*key to meet the climate neutrality goals*". France explains that the existing industrial ecosystem, especially in the production of heat pumps and onshore wind turbines has been weakened by the crisis and is strongly challenged by Asian and US competition. The development of new production facilities, for equipment such as solar panels, offshore wind turbines, heat-pumps or batteries are essential to reach national and European climate goals, but are also jeopardised by massive support policies in third jurisdictions, leading to huge production costs differentials ⁽⁴⁾.
- (5) The French authorities support the analysis and objectives exposed by the Commission in the March and May 2022 REpowerEU communications ⁽⁵⁾, especially the deployment of additional strategic investments focused on the green transition to address the challenges posed by the energy crisis and the need to improve the European industries' resilience. Additional investments in strategic goods for the transition towards a net-zero economy are required, particularly in the current global context where such investments are at risk of being diverted away from the European Economic Area ('EEA').

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

⁽³⁾ Communication from the Commission of 1.2.2023, A green deal industrial plan for the net-zero age, COM(2023) 62 final.

⁽⁴⁾ As an example, the French authorities identified a possible production cost differential of around 30 % between the USA and Europe for solar panels modules.

⁽⁵⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 108 final of 8 March 2022 – REPowerEU: Joint European Action for more affordable, secure and sustainable energy and Communication COM/2022/230 final of 18 May 2022 – REPowerEU Plan.

- (6) In this context, France is setting up a fiscal scheme to create or strengthen value chains in relation to energy transition, targeting the development of facilities to produce solar panels, wind turbines, batteries and heat pumps, as well as other relevant goods along the value chain (key components and critical raw materials).
- (7) 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.
- (8) The compatibility assessment of the measure is based on Article 107(3), point (c), TFEU in light of sections 1 and 2.8 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (9) The measure provides aid on the basis of a scheme in the form of a tax credit for the capital expenditures incurred by applicants in relation to their investments in facilities referred to in recital (6). The tax credit will be applied in fractions in respect of the financial year or years in which the expenditure of the investment plan is incurred, applying to such expenditure the tax credit rate specified in the agreement referred to in recital (21) ⁽⁶⁾.

2.2. Legal basis

- (10) The legal basis for the measure is a draft article in the budget law for 2024 (*loi de finances*), to be adopted by 31 December 2023. A provision, which subjects the entry into force of the measure to the approval of the scheme by the Commission is included in the draft ⁽⁷⁾. The article will be completed by an implementing decree to be adopted by the Ministers in charge of Economy and Industry laying down more precisely the material scope of the measure (*arrêté conjoint des ministres chargés de l'économie et de l'industrie*), a draft of which was also submitted to the Commission.

2.3. Administration of the measure and aid granting authority

- (11) The French Ministry of economy, finances, industrial and digital sovereignty (including Ministry of budget) is responsible for administering the measure and granting the aid.

⁽⁶⁾ Each fraction of the tax credit (corresponding to the fraction of the investment costs incurred that year) will be set off against the income tax payable by the taxpayer (for undertakings subject to income tax) in the year in which the expenditure referred to in the investment plan is incurred or against the corporate tax payable by the undertaking in the year in which that expenditure is incurred (for undertakings subject to corporate tax). For undertakings which are not subject to corporate tax, irrespective of the closing date of the financial years and regardless of their duration, the fraction of the tax credit will be calculated by reference to the expenditure incurred in the last calendar year. If the amount of the fraction of the tax credit exceeds the tax due for the year or financial year, the excess shall be paid to the beneficiary.

⁽⁷⁾ See point IV. of the draft article.

2.4. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 2.9 billion, to be financed from the State budget.
- (13) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2025 ⁽⁸⁾.

2.5. Beneficiaries

- (14) The final beneficiaries of the measure are SMEs ⁽⁹⁾ and large enterprises ⁽¹⁰⁾, provided they are taxed on their actual profit ⁽¹¹⁾. However, undertakings in difficulty ⁽¹²⁾, credit institutions or other financial institutions are excluded as eligible final beneficiaries.
- (15) France confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (16) France confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable

⁽⁸⁾ The tax liability in relation to which the aid is granted must have arisen no later than 31 December 2025. The benefit of the tax advantage is conditional to an agreement delivered by the French Ministry of budget before that date. The French authorities explain that undertakings can already apply for an agreement, but no agreement will be delivered before the notification of the Commission decision approving the scheme.

⁽⁹⁾ 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).

⁽¹⁰⁾ As defined in Article 2, point 24, 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).

⁽¹¹⁾ The French authorities explain that, as a consequence, undertakings subject to a simplified income tax regime are excluded from the scheme because the way their profit is calculated is already advantageous. Undertakings exempted from corporate tax are also excluded (as they already benefit from an advantage linked to their exemption) unless they are located in certain areas (assisted areas within the meaning of the Regional aid guidelines and '*zone d'aide à l'investissement des petites et moyennes entreprises*'), as the exemption is merely temporary.

⁽¹²⁾ As defined in Article 2, point 18, of Commission Regulation (EU) No 651/2014.

regulations⁽¹³⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (17) The measure is open to all sectors, except the financial sector. Under the measure, the planned aid is aimed at incentivising investments for:
- (i) the production of equipment needed for the transition to a net-zero economy, namely, solar panels, batteries⁽¹⁴⁾, wind turbines, and heat-pumps; or
 - (ii) the production of key components⁽¹⁵⁾ provided they are designed and primarily used as direct input for the production of the equipment defined under point (i); or
 - (iii) the production or recovery of related critical raw materials⁽¹⁶⁾ necessary for the production of the equipment and key components defined in points (i) and (ii).
- (18) The measure applies to the whole French territory (except the outermost region of Saint-Martin which sets its own corporate and income tax rules within the French institutional framework)⁽¹⁷⁾.

⁽¹³⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁽¹⁴⁾ The French authorities explain that with regard to batteries and solar panels, batteries cells and solar panel modules, "production" does not include assembling activities.

⁽¹⁵⁾ Key components for the production of solar panels are photovoltaic or hybrid cells that can be associated with the manufacture of photovoltaic or hybrid modules; PV grade wafers; back sheets (including Tedlar®), encapsulant (including EVA and POE); solar glass; ingots; supporting structure. Key components for the production of wind turbines are structures for floating foundations, including anchoring systems and floating sub-components; foundations (laid and floating) for offshore wind; slewing rings; forged parts/foundry for large turbine component; permanent magnets; nacelle and sub segments: generator, hub, backend electrical system; blades; tower structures and segments; electrical substations; dynamic and electrical connecting cables (including inter-turbines cables); materials for recyclable blades and composite materials from recycled blades. Key components for the production of heat-pumps are compressors; electronic and regulatory systems; thermal and hydraulic exchangers (including condenser evaporator and fans); underground exchangers and geothermal sensors; hydraulic distribution components (including valve technology); refrigerant (circuits and components), casing elements. Key components for the production of batteries are battery cells that can be associated with the manufacture of battery modules; electrodes (anode, cathode); battery grade electrolytes; electrolyte salts (LiFSI, LiPF6); precursor cathode active material (pCAM)/cathode active material (CAM); anode materials (including synthetic graphite) and their precursors battery grade separators; polymer binders; carbon nanotubes; calcium zincate; nano-silicon powders, copper and aluminium foils.

⁽¹⁶⁾ By reference to the EU list of critical raw materials contained in Annex IV to Commission Regulation No 651/2014.

⁽¹⁷⁾ Saint Martin is a "*collectivité territoriale d'outre-mer*" which has been granted fiscal autonomy by a fundamental law (*loi organique n° 2007-223 du 21 février 2007 portant dispositions statutaires et institutionnelles relatives à l'outre-mer*).

2.7. Basic elements of the measure

- (19) The purpose of the measure is to grant aid for investments for the production of relevant equipment for the transition towards a net-zero economy, namely solar panels, wind turbines, heat pumps and batteries (recital (17)(i)), of key components designed and primarily used as direct input for the production of solar panels, wind turbines, heat pumps and batteries (recital (17)(ii)), and for the production or recovery of related critical raw materials necessary for the production of equipment and key components defined in recital (17)(ii) and (iii)).
- (20) Undertakings carrying out a project for the production of relevant key components for the production of each type of equipment defined in recital (17)(i) must demonstrate that, to be eligible under the scheme, at least 50 % of the turnover generated by their project⁽¹⁸⁾ is planned to be achieved with undertakings producing such equipment. Similarly, undertakings carrying out a project for the production and recovery of the relevant critical raw materials necessary for the production of each type of equipment defined in recital (17)(i) or related key components defined in recital (17)(ii) must demonstrate that directly or indirectly, at least 50 % of the turnover generated by their project supported by the tax credit is planned to be achieved with undertakings producing those equipment or key components. In case the undertakings do not reach this percentage they are not eligible under the scheme⁽¹⁹⁾.
- (21) To benefit from the tax advantage, undertakings will have to apply for an agreement from the Ministry of budget. In their applications, undertakings have to demonstrate the economic viability of the investment plan and their compliance with their fiscal and social obligations, as well as the fulfilment of the conditions mentioned in recital (20). The applicants must describe the investment plan, the amounts and schedule envisaged, and the eligible costs. The public entity in charge of environment and energy efficiency (*Agence de l'environnement et de la maîtrise de l'énergie*, ADEME) will ensure that the investments fall within the scope of the scheme defined in recital (17).
- (22) The costs eligible for aid under the scheme are investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know how or other intellectual property) required for the production or recovery of the goods listed in recital (17). Intangible assets must (i) remain associated with the area concerned and must not be transferred to other areas; (ii) be used primarily in the relevant production facility receiving the aid; (iii) be amortisable; (iv) be purchased under market conditions from third parties unrelated to the buyer; (v) be included in the assets of the undertaking that receives the aid; and (vi) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).

⁽¹⁸⁾ The project is presented in the investment plan for the agreement of the Ministry of budget as explained in recital (21).

⁽¹⁹⁾ For those beneficiaries reaching between 50 % and 100 %, all other conditions being met, the French authorities confirm that only the investment expenditures compliant with the conditions in recital 17 (ii) and 17 (iii) are taken into account to calculate the tax credit.

- (23) Works on the investment must start ⁽²⁰⁾ only after the beneficiary has submitted the application for an agreement, which will include the information required in Annex II to the Temporary Crisis and Transition Framework.
- (24) The aid intensity may not exceed 20 % ⁽²¹⁾ of the eligible costs defined in recital (22), up to a maximum of EUR 150 million per undertaking in France. However, (a) for investments in assisted areas designated in the regional aid map 2022-2027 for France ⁽²²⁾ in accordance with Article 107(3), point (c), TFEU (“c” areas), the aid intensity may be increased to 25 % ⁽²³⁾ of the eligible costs up to a maximum of EUR 200 million per undertaking in France; (b) for investments in assisted areas designated in the regional aid map 2022-2027 for France in accordance with article 107(3), point (a), TFEU (“a” area), the aid intensity may be increased to 40 % ⁽²⁴⁾ of the eligible costs up to a maximum of EUR 350 million per undertaking in France.
- (25) In addition, for investments made by small enterprises, the aid intensities may be increased by further 20 percentage points and, for investments made by medium-sized enterprises, by 10 percentage points ⁽²⁵⁾.
- (26) France confirms that the beneficiary must commit to maintain the investments in the area concerned for at least 5 years or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.
- (27) Aid may not be granted to facilitate the relocation of the production activities ⁽²⁶⁾ to another contracting State of the EEA agreement. For this purpose, the

⁽²⁰⁾ ‘Start of works’ means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

⁽²¹⁾ Including the increase of the maximum aid intensity set by point 85(g) Temporary Crisis and Transition Framework by 5 percentage points provided for aid granted in the form of tax advantages by point 85(h) Temporary Crisis and Transition Framework.

⁽²²⁾ Decision C(2022) 288 final of 21.1.2022 in case SA.100838 - France - Regional aid map for France (1 January 2022 – 31 December 2027), (OJ C60 of 4.2.2022, p.31), amended by decision C(2022) 3093 final of 16.5.2022 in case SA.101498 - France - Amendment of the regional aid map for France (1 January 2022 – 31 December 2027), (OJ C235 of 17.6.2022, p.5), and decision C(2023) 7766 final of 20.11.2023 in case SA. 109498 - France - Amendment to the Regional aid map for France (1 January 2022 – 31 December 2027) for the period 1 January 2024 to 31 December 2027 (mid-term review), (OJ C, C/2023/1241, 29.11.2023).

⁽²³⁾ Same comment as in footnote 17.

⁽²⁴⁾ Same comment as in footnote 17.

⁽²⁵⁾ See point V. B of the draft Article.

⁽²⁶⁾ Within the meaning of footnote 147 to the Temporary Crisis and Transition Framework.

beneficiary must confirm that, in the two years preceding the aid application, no relocation has taken place to the establishment in which the aided investment will be carried out and commit not to carry out such relocation for a period of two years after completion of the investment.

- (28) The French authorities confirm that the granting authority will verify, *inter alia*, before granting the aid, i.e. at the time of assessing the application for an agreement under the scheme, the real risk that the investment will not be carried out in the EEA in the absence of aid and that there is no risk of relocation within the EEA.
- (29) The French authorities confirm that they will inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II of the Temporary Crisis and Transition Framework.

2.8. Compliance with relevant provisions of Union law

- (30) The French authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

2.9. Cumulation

- (31) The French authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations⁽²⁷⁾ or the General Block Exemption Regulation⁽²⁸⁾ provided the provisions and cumulation rules of those Regulations are respected.

⁽²⁷⁾ 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).

⁽²⁸⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1), Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1) and Commission Regulation (EU) 2022/2473 of 14 December 2022 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 on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82).

- (32) The French authorities confirm that aid under the measure may not be cumulated with aid approved by the Commission under the COVID-19 Temporary Framework ⁽²⁹⁾.
- (33) The French authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework provided the provisions in those specific sections are respected.
- (34) The French authorities confirm that aid granted under the measure can be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances will the total aid amount exceed 100 % of the eligible costs.

2.10. Monitoring and reporting

- (35) The French authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 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 6 months* from the moment of granting ⁽³⁰⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (36) By notifying the measure before putting it into effect (recital (10)), 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 be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

⁽²⁹⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

⁽³⁰⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) 2022/2472 and Annex III to Commission Regulation (EU) 2022/2473. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

- (38) The measure is imputable to the State, since it is administered by the Ministry of Economy, finances, industrial and digital sovereignty and it is based on an article of the 2024 budget law. It is financed through State resources, since it is financed by public funds (recital (12)).
- (39) The measure confers an advantage on its beneficiaries in the form of tax advantages (recital (9)), advantage which they would not have had under normal market conditions.
- (40) The advantage granted by the measure is selective: According to Articles 12, 13, 38, 156 and 209 of the French *code général des impôts* (CGI), the taxable profit for income tax and corporate tax purposes is the "net profit". In addition, pursuant to Articles 193 and 219 (I) of the CGI, the amount of income tax or corporate tax is determined by applying to the net profit the normal tax rate. By derogation to these general rules of taxation, which represent the reference framework, the amount of (income or corporate) tax to be paid by the undertakings benefitting from the measure is reduced by the amount of the tax credit. In the light of the objective of corporate tax and income tax, which is to tax the net profit, the beneficiaries are in the same situation as any other undertaking, in particular undertakings carrying out other investment projects not benefitting from a tax credit. The French authorities have not provided any justification for that discrimination. The measure - tax credit - was introduced for public policy reasons, which are external to the tax system, and thus the measure cannot be regarded as justified by the logic of the tax system. Accordingly, the tax advantage is selective. Moreover, the advantage is awarded only to certain undertakings in certain sectors and only if they carry out certain investments under certain conditions (recitals (14), (17) and (20)).
- (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), point (c), TFEU, the Commission may declare compatible with the internal market 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.
- (45) The current crisis has demonstrated the urgent need to reduce dependency on imports of fossil fuels and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures

in line with the REPowerEU Plan⁽³¹⁾, to accelerate the decarbonisation of European industry and to address the productive investment gap in sectors strategic for the transition towards a net-zero economy in order to achieve the Union's climate targets. The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission's view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for a limited period of time if it contributes to accelerating the economic transition and addressing the productive investment gap in sectors strategic for the transition towards a net-zero economy by providing incentives for their fast deployment, also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA (recital (5)).

(46) The Commission considers that the measure is necessary, appropriate and proportionate in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU. In particular:

- the measure is aimed at investment projects with strategic importance for the transition towards a net-zero economy. The measure will support the production of solar panels, wind turbines, heat pump and batteries, key components designed and primarily used as direct input for the production of these equipment and/or production or recovery of related critical raw materials necessary for the production of the said equipment and key components (recital (17)). The measure therefore complies with point 85(a) of the Temporary Crisis and Transition Framework;
- the aid is granted under the measure on the basis of a scheme with an estimated budget (recital (12)). The measure therefore complies with point 85(b) of the Temporary Crisis and Transition Framework;
- aid under the measure can be granted until 31 December 2025 at the latest (recital (13)). The measure therefore complies with point 85(c) of the Temporary Crisis and Transition Framework;
- the measure provides that beneficiaries must apply for the aid before the start of works and must provide the information required in Annex II to the Temporary Crisis and Transition Framework (recital (23)). The measure therefore complies with point 85(d) of the Temporary Crisis and Transition Framework;
- aid under the measure will be granted in the form of tax advantages. The measure therefore complies with point 85(e) of the Temporary Crisis and Transition Framework;
- the calculation of eligible costs as set out in recital (22) fulfils the requirements of point 85(f) of the Temporary Crisis and Transition Framework;

⁽³¹⁾ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan (COM/2022/230 final).

- the aid intensities and the overall aid amounts under the measure (recital (24)) correspond to the thresholds in point 85(g) of the Temporary Crisis and Transition Framework increased by the bonuses applicable under point 85(h) of the Temporary Crisis and Transition Framework. In addition, the nominal amount of the tax advantage under the measure does not exceed the applicable aid intensity and overall aid amounts, in line with points 85(e), 85(g) and 85(h) of the Temporary Crisis and Transition Framework;
- France commits that beneficiaries under the measure will maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment, and to respect the additional conditions set in line with point 85(i) of the Temporary Crisis and Transition Framework (recital (26)). The measure therefore complies with point 85(i) of the Temporary Crisis and Transition Framework;
- France commits that before each individual grant of aid under the scheme, the granting authority will verify, on the basis of the information provided by the beneficiary (recital (28)), the concrete risks of the productive investment to be supported under the measure not taking place within the EEA and that there is no risk of relocation within the EEA (recital (27)). The measure therefore complies with point 85(j) of the Temporary Crisis and Transition Framework;
- France commits that beneficiaries under the measure will have to (i) confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place; and (ii) commit not to carry out such relocation up to a period of two years after completion of the investment (recital (27)). The measure therefore complies with point 85(k) of the Temporary Crisis and Transition Framework;
- aid under the measure will not be granted to undertakings in difficulty (recital (14)). The measure therefore complies with point 85(l) of the Temporary Crisis and Transition Framework;
- France confirmed that aid under the measure may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules (recital (31)). Under no circumstances may the total aid amount exceed 100 % of the eligible costs (recital (34)). The measure therefore complies with point 85(m) of the Temporary Crisis and Transition Framework;
- France committed to inform the Commission, within 60 days from the moment of granting individual aid under the measure, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary (recital (29)). The measure therefore complies with point 85(o) of the Temporary Crisis and Transition Framework.

- (47) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ⁽³²⁾.
- (48) France has confirmed that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.
- (49) The French authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, 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 (27)).
- (50) The French authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
- (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
 - (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
 - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recitals (15) and (16)).
- (51) The French authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (35)). The French authorities further confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework, the previous Temporary Crisis Framework and the COVID-19 Temporary Framework and the cumulation rules in the relevant regulations and applicable communications are respected (recitals (31) to (33)).
- (52) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure which accelerates the economic transition and overcomes the current crisis when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to

⁽³²⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paras, 96 et seq.

Article 107(3), point (c), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

The Commission has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (c), of the TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President