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2021/0436 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

amending Implementing Decision (EU) 2020/1354 granting temporary support under Regulation (EU) 2020/672 to the Portuguese Republic to mitigate unemployment risks in the emergency following the COVID-19 outbreak

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Regulation (EU) 2020/672 ('SURE Regulation') lays down the legal framework for providing Union financial assistance to Member States, which are experiencing, or are seriously threatened with, a severe economic disturbance caused by the COVID-19 outbreak. Support under SURE serves for the financing, primarily, of short-time work schemes or similar measures aimed at protecting employees and the self-employed and thus reducing the incidence of unemployment and loss of income, as well as for the financing, as an ancillary, of some health-related measures, in particular in the workplace.

On 25 September 2020, the Council granted financial assistance to Portugal with a view to complementing its national efforts to address the impact of the COVID-19 outbreak and respond to the socio-economic consequences of the outbreak for workers and the self-employed.

On 9 December 2021, Portugal requested the Union to extend the list of measures for which the Council granted financial assistance in Council Implementing Decision (EU) 2020/1354.

In accordance with Article 6(2) of the SURE Regulation, the Commission has consulted the Portuguese authorities to verify the sudden and severe increase in actual and planned expenditure directly related to Portuguese labour market measures and health-related measures caused by the COVID-19 pandemic. In particular, these measures pertain to new measures which Portugal implemented:

- (a) the extraordinary support scheme for self-employed workers, workers without access to other social protection mechanisms, and managers whose income has been particularly affected by the COVID-19 pandemic.

In the case of self-employed workers, the measure provides a benefit equal to two-thirds of the drop in the workers' monthly income, between the monthly average according to the last quarterly income statement and the monthly average of 2019, with an upper limit of EUR 501.16. Eligible self-employed workers are those experiencing a drop in income of at least 40% in the period from March to December 2020, compared with 2019.

In the case of workers without access to other social protection mechanisms, the measure provides: (i) for employees, a benefit equal to the difference between the monthly reference value of EUR 501.16 and the average monthly wage per adult in the respective household; or, (ii) for self-employed workers, a benefit equal to two-thirds of the drop in the workers' monthly income, between the monthly average according to the last quarterly income statement and the monthly average of 2019, with an upper limit of EUR 501.16.

In the case of managers, the measure provides a benefit equal to either their reference average monthly income when it is below 1.5 times Portugal's social support index (EUR 438.81), or two-thirds of their reference average monthly income when it is equal or above the aforementioned index. Eligible managers are those whose business activity has been temporarily suspended due to the COVID-19 pandemic, or that are experiencing revenue losses of at least 40% in the period of 30 days

preceding the request for support, compared with the same month of the previous year, or with the monthly average of the two months prior to that period.

In all cases, the benefit has a lower limit equal to EUR 50, increased to 50% of the observed monthly income drop when the latter falls between 50% and 100% of Portugal's social support index, or EUR 219.40 when the income drop exceeds the aforementioned index.

- (b) the social support scheme for artists, authors, technicians and other art professionals. The measure provides for a monthly benefit equal to Portugal's social support index (EUR 438.81).
- (c) the hiring of additional health professionals and overtime work in the National Health Service to help address pandemic-related challenges.

Portugal provided the Commission with the relevant information.

Taking into account the available evidence, the Commission proposes to the Council to adopt an Implementing Decision to extend the list of measures for which the Council already granted financial assistance in Council Implementing Decision (EU) 2020/1354.

Health-related measures, as requested by Portugal, including the additional health-related measures requested on 9 December 2021, amount to EUR 1 513 823 304.

- **Consistency with existing policy provisions in the policy area**

The present proposal is fully consistent with Council Regulation (EU) 2020/672, under which the proposal is made.

The present proposal comes in addition to another Union law instrument to provide support to Member States in case of emergencies, namely Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (EUSF) ('Regulation (EC) No 2012/2002'). Regulation (EU) 2020/461 of the European Parliament and of the Council, which amends that instrument to extend its scope to cover major public health emergencies and to define specific operations eligible for financing, was adopted on 30 March.

- **Consistency with other Union policies**

The proposal is part of a range of measures developed in response to the current COVID-19 pandemic such as the 'Coronavirus Response Investment Initiative', and it complements other instruments that support employment such as the European Social Fund and the European Fund for Strategic Investments (EFSI)/InvestEU. By making use of borrowing and lending in this particular case of the COVID-19 outbreak for supporting Member States, this proposal acts as a second line of defence to finance short-time work schemes and similar measures, helping protect jobs and thus employees and self-employed against the risk of unemployment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this instrument is Council Regulation (EU) 2020/672.

- **Subsidiarity (for non-exclusive competence)**

The proposal follows a Member State request and shows European solidarity by providing Union financial assistance in the form of temporary loans to a Member State affected by the COVID-19 outbreak. As a second line of defence, such financial assistance supports the

government's increased public expenditure on a temporary basis in respect of short-time work schemes and similar measures to help them protect jobs and thus employees and self-employed against the risk of unemployment and loss of income.

Such support will help the population affected and helps to mitigate the direct societal and economic impact caused by the present COVID-19 crisis.

- **Proportionality**

The proposal respects the proportionality principle. It does not go beyond what is necessary to achieve the objectives sought by the instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Due to the urgency to prepare the proposal so that it can be adopted in a timely manner by the Council, a stakeholder consultation could not be carried out.

- **Impact assessment**

Due to the urgent nature of the proposal, no impact assessment was carried out.

4. BUDGETARY IMPLICATIONS

The Commission should be able to contract borrowings on the financial markets with the purpose of on-lending them to the Member State requesting financial assistance under the SURE instrument.

In addition to the provision of Member State guarantees, other safeguards are built into the framework in order to ensure the financial solidity of the scheme:

- A rigorous and conservative approach to financial management;
- A construction of the portfolio of loans that limits concentration risk, annual exposure and excessive exposure to individual Member States whilst ensuring sufficient resources could be granted to Member States most in need; and
- Possibilities to roll over debt.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak¹, and in particular Article 6(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Further to a request from Portugal on 11 August 2020, on 25 September 2020 the Council granted financial assistance to Portugal in the form of a loan amounting to a maximum of EUR 5 934 462 488 with a maximum average maturity of 15 years, with a view to complementing Portugal's national efforts to address the impact of the COVID-19 outbreak and respond to the socio-economic consequences of that outbreak for workers and the self-employed.
- (2) The loan was to be used by the Portuguese Republic to finance the short-time work schemes, similar measures and health-related measures, as referred to in Article 3 of Council Implementing Decision (EU) 2020/1354.²
- (3) The COVID-19 outbreak has immobilised a substantial part of the labour force in Portugal. This has led to a still sudden and severe increase in public expenditure in Portugal in respect of new measures that Portugal implemented, namely the extraordinary support scheme for self-employed workers, workers without access to other social protection mechanisms, and managers whose income has been particularly affected by the COVID-19 pandemic, the social support scheme for artists, authors, technicians and other art professionals, and the hiring of additional health professionals and overtime work in the National Health Service to help address pandemic-related challenges.
- (4) The COVID-19 outbreak and the extraordinary measures implemented by Portugal in 2020 and 2021 to contain that outbreak and its socio-economic and health-related impact had and still have a dramatic impact on public finances. Portugal had a general government deficit and debt of 5.7% and 133.6% of gross domestic product (GDP), respectively, by the end of 2020. According to the Commission's 2021 autumn forecast, Portugal's general government deficit and debt are forecast to narrow to 4.5%

¹ OJ L 159, 20.5.2020, p. 1.

² Council Implementing Decision (EU) 2020/1354 of 25 September 2020 granting temporary support under Regulation (EU) 2020/672 to the Portuguese Republic to mitigate unemployment risks in the emergency following the COVID-19 outbreak (OJ L 314, 29.9.2020, p. 49).

and 128.1% of GDP, respectively, in 2021, and Portugal's GDP is projected to increase by 4.5% in 2021.

- (5) On 9 December 2021, Portugal requested the Union to extend the list of measures for which financial assistance was already granted by Implementing Decision (EU) 2020/1354 with a view to continuing to complement its national efforts undertaken in 2020 and 2021 to address the impact of the COVID-19 outbreak and respond to the socio-economic consequences of the outbreak for workers and the self-employed. In particular, it concerns the measures set out in recitals 6 and 7.
- (6) 'Law No 75-B/2020 of 31 December'³ and the subsequent 'Government Ordinance No 19-A/2021 of 25 January'⁴, which are referred to in Portugal's request of 9 December 2021, introduced an extraordinary support scheme for self-employed workers, workers without access to other social protection mechanisms, and managers whose income has been particularly affected by the COVID-19 pandemic.

In the case of self-employed workers, the measure provides a benefit equal to two-thirds of the drop in the workers' monthly income, between the monthly average according to the last quarterly income statement and the monthly average of 2019, with an upper limit of EUR 501.16. Eligible self-employed workers are those experiencing a drop in income of at least 40% in the period from March to December 2020, compared with 2019.

In the case of workers without access to other social protection mechanisms, the measure provides: (i) for employees, a benefit equal to the difference between the monthly reference value of EUR 501.16 and the average monthly wage per adult in the respective household; or, (ii) for self-employed workers, a benefit equal to two-thirds of the drop in the workers' monthly income, between the monthly average according to the last quarterly income statement and the monthly average of 2019, with an upper limit of EUR 501.16.

In the case of managers, the measure provides for a benefit equal to either their reference average monthly income when it is below 1.5 times Portugal's social support index (EUR 438.81), or two-thirds of their reference average monthly income when it is equal to or above the aforementioned index. Eligible managers are those whose business activity has been temporarily suspended due to the COVID-19 pandemic, or that are experiencing revenue losses of at least 40% in the period of 30 days preceding the request for support, compared with the same month of the previous year, or with the monthly average of the two months prior to that period.

In all cases, the benefit has a lower limit equal to EUR 50, increased to 50% of the observed monthly income drop when the latter falls between 50% and 100% of Portugal's social support index, or to EUR 219.40 when the income drop exceeds the aforementioned index.

- (7) 'Annex of the Resolution of the Council of Ministers No 41/2020 of 6 June'⁵ and the subsequent 'Government Ordinance No 180/2020 of 3 August'⁶ and 'Government Ordinance No 37-A/2021 of 15 February'⁷, which are referred to in Portugal's request of 9 December 2021, introduce a social support scheme for artists, authors, technicians

³ 'Diário da República n.º 253/2020, 1º Suplemento, Série I de 2020-12-31', pp. 171-(2) to 171-(288).

⁴ 'Diário da República n.º 16/2021, 1º Suplemento, Série I de 2021-01-25', pp. 25-(2) to 25-(8).

⁵ 'Diário da República n.º 110-A/2020, Série I de 2020-06-06', pp. 3 to 37.

⁶ 'Diário da República n.º 149/2020, Série I de 2020-08-03', pp. 19 to 25.

⁷ 'Diário da República n.º 31/2021, 1º Suplemento, Série I de 2021-02-15', pp. 21-(2) to 21-(11).

and other art professionals. The measure provides for a monthly benefit equal to Portugal's social support index (EUR 438.81).

- (8) Portugal also introduced a series of new health-related measures, which it has implemented to address the COVID-19 outbreak. In particular, it concerns the measures set out in recital 9.
- (9) 'Decree-Law No 10-A/2020 of 13 March'⁸ and the subsequent 'Decree-Law No 10-A/2021 of 2 February'⁹, which are referred to in Portugal's request of 9 December 2021, provided for the hiring of additional health professionals and overtime work in the National Health Service to help address pandemic-related challenges. In particular, the administrative process underlying the hiring of workers under fixed-term contracts by the National Health Service was streamlined, and additional doctors and nurses have been hired since the outbreak of the COVID-19 pandemic. Moreover, the legal limits established for overtime work by civil servants were suspended in the National Health Service, and the organisation of shifts using supplementary work by specialist doctors and nurses, if necessary, was made possible to cope with the COVID-19 pandemic.
- (10) Portugal fulfils the conditions for requesting financial assistance set out in Article 3 of Regulation (EU) 2020/672. Portugal has provided the Commission with appropriate evidence that the actual and planned public expenditure has increased by EUR 5 934 462 488 as of 1 February 2020 due to the national measures taken to address the socio-economic effects of the COVID-19 outbreak. This constitutes a sudden and severe increase because it is related also to new measures directly related to short-time work schemes and similar measures that cover a significant proportion of undertakings and of the labour force in Portugal.
- (11) The Commission has consulted Portugal and verified the sudden and severe increase in the actual and planned public expenditure directly related to short-time work schemes and similar measures, as well as the recourse to relevant health-related measures related to the COVID-19 outbreak, referred to in the request of 9 December 2021, in accordance with Article 6 of Regulation (EU) 2020/672.
- (12) Health-related measures, as requested by Portugal, including the additional health-related measures referred to in recital 9, amount to EUR 1 513 823 304.
- (13) Financial assistance already granted by Implementing Decision (EU) 2020/1354 should therefore also cover the new measures which Portugal implemented, referred to in recitals 6, 7 and 9.
- (14) This Decision should be without prejudice to the outcome of any procedures relating to distortions of the operation of the internal market that may be undertaken, in particular pursuant to Articles 107 and 108 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 108 of the Treaty.
- (15) Portugal should inform the Commission on a regular basis of the implementation of the planned public expenditure, in order to enable the Commission to assess the extent to which Portugal has implemented that expenditure.
- (16) The decision to provide financial assistance has been reached taking into account existing and expected needs of Portugal, as well as requests for financial assistance

⁸ 'Diário da República n.º 52/2020, 1º Suplemento, Série I de 2020-03-13', pp. 22-(2) to 22-(13).

⁹ 'Diário da República n.º 22/2021, 2º Suplemento, Série I de 2021-02-02', pp. 15-(15) to 15-(19).

pursuant to Regulation (EU) 2020/672 already submitted or planned to be submitted by other Member States, while applying the principles of equal treatment, solidarity, proportionality and transparency,

HAS ADOPTED THIS DECISION:

Article 1
Implementing Decision (EU) 2020/1354 is amended as follows:

(1) Article 3 is replaced by the following:

‘Article 3

Portugal may finance the following measures:

- (a) the support for the maintenance of employment contracts through the temporary interruption of work or reduction of normal working time, as provided for in Articles 298 to 308 of ‘Law No 7/2009 of 12 February’;
- (b) the new and simplified special support for the maintenance of employment contracts through the temporary interruption of work or reduction of normal working time, as provided for in ‘Decree-Law No 10-G/2020 of 26 March’ and Article 2 of ‘Decree-Law No 27-B/2020 of 19 June’, as amended by Article 142 of ‘Law No 75-B/2020 of 31 December’;
- (c) the special vocational programmes for the maintenance of employment contracts through the temporary interruption of work or reduction of normal working time, as provided for in Articles 5 (2) and 7 to 9 of ‘Decree-Law No 10-G/2020 of 26 March’;
- (d) the new special support for firms for the resumption of business activity, as provided for in Article 4(1) to (7) and (10) to (12) and Article 5 of ‘Decree-Law No 27-B/2020 of 19 June’, and in Article 14-A of ‘Decree-Law No 46-A/2020 of 30 July’, as added by Article 4 of ‘Decree-Law No 6-C/2021 of 15 January’;
- (e) the new income stabilisation supplement for employees covered by either the support schemes referred to in points (a), (b) or (c) for the maintenance of employment contracts through the temporary interruption of work or reduction of normal working time as provided for in Article 3 of ‘Decree-Law No 27-B/2020 of 19 June’, as amended by ‘Decree-Law No 58-A/2020 of 14 August’;
- (f) the new and progressive special support for the maintenance of employment contracts through the temporary reduction of normal working time as provided for in ‘Decree-Law No 46-A/2020 of 30 July’, as amended by Article 142 of ‘Law No 75-B/2020 of 31 December’;
- (g) the new special support for the self-employed, informal workers and managing partners as provided for in Articles 26 to 28-A of ‘Decree-Law No 10-A/2020 of 13 March’, as amended by Article 5 of ‘Decree-Law No 20-C/2020 of 7 May’, and Article 325-G of ‘Law No 2/2020 of 31 March’, as added by Article 3 of ‘Law No 27-A/2020 of 24 July’;

- (h) the family allowance for employees prevented from working due to the need to assist their children under 12 years of age or other dependents, as provided for in Article 23 of ‘Decree-Law No 10-A/2020 of 13 March’;
- (i) the special support for the maintenance of trainers’ employment contracts in the light of the cancellation of vocational trainings as provided for in ‘Government Order No 3485-C/2020 of 17 March’, ‘Government Order No 4395/2020 of 10 April’ and ‘Government Order No 5897-B/2020 of 28 May’;
- (j) the regional employment-related measures in the autonomous region of the Azores as provided for in ‘Resolution of the Council of the Regional Government of the Azores No 97/2020 of 8 April’, ‘Resolution of the Council of the Regional Government of the Azores No 120/2020 of 28 April’, ‘Resolution of the Council of the Regional Government of the Azores No 128/2020 of 5 May’, ‘Resolution of the Council of the Regional Government of the Azores No 129/2020 of 5 May’, ‘Resolution of the Council of the Regional Government of the Azores No 195/2020 of 15 July’, ‘Resolution of the Council of the Regional Government of the Azores No 196/2020 of 15 July’ and ‘Resolution of the Council of the Regional Government of the Azores No 200/2020 of 17 July’;
- (k) the regional employment-related measures in the autonomous region of Madeira, as provided for in ‘Resolution of the Regional Government of Madeira No 101/2020 of 13 March’ and ‘Ordinance No 133-B/2020 of the Vice-Presidency of the Regional Government of Madeira and of the Regional Secretariat for Social Inclusion and Citizenship of 22 April’;
- (l) the allowance for employees and self-employed in prophylactic isolation as provided for in Article 19 of ‘Decree-Law No 10-A/2020 of 13 March’ and Article 325-F of ‘Law No 2/2020 of 31 March’, as amended by Article 3 of ‘Law No 27-A/2020 of 24 July’;
- (m) the sickness allowance owing to the contraction of COVID-19 as provided for in ‘Government Order No-2875-A/2020 of 3 March’, Article 20 of ‘Decree-Law No 10-A/2020 of 13 March’ and Article No 325-F of ‘Law No 2/2020 of 31 March’, as amended by Article 3 of ‘Law No 27-A/2020 of 24 July’;
- (n) the purchase of personal protective equipment to be used in the workplace, notably in public hospitals as provided for in Norm No 012/2020 of 6 May, as amended on 14 May 2020, and in Norm No 013/2020 of 10 July, as amended on 23 June 2020, both issued by the Portuguese Directorate-General for Health, as well as in line ministries, municipalities and the autonomous regions of the Azores and Madeira as provided for in Article 3 of ‘Decree-Law No 10-A/2020 of 13 March’;
- (o) the school hygiene campaign as provided for in Article 9 of ‘Decree-Law No 10-A/2020 of 13 March’;
- (p) the testing for contraction of COVID-19 of inpatients and workers of public hospitals, as well as of employees of nursing homes and childcare facilities, as notably provided for in Norm No 012/2020 of 6 May, as amended on 14 May 2020, and in Norm No 013/2020 of 10 July, as amended on 23 June 2020, both issued by the Portuguese Directorate-General for Health;
- (q) the new special compensation for workers in the National Health Service involved in fighting the COVID-19 outbreak as provided for in Article 42-A of

‘Law No 2/2020 of 31 March’, as amended by Article 3 of ‘Law No 27-A/2020 of 24 July’, and by Article 291 of ‘Law No 75-B/2020 of 31 December’;

- (r) the extraordinary support scheme for self-employed workers, workers without access to other social protection mechanisms, and managers whose income has been particularly affected by the COVID-19 pandemic, as provided for in Article 156 of ‘Law No 75-B/2020 of 31 December’, and subject to the conditions set out in points (2) (c) to (f) therein, as further specified in ‘Government Ordinance No 19-A/2021 of 25 January’;
- (s) the social support scheme for artists, authors, technicians and other art professionals provided for in point 2.5.1 of the ‘Annex of the Resolution of the Council of Ministers No 41/2020 of 6 June’, as further specified in Articles 10 to 12 of ‘Government Ordinance No 180/2020 of 3 August’, and extended by Articles 5 to 7 of ‘Government Ordinance No 37-A/2021 of 15 February’;
- (t) the hiring of additional health professionals and overtime work in the National Health Service to help address pandemic-related challenges, as provided for in Article 6 of ‘Decree-Law No 10-A/2020’ of 13 March and in Articles 5 to 8 of ‘Decree-Law’ No 10-A/2021 of 2 February.

(2) Article 4 is replaced by the following:

‘Article 4

1. Portugal shall inform the Commission by 30 March 2021, and every six months thereafter of the implementation of the planned public expenditure until that planned public expenditure has been fully implemented.
2. Where measures referred to in Article 3 are based on planned public expenditure and have been subject to an Implementing Decision amending Implementing Decision (EU) 2020/1354, Portugal shall inform the Commission within 6 months after the date of adoption of that decision, and every 6 months thereafter of the implementation of the planned public expenditure until that planned public expenditure has been fully implemented.’

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

*For the Council
The President*