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Subject: 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

COUNCIL IMPLEMENTING DECISION (EU) 2022/...

of ...

**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**

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,

¹ OJ L 159, 20.5.2020, p. 1.

Whereas:

- (1) Further to a request from Portugal on 11 August 2020, the Council, by means of Implementing Decision (EU) 2020/1354¹, 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 socioeconomic consequences of that outbreak for workers and the self-employed.
- (2) The loan was to be used by Portugal to finance short-time work schemes, similar measures and health-related measures, as referred to in Article 3 of Implementing Decision (EU) 2020/1354.
- (3) The COVID-19 outbreak has immobilised a substantial part of the labour force in Portugal. This has led to repeated sudden and severe increases in public expenditure in Portugal in respect of new measures that Portugal has 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.

¹ 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).

- (4) The COVID-19 outbreak and the extraordinary measures implemented by Portugal in 2020 and 2021 to contain that outbreak and its socioeconomic and health-related impact had, and are still having, a dramatic impact on public finances. Portugal had a general government deficit and debt of 5,8 % and 135,2 % 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 % and 128,1 % of GDP respectively in 2021, and its 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 had already been granted by means of Implementing Decision (EU) 2020/1354 in order to further complement its national efforts undertaken in 2020 and 2021 to address the impact of the COVID-19 outbreak and respond to the socioeconomic consequences of the outbreak for workers and the self-employed, in particular the measures referred to in recitals (6) and (7).

(6) 'Law No 75-B/2020 of 31 December' and the subsequent 'Government Ordinance No 19-A/2021 of 25 January', 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 who experienced 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, if it is below 1,5 times Portugal's social support index (EUR 438,81 in 2021), or two thirds of their reference average monthly income, if it is equal to or above that index.

Eligible managers are those whose business activity has been temporarily suspended because of the COVID-19 pandemic, or who experienced 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 or 50 % of the observed monthly income drop if the latter falls between 50 % and 100 % of Portugal's social support index, or to EUR 219,40 if the income drop exceeds that index.

- (7) The 'Annex to the Resolution of the Council of Ministers No 41/2020 of 6 June' and the subsequent 'Government Ordinance No 180/2020 of 3 August' and 'Government Ordinance No 37-A/2021 of 15 February', which are referred to in Portugal's request of 9 December 2021, introduce a social support scheme for artists, authors, technicians and other art professionals. The scheme provides for a benefit equal to Portugal's social support index (EUR 438,81).
- (8) Portugal has also introduced a series of new health-related measures, which it has implemented to address the COVID-19 outbreak, in particular the measures referred to in recital (9).

- (9) 'Decree-Law No 10-A/2020 of 13 March' and the subsequent 'Decree-Law No 10-A/2021 of 2 February', 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 beginning of the COVID-19 pandemic. Moreover, the legal limits established for overtime work by civil servants were suspended for the National Health Service, and the organisation of shifts using supplementary work by specialist doctors and nurses, where necessary, was made possible in order 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 because of the national measures taken to address the socioeconomic effects of the COVID-19 outbreak. This constitutes a sudden and severe increase because it relates 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, as referred to in the request of 9 December 2021, in accordance with Article 6 of Regulation (EU) 2020/672.
- (12) The health-related measures 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 means of Implementing Decision (EU) 2020/1354 should therefore also cover the new measures implemented by Portugal that are 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 the existing and expected needs of Portugal, as well as requests for financial assistance 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", and as specified in "Government Order No 102-A/2021 of 14 May";
- (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 added 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 added 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 added by Article 3 of "Law No 27-A/2020 of 24 July", and in 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 to 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 the "Annex to 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 4 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 this Decision, Portugal shall inform the Commission within six months of the date of adoption of that amending implementing decision, and every six 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.

This Decision shall take effect on the date of its notification to the addressee.

Done at ...,

For the Council

The President
