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 outbreak

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 122 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 122(1) of the Treaty on the Functioning of the European Union (TFEU) allows the Council to decide, on a proposal from the Commission and in a spirit of solidarity between Member States, upon the measures appropriate to respond to the socio# economic situation following the COVID-19 outbreak.

(2) Article 122(2) TFEU enables the Council to grant Union financial assistance to a Member State that is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control.

(3) The severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2), which causes the coronavirus disease named COVID-19 by the World Health Organization (WHO), is a new strain of coronavirus not previously identified in humans. The global outbreak of that disease is evolving rapidly and has been declared a pandemic by the WHO. From the beginning of the COVID-19 outbreak in the Union up until 30 March 2020, 334 396 cases and 22 209 deaths were reported in the Member States.

(4) Member States have implemented extraordinary measures to contain the COVID#19 outbreak and its impact. The probability of further transmission of COVID#19 in the Union is considered high. In addition to public health impacts with substantial fatal outcomes, the COVID#19 outbreak has had a massive and disruptive impact on the economic systems of the Member States, caused societal disruptions and increased public expenditure in a growing number of Member States.

(5) That exceptional situation, which is beyond the control of the Member States and which has immobilised a substantial part of their labour force, has led to a sudden and severe increase in public expenditure by the Member States on short-time work schemes for employees and similar measures, in particular for the self-employed, as well as expenditure on some health-related measures, in particular in the workplace. In order to maintain the strong focus of the instrument provided for in this Regulation and thereby its effectiveness, health-related measures for the purpose of that instrument may consist

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of those aiming at reducing occupational hazards and ensuring the protection of workers and the self#employed in the workplace, and, where appropriate, some other health# related measures. It is necessary to facilitate efforts by the Member States to address the sudden and severe increase in public expenditure until the COVID-19 outbreak and its impact on their labour force are under control.

(6) The creation of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) (the 'Instrument') following the COVID-19 outbreak should enable the Union to respond to the crisis in the labour market in a coordinated, rapid and effective manner and in a spirit of solidarity among Member States, thereby alleviating the impact on employment for individuals and the most affected economic sectors and mitigating the direct effects of this exceptional situation on public expenditure by the Member States.

(7) Article 220(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(1)] states that financial assistance by the Union to Member States can take the form of a loan. Such loans should be granted to Member States where the COVID-19 outbreak has led to a sudden and severe increase, as from 1 February 2020, in actual and possibly also planned public expenditure due to national measures. That date ensures equal treatment for all Member States and allows for coverage of their actual and possibly also planned increases in spending relating to the effects on the labour markets of the Member States, irrespective of when the COVID-19 outbreak occurred in each specific Member State. The national measures, which are understood to be in line with the relevant fundamental rights principles, should be directly related to the creation or extension of short-time work schemes and to similar measures, including measures for self-employed persons, or to some health-related measures. Short-time work schemes are public programmes that in certain circumstances allow businesses experiencing economic difficulties to temporarily reduce the hours worked by their employees, who are provided with public income support for the hours not worked. Similar schemes exist for income replacement for the self-employed. The Member State requesting financial assistance should provide evidence of a sudden and severe increase in actual and possibly also planned public expenditure for short-time work schemes or similar measures. If financial assistance is granted for health-related measures, the Member State requesting financial assistance should also provide evidence of actual or planned expenditure related to the relevant health-related measures.

(8) In order to provide the affected Member States with sufficient financial means under favourable terms to enable them to deal with the impact of the COVID-19 outbreak on their labour market, the Union's borrowing and lending operations under the Instrument should be sufficiently large. The financial assistance granted by the Union in the form of loans should therefore be financed by recourse to international capital markets.

(9) The COVID-19 outbreak has had a massive and disruptive impact on the economic system of each Member State. It therefore calls for collective contributions by Member States in the form of guarantees supporting the loans from the Union budget. Such guarantees are necessary to enable the Union to grant loans of a sufficient order of magnitude to Member States in order to support labour market policies which are

under the greatest strain. To ensure that the contingent liability arising from such loans is compatible with the applicable multiannual financial framework ('MFF') and own#resources ceilings, the guarantees provided by the Member States should be irrevocable, unconditional and on demand, while additional safeguards should enhance the robustness of the system. In line with the complementary role of such guarantees, and without prejudice to their irrevocable, unconditional and on-demand nature, the Commission is expected, before calling on the guarantees provided by Member States, to draw on the margin available under the own#resources ceiling for payment appropriations to the extent that it is deemed sustainable by the Commission, having regard, inter alia, to the total contingent liabilities of the Union, including under the balance of payments facility established by Council Regulation (EC) No 332/2002[(2)]. In the relevant call on guarantees, the Commission should inform the Member States about the extent to which the available margin has been drawn. The need for guarantees provided by Member States may be reviewed if an agreement on a revised own-resources ceiling is reached.

(10) The additional safeguards to enhance the robustness of the system should consist of conservative financial management, a maximum annual exposure and sufficient diversification of the loan portfolio.

(11) The loans granted under the Instrument should constitute financial assistance within the meaning of Article 220 of Regulation (EU, Euratom) 2018/1046. In accordance with point (g) of Article 282(3) of that Regulation, Article 220 of that Regulation will apply to the loans granted under the Instrument only as from the date of application of the post#2020 MFF. However, it is appropriate that the requirements set out in Article 220(5) of Regulation (EU, Euratom) 2018/1046 apply to the borrowing and lending operations under the Instrument as of the entry into force of this Regulation.

(12) In order to make the contingent liability arising from loans granted under the Instrument compatible with the applicable MFF and own-resources ceilings, it is necessary to lay down prudential rules, including on the possibility of rolling over the borrowings contracted on behalf of the Union.

(13) Given their particular financial implications, decisions to grant financial assistance pursuant to this Regulation require the exercise of implementing powers, which should be conferred on the Council. When deciding upon the amount of a loan, the Council, on a proposal from the Commission, should consider the existing and expected needs of the requesting Member State, as well as requests for financial assistance pursuant to this Regulation already submitted or planned to be submitted by other Member States, having regard to the principles of equal treatment, solidarity, proportionality and transparency, and in a manner that fully respects the competence of the Member States.

(14) Article 143(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[(3)] (the 'Withdrawal Agreement') limits the liability of the United Kingdom for its share of the contingent financial liabilities of the Union to those contingent financial liabilities of the Union arising from financial operations taken by the Union before the date of entry into force of the Withdrawal Agreement. Any

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contingent financial liability of the Union arising from financial assistance under this Regulation would be subsequent to the date of entry into force of the Withdrawal Agreement. Therefore, the United Kingdom should not participate in the financial assistance under this Regulation.

(15) As the Instrument is of a temporary nature in order to address the COVID#19 outbreak, the Commission should assess every six months whether the exceptional circumstances causing the severe economic disturbances in Member States still exist and report to the Council. Consistently with the legal basis for the adoption of this Regulation, no financial assistance should be made available under this Regulation once the COVID#19 emergency has passed. To that end, it is appropriate to limit the availability of the Instrument in time. The Council should be empowered, on a proposal from the Commission, to extend the period of availability of the Instrument where the exceptional occurrences that justify the application of this Regulation continue to exist.

(16) The European Central Bank delivered its opinion on 8 May 2020.

(17) Given the impact of the COVID-19 outbreak and the need for an urgent response to the consequences of that outbreak, this Regulation should enter into force on the date of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 In order to address the impact of the COVID-19 outbreak and respond to its socio# economic consequences, this Regulation establishes the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) (the ‘Instrument’).

2 This Regulation lays down the conditions and procedures enabling the Union to provide financial assistance to a Member State which is experiencing, or is seriously threatened with, a severe economic disturbance caused by the COVID-19 outbreak 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.

Article 2

Complementary nature of the Instrument

The Instrument shall complement the national measures taken by affected Member States by providing financial assistance to help those Member States cope with the sudden and severe increase in actual and possibly also planned public expenditure intended to mitigate the direct economic, social and health-related effects of the exceptional occurrence caused by the COVID#19 outbreak.

Article 3

Conditions for using the Instrument

1 A Member State may request Union financial assistance under the Instrument ('financial assistance') where its actual and possibly also planned public expenditure has suddenly and severely increased as of 1 February 2020 due to national measures directly related to short#time work schemes and similar measures to address the socio-economic effects of the exceptional occurrence caused by the COVID-19 outbreak.

2 Beneficiary Member States shall use financial assistance primarily in support of their national short-time work schemes or similar measures, and, where applicable, in support of relevant health-related measures.

Article 4

Form of financial assistance

The financial assistance shall take the form of a loan granted by the Union to the Member State concerned. To that end, and in accordance with a Council implementing decision adopted pursuant to Article 6(1), the Commission shall be empowered to borrow on the capital markets or with financial institutions on behalf of the Union at the most appropriate time so as to optimise the cost of funding and preserve its reputation as the Union's issuer in the markets.

Article 5

Maximum amount of financial assistance

The maximum amount of financial assistance shall not exceed EUR 100 000 000 000 for all Member States.

Article 6

Procedure for requesting financial assistance

1 Financial assistance shall be made available by means of a Council implementing decision adopted on the basis of a proposal from the Commission.

2 Before submitting a proposal to the Council, the Commission shall consult the Member State concerned without undue delay to verify the sudden and severe increase in actual and possibly also planned public expenditure directly related to short-time work schemes and similar measures, as well as, where appropriate, to relevant health-related measures, in the Member State requesting financial assistance which are linked to the exceptional occurrence caused by the COVID-19 outbreak. To that end, the Member State concerned shall provide the Commission with appropriate evidence. In addition, the Commission shall verify compliance with the prudential rules laid down in Article 9.

3 The Council implementing decision referred to in paragraph 1 shall contain: