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PUBLIC VERSION

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**Subject: State Aid SA.58522 (2020/N) – France
COVID-19: Amendment to the scheme SA.57754 – “Modification du dispositif d'activité partielle ad hoc – ajout des secteurs bénéficiaires”**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 4 September 2020, France notified a modification to the State aid scheme SA.57754 *Dispositif d'activité partielle ad hoc* (“the ad hoc short-term work scheme”), which was approved by the Commission by its decision of 29 June 2020¹ (“the initial decision”) in the context of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)².

¹ Commission Decision C(2020) 4512 final.

² Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 35, and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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- (2) The Commission has already approved a previous amendment to the ad hoc short-term work scheme by the decision SA.58108 “*Amendment to the scheme SA.57754 – “Modification du dispositif d’activité partielle ad hoc”* of 30 July 2020³ (“the first amendment”).
- (3) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958,⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Background and context of the measure

- (4) France considers that the COVID-19 outbreak has affected the real economy and put at risk the jobs of workers and employees of undertakings that have suspended partially or entirely their activities due to the state of emergency and containment measures enforced by the national authorities. As a result, there is a risk of significant redundancies⁵. Thus, France has taken measures in order to preserve employment and protect employees, who would otherwise have been laid off due to the COVID-19 outbreak. In addition, these measures aim at allowing undertakings to resume their activities immediately after the lockdown period.
- (5) Against this backdrop, France has decided to make use of a pre-existing short-term work scheme applicable to employers in the private sector, already in force in national legislation before the COVID-19 outbreak (as described in recital (12) of the initial decision, the “pre-existing short-term work scheme”). This scheme offered wage compensation amounting to 70% of the employee’s gross salary.
- (6) The initial decision approved a modification to the pre-existing short-term work scheme, which included the reduction of the wage compensation amount from 70% to 60% of the employee’s gross salary for all sectors, while maintaining the percentage of 70% for certain sectors severely affected by the COVID-19 outbreak, as described in detail in recital (13) of the initial decision⁶. The professional activities covered by the initial decision were listed in Annexes 1 and

³ Commission Decision C(2020) 5347 final.

⁴ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁵ The French authorities submit that in June 2020 the economic activity in the country was 12 % lower than the situation at the beginning of the year. In addition, since 1 March until 15 June 2020, the French authorities have received approximately 1.402.000 applications of employers asking to be included in the existing subsidy mechanism for short-term work, involving 13.5 million employees and reflecting 5.9 billion hours of unemployment.

⁶ In summary, the sectors caught by the initial decision are: i) catering and restauration, hotel industry and accommodation, tourism, passenger transport, arts, culture, sports; ii) upstream and downstream sectors linked with those above, provided that they have sustained a loss of 80% in their total revenue in the period of 15.03.2020 – 15.06.2020; iii) all other sectors, which involve services provided to the public and whose activities were mandatorily interrupted by the spread of COVID-19.

2 of the “Décret n° 2020-810 du 29 juin 2020”⁷ (“the Decree”, as described in recital (6) of the initial decision).

- (7) The first amendment of the ad hoc short-term work scheme included an extension in the scope of the approved measure, namely the coverage of all economic activities of the private sector by a wage subsidy of 70% of the employee’s gross salary. That amendment has a targeted geographical scope, namely it applies solely in the regions of Mayotte and Guyane. In addition, it includes an extension of the temporal scope, namely until the termination of the state of emergency in Mayotte and Guyane, which will take place on 30 October 2020 at the latest.

2.2. Amendments to the ad hoc short-term work scheme

- (8) By the notification in question, France intends to further modify the scope of the ad hoc short-term work scheme as to the circle of beneficiaries: the wage compensation amounting to 70% of the employee’s gross salary will be extended so as to include certain professional activities, which belong to the wider economic sectors of arts, culture, sports and tourism but were not explicitly covered by the initial decision, nor by the Decree. Therefore, the scope will include the following professional activities:
- (i) Post-production of cinematographic films, videos and television programmes,
 - (ii) Distribution of cinematographic films,
 - (iii) Art galleries,
 - (iv) Exploitation of casinos,
 - (v) Auxiliary services of maritime transport,
 - (vi) Shops in shopping centres and airports,
 - (vii) Translators-interpreters,
 - (viii) Souvenir and religion shops,
 - (ix) Other art professions,
 - (x) Sports betting,
 - (xi) Activities linked to the production of original sound matrixes, on tapes, cassettes, CDs, provision, promotion and distribution of recordings.
- (9) As regards the geographical scope, it is clarified that the present measure will apply to the entire territory of France, except for: i) New Caledonia, which does not form part of the European Union and ii) the regions of Mayotte and Guyane, to which a wider coverage of economic sectors already applies by virtue of Commission decision SA.58108 (see recital (7)). The latter decision continues to

⁷ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000042056541&categorieLien=id>

apply in full as regards Mayotte and Guyane and is not affected by the present measure.

- (10) As regards the temporal scope, it is clarified that the measure retains the same ending date as stipulated in the initial decision, namely 30 September 2020.
- (11) The measure pursues the same objective as the ad hoc short term-work scheme, namely to support economic activity and avoid lay-offs as a consequence of the severe disturbance caused by the COVID-19 outbreak. The French authorities submit that, while continuously evaluating the development of the crisis and the effect of the ad hoc short-term work scheme in the entire territory of France, they observed that certain economic activities, which belong to the wider sectors of arts, culture, sports and tourism, were not covered by the ad hoc short-term work scheme. However, those professions have also suffered a significant reduction in their economic activities, similarly to the professions already covered by the initial decision as of June 2020. In view of the continuing disruption in the wider economy, the French authorities consider that the professional activities in question merit equal support and protection from the ongoing consequences of the COVID-19 outbreak.
- (12) More specifically, the French authorities aim at supporting the activities linked to arts, cultural events, cinema and music production in view of the continuing disruption in the operation of cultural venues, performances, cinemas, music concerts and tours. The support of translators and interpreters derives from the cancellation of seminars and conferences. As regards the activities linked to maritime transport, shopping, and casinos, they are in need of support due to the significant reduction of travels and touristic activities. Finally, sports betting is considered as meriting economic support in view of the halt in sports competitions and events.
- (13) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.10 of the Temporary Framework.

2.3. Legal basis

- (14) The legal basis is the Decree amending Annexes 1 and 2 of the « Décret n° 2020-810 du 29 juin 2020 portant modulation temporaire du taux horaire de l'allocation d'activité partielle ». The former will be issued after the adoption of the present decision.

2.4. Budget and duration of the measure

- (15) The estimated budget of the measure is around EUR 90 000 000.
- (16) Aid may be granted under the measure as from its approval until 30 September 2020. In line with the initial decision, the measure will have retroactive effect as of 1 June 2020.

2.5. Beneficiaries

- (17) The final beneficiaries of the measure are employers in the private sector, who make the subsidy claim and are active in the sectors of the economy identified in recital (8) of the present decision.

2.6. Regional scope of the measure

- (18) The measure applies to employers that are residents in the entire territory of France, except for New Caledonia, Mayotte and Guyane.

2.7. Other elements of the measure

- (19) Apart from the amendments mentioned in this decision, all other conditions, definitions and commitments applicable to the initial decision, including those on cumulation and reporting, remain equally applicable to the measure in question. This applies in particular, but not limited to, the calculation and maximum amount of compensation on the basis of the gross salary (recital (14) of the initial decision), the temporal scope for the submission of applications (recital (16) of the initial decision), as well as the administrative procedure relating to the granting of the measure and eligibility controls (recitals (15) – (17) of the initial decision).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (20) Although the measure will be applied retroactively, France has confirmed that no aid will be granted under the measure until it has been authorised by the Commission. By notifying the measure before putting it into effect, the French authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (21) The Commission refers to its examination of the existence of State aid in its initial decision (recitals (23) – (28) of the initial decision). However, as regards the modification in question, the following additional remark is taken into account.
- (22) The advantage granted by the measure is selective, since it ensures a higher coverage to employers active in certain sectors of the economy, i.e. those which will be specifically identified in the modified Annexes 1 and 2 of the Decree.
- (23) 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

- (24) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that aid is compatible with the internal market.
- (25) The Commission refers to its analysis of compatibility as set out in recitals (29) – (36) of the initial decision.
- (26) The measure is part of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the economy of the French

territory and in particular in the sectors of arts, culture, sports and tourism, which constitute significant pillars of the national economy. The measure is also justified by the severe crisis that the professional activities in question are undergoing due to the COVID-19 outbreak, as described in recitals (11) and (12). The regular operation and activity of artistic and cultural venues, music performances and concerts, cinemas, as well as conferences and sports events has been essentially ceased already since March 2020 and is not expected to be quickly restored. As regards tourism, the sector has already suffered significant losses during spring and summer 2020, which are usually the most active and profitable periods of the year. Also, the possibility of additional restrictions and lockdowns enhances the economic uncertainty and does not indicate a smooth transition to regular volumes of traveling. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid in the form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak”) described in section 3.10 of the Temporary Framework.

(27) The Commission considers the amendment of the measure, like the measure covered by the initial decision, necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- As required by point 43(a) of the Temporary Framework, the aid granted under the measure aims at preserving employment and avoiding redundancies during the COVID-19 outbreak. In this case, the measure translates into employment security and main income support for employees occupied in severely affected sectors of the economy, who would run a high risk of being laid off in the near future, in view of the reduced economic activity of their employers (see recitals (4), (11), (12), including references to the initial decision). The extension of those severely affected sectors has been appropriately justified by the French authorities (see recitals (11) and (12)).
- As required by point 43(b) of the Temporary Framework, aid is granted in the form of a scheme to undertakings in the specific sectors that are particularly affected by the COVID-19 outbreak, namely the employers who are active in certain professional activities related to arts, culture, sports and tourism, which were not covered by the initial decision (see recital (8)).
- As regards points 43(c), (d) and (e) of the Temporary Framework, the Commission refers to the compatibility assessment of the initial decision (see recital (34) of that decision), which will also be applicable to the present measure. The Commission notes the confirmation of the French authorities that, apart from the extension of the scope of the initial measure, no other alterations of the initial scheme are introduced by the present modification and all relevant commitments of the French authorities continue to apply (including, but not limited to, the temporal scope for the submission of the applications, the duration of the measure, the cumulation and reporting obligations, see recital (19)).

- The measure does not exclusively target employees from the financial sector (see recitals (8), (17)). The measure is therefore in line with points 20bis and 43bis of the Temporary Framework.

(28) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President