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**Subject: State Aid SA.58689 (2020/N) – France
COVID-19: Amendment to the scheme SA.57754 – “Prolongation et
amendement du dispositif d'activité partielle ad hoc”**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 18 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.
- (2) The Commission has already approved two amendments to the ad hoc short-term work scheme by the following decisions: i) SA.58108 “*Amendment to the scheme SA.57754 – “Modification du dispositif d'activité partielle ad hoc”*” of 30 July

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.

Son Excellence Monsieur Jean-Yves le Drian
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2020³ (“the first amendment”) and ii) SA.58522 “*Amendment to the scheme SA.57754 – “Modification du dispositif d’activité partielle ad hoc – ajout des secteurs bénéficiaires”* of 10 September 2020⁴ (“the second 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 1/1958,⁵ 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 redundancies⁶. 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.
- (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. The compensation is paid by the employer to the employee and the former is reimbursed by the French authorities by an amount equal to the full amount of the subsidy.
- (6) The initial decision approved a modification to the pre-existing short-term work scheme, which included the reduction of the reimbursement 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 decision⁷. The professional activities covered by the initial decision were listed in Annexes 1 and

³ Commission Decision C(2020) 5347 final.

⁴ Commission Decision C(2020) 6295 final.

⁵ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁶ 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.

⁷ 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 – 15.05.2020; 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”⁸ (as described in recital (6) of the initial decision and hereinafter referred to as “June Decree”). The duration of the ad hoc short-term work scheme was defined as of 1 June 2020 until 30 September 2020, while the geographical scope included the entire territory of France, except for New Caledonia.

- (7) The first amendment of the ad hoc short-term work scheme applied solely in the regions of Mayotte and Guyane. It consisted of an extension of the scope of beneficiaries, namely it ensured a wage subsidy of 70% of the employee’s gross salary for all economic activities of the private sector. It also included an extension in 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.
- (8) The second amendment applied in the rest of the French territory, namely except for Mayotte and Guyane, to which the first amendment continues to apply until 30 October 2020. The second amendment consisted of an extension of the sectoral scope of the ad hoc short-term work scheme, in particular the addition of certain professional activities, which belong to the wider economy sectors covered by the initial decision (i.e. tourism, culture, arts and sports), but were not covered by the Commission decision SA.57754, nor by the Annexes 1 and 2 of the June Decree (see recital (8) of the decision SA.58522).

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

- (9) By the notification in question, France intends to further modify the ad hoc short-term work scheme in two steps.

2.2.1. Amendment A

- (10) Prolongation: first, the French authorities intend to prolong the ad hoc short-term work scheme until 31 October 2020. This prolongation applies to the entire French territory, except for: i) New Caledonia, which does not form part of the European Union, ii) Mayotte and Guyane, for which the first amendment has already approved the granting of aid until 30 October 2020⁹. In addition, the French authorities submit that all definitions, commitments and procedures, to which they have committed in the context of the cases SA.57754, SA.58108 and SA.58522, continue to apply in full, even if they are not explicitly mentioned in the present decision.

2.2.2. Amendment B

- (11) Prolongation and substantial modifications: the French authorities also notified the Commission of their intention to further prolong the ad hoc short-term work scheme for the months of November and December 2020. However, as of 1 November 2020 until 31 December 2020, the scheme will apply in a modified version, according to the following general rules:

⁸ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000042056541&categorieLien=id>

⁹ It is clarified that SA.58108 continues to apply to the regions of Mayotte and Guyane, without being affected by Amendment A.

- (a) As regards all professional activities of the private sector, the subsidy rate granted to the employee will be set at 60% of its gross salary, while the percentage reimbursed to the employer by the French authorities will be set at 36% of the employee's gross salary. Thus, the employer will bear the charges for the rest of the amount, which is calculated at a maximum of 40% of the employee's gross salary¹⁰. The precise figure will be defined by a national legislative act ("Decree") to be issued following the adoption of the present decision (see recital (15)).
- (b) In derogation to (a), as regards certain professional activities¹¹ belonging to the sectors of:
- Tourism (hotel industry, restauration, passenger transport, gambling and betting) and activities related to events (culture, sports, organisation of expositions or shows, booking services),
 - The sectors which are directly linked to the sectors identified above, namely: production and trade of agricultural and fish products, manufacture of drinks and beverages, wholesale and retail trade, laundry services, retail trade of fuel, provided that the potential beneficiaries have sustained a loss amounting to 80% of their total revenue during the period from 15 March to 15 May 2020,

the subsidy rate granted to the employee will remain at a maximum of 70% of its gross salary, while the percentage reimbursed to the employer will also remain at a maximum of 70% of the employees' gross salaries.

- (c) As regards all other activities relating to services provided to the public, which were administratively forced to interrupt their activities due to the COVID-19 outbreak, the wage compensation granted to the employee will amount to a maximum of 80% of its gross salary¹² and the percentage reimbursed by the French authorities to the employer will also amount to a maximum of 80% of the employee's gross salary.
- (12) The substantial modifications outlined in recital (11) will apply to the entire territory of France, except for New Caledonia, as of 1 November until 31 December 2020.
- (13) 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

¹⁰ The French authorities confirm that the "gross salary" excludes the employer's social security contributions but includes the "Contribution Sociale Generalisee (CSG) and the "Contribution au Remboursement de la Dette Sociale", as also defined in recital (14) of the initial decision. However, due to the reduction of the amount reimbursed to the employer, the minimum amount of hourly subsidy will be EUR 7.23 (instead of EUR 8.03). The French authorities confirm that, even in that case, the hourly subsidy will constantly remain below the threshold of 80% of the employee's gross salary.

¹¹ The professional activities covered by the measure will be precisely indicated by the French authorities by national legislative act, see recital (20).

¹² In this case, the minimum hourly wage subsidy will amount to EUR 8.03, as explained in recital (14) of the initial decision.

severe disturbance caused by the COVID-19 outbreak. The French authorities clarify that, in view of the ever-changing situation regarding the COVID-19 outbreak and the relevant administrative measures, especially regarding disruptions in the business activity of certain sectors, they intend to keep the ad hoc short-term work scheme under constant review. In this context, they intend to retain the flexibility to further adapt the scheme according to the circumstances and the needs of the French economy, by clarifying either the professional activities covered by the scheme or by adapting the applicable subsidy rates. For this reason, the French authorities clarify that the modifications described in recital (11) reflect the general structure and criteria of the scheme, as well as the highest possible subsidy rates, according to which the budget has been calculated. As of the adoption of the present decision the national authorities will be able to modify the lists of professional activities covered by the scheme, as well as the setting of the precise subsidy rates applicable to each of the sectors covered, for the months of November and December by means of national legislative acts. The French authorities confirm that any such modification will respect the criteria of the scheme set in this decision. In particular regarding the professional activities, which will be covered by a higher subsidy rate compared to the general subsidy available to all employers of the private sector, the French authorities might in the future include other professional activities in the regime, to the extent they pertain to the wide economy sectors identified in recital (11) (b) and (c), i.e. in the wider sectors of tourism, activities related to events, and sectors directly linked to the afore-mentioned. Those sectors are deemed to have been severely affected by the COVID-19 outbreak and therefore are in need of further support by the French State. In addition, the French authorities commit that any future modification of the applicable subsidy rates can only take place downwards and under no circumstances can it surpass, over the whole duration of the ad-hoc short-term work scheme between the initial decision and 30 December 2020, the subsidy threshold of 80% of the employee's gross salary, as required by point 43(d) of the Temporary Framework.

- (14) 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

- (15) The legal basis is:
- (a) The article L.5122-1 of the “Code du Travail”, which sets the general structure of the short-term work scheme, and
 - (b) The Decree to be issued following the adoption of the present decision, which will modify temporarily the percentage of the short-term work scheme (“Décret portant modification du dispositif d’activité partielle et du dispositif spécifique d’activité partielle en cas de réduction d’activité durable”, hereafter “the Decree”).
 - (c) Any potential Decree, or other legislative act of the French State, which may be issued until December 2020 and which will adapt the lists of professional activities covered by the measure or the applicable subsidy rates.

2.4. Budget and duration of the measure

- (16) The estimated budget of the measure is around EUR 303 000 000. Out of this amount, approximately EUR 275 000 000 relate to Amendment A and Amendment B, as to the part covering the sectors identified in recital (11) (a) and (b), while approximately EUR 28 000 000 relate to Amendment B as to the part covering the sectors identified in recital (11) (c).
- (17) In the context of Amendment A, aid may be granted as of the approval by the Commission of the present modification until 30 October 2020.
- (18) In the context of Amendment B, aid may be granted as of 1 November 2020 until 31 December 2020.

2.5. Beneficiaries

- (19) As regards Amendment A, the final beneficiaries of the measure are employers in the private sector, active in the professional activities defined in recital (13) of the initial decision (see footnote 7 of the present decision) and (8) of the decision SA.58522¹³.
- (20) As regards Amendment B, the final beneficiaries of the measure are employees in the private sector, who belong to the sectors identified in recital (11) (b) and (c) of the present decision. The French authorities will indicate the precise professional activities covered by the measure in the Decree (see recital (15)(b)) and will be able to further modify those lists by future legislative acts, without tightening the criteria of the ad hoc short-term work scheme and provided that the professional activities will belong to the economy sectors identified in recital (11) (b) and (c). The French authorities submit that those business sectors have been severely affected by the COVID-19 outbreak, in view of mandatory closures and effective disruptions in their activity. In light of the current uncertainty regarding the development of both the health and economic circumstances, it is considered appropriate to provide constant support to the sectors immediately affected, such as tourism and event organisation, as well as to the sectors which directly depend on the latter and have sustained significant reduction in their revenue due to the COVID-19 outbreak, such as wholesale and retail production and trade of products necessary for the aforementioned economic activities. In particular, production and trade of food products and beverages relates to the provision of food supply to the catering and restauration sector, while laundry services and fuel trade relate to the tourism industry. Lastly, the businesses which relate to services offered to the public are also in need of financial support due to the mandatory suspension of their activities and therefore their loss of revenue.
- (21) The eligible employers will have to make a subsidy claim according to the applicable administrative procedure, as indicated by national legislation (see recital (16) of the initial decision).

¹³ In summary, those activities include: post-production and distribution of cinematographic films, videos and television programmes, production of sound matrixes, art galleries and other art professions, translators and interpreters, souvenir shops, retail shops on shopping centres and airports, auxiliary services of maritime transport, exploitation of casinos and sports betting.

2.6. Regional scope of the measure

- (22) Amendment A applies to eligible beneficiaries who are residents in the entire territory of France, except for New Caledonia, Mayotte and Guyane.
- (23) Amendment B applies to eligible beneficiaries who are residents in the entire territory of France, except for New Caledonia.

2.7. Other elements of the measure

- (24) 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 amendments 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), 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

- (25) The relevant national legal basis for the measure will be issued and the measures will be implemented following the adoption of the present decision. Therefore, in both cases, by notifying the measures before putting them into effect, the French authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (26) The Commission refers to its examination of the existence of State aid in the initial decision (recitals (23) – (28) of the initial decision). However, as regards the modifications in question, the following additional remarks are taken into account.
- (27) The advantage granted by the measure is selective, since it continues to benefit employers active in certain sectors of the economy by ensuring them a higher subsidy rate, despite the extension of the scope of beneficiaries: as regards Amendment A, the measure covers the sectors identified in recitals (13) of the initial decision and (8) of the decision SA.58522. As regards Amendment B, the measure will ensure a higher coverage for the economy sectors identified in recital (11) (b) and (c) of the present decision. In view of the possibility of the French authorities to further adapt the subsidy rates for certain or for all of the sectors, it is possible that some of those might benefit from a higher subsidy rate than others, depending on the development of the health and economic situation in the French territory.
- (28) 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

- (29) 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.
- (30) The Commission refers to its analysis of compatibility as set out in recitals (29) – (36) of the initial decision.
- (31) 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.
- (32) In particular as regards Amendment A, it is considered that the economic sectors and professional activities already supported by the ad hoc short-term work scheme have not ceased to sustain the consequences of the COVID-19 outbreak and the disruption of economic activity. In this context, the Commission also takes note of its compatibility assessment in recitals (32) and (33) of the initial decision, as well as in recital (26) of decision SA.58522. Therefore, it is deemed necessary to continue offering financial support to those sectors, which constitute significant pillars of the national economy. Therefore, the prolongation of the ad hoc short-term work scheme in its current structure for one additional month is deemed necessary to support the French economy in the context of the COVID-19 outbreak.
- (33) Amendment B is also considered appropriate and necessary, as it essentially supports and protects the same economy sectors and maintains the same structure of the ad hoc short-term work scheme, namely by supporting the wide sectors of tourism, organisation of events, other sectors which are directly linked to the former, as well as those which relate to services offered to the public. Those sectors are considered as significantly affected by the current economic reality. In particular, tourism and organisation of events have sustained a severe impact on their activities in view of the restrictions in traveling and large gatherings. The sectors directly linked to the afore-mentioned have equally sustained significant losses in their revenue and disruption in their activities, since they mainly relate to the provision and supply of goods and services to tourism and event organisation: the production and trade of food products and beverages relate to the provision of food supply to the catering and restauration sector, while laundry services and fuel trade relate to services and goods provided to the tourism industry. Furthermore, the businesses which relate to services offered to the public are also in need of financial support due to the mandatory suspension of their activities and therefore their loss of revenue (see recitals (13), (20)).
- (34) However, in view of the constantly changing health and economic circumstances, the Commission considers appropriate that the French authorities retain a level of flexibility for the following months, in order to adapt the sectors covered and the compensation rates offered by the measure according to the current circumstances. Hence, the national authorities envisage a reduction in the wage subsidy rates granted to employers, while also considering highly likely the need for further reduction or for differentiation between the various sectors covered. In light of these circumstances, Amendment B outlines the general structure and

criteria of the ad hoc short-term work scheme, including a definition of the benefitting sectors and of the maximum compensation rate. The French authorities commit that any future modification will respect the criteria of the scheme as set in this decision. In particular regarding the list of professional activities covered by the measure, the national authorities might include other professional activities in the regime, to the extent they pertain to the wide economy sectors identified in recital (11) (b) and (c); additionally, any modification in the subsidy rate will only take place downwards, i.e. by reducing the compensation rate. Against this backdrop, France will be able to adapt the particular characteristics of the scheme, while also fully respecting its principal content as described in the present decision, as well as the compatibility criteria as defined in point 43 of the Temporary Framework.

- (35) The Commission considers the present amendments, like the initial measure, 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:
- (36) As regards Amendment A: the Commission refers to recital (34) of the initial decision and (27) of the decision SA.58522, which apply *mutatis mutandis*. Since the sole difference implemented by Amendment A is the temporal scope of the measure, it suffices to consider it compliant with point 43 (c) of the Temporary Framework, namely it is granted over a period of not more than twelve months, namely five (5) months in total (see recital (17)).
- (37) As regards Amendment B: the Commission again refers to recital (34) of the initial decision and (27) of the decision SA.58522, which apply *mutatis mutandis*. In addition, the following remarks should be taken into account:
- 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 the economic sectors identified in recital (11) (b) and (c). The Commission considers appropriate to permit the French authorities to adapt the list of professional activities covered by the measure according to the needs of national economy, while respecting their commitment to constantly remain within the limits of the wide economy sectors already identified in this decision (see recitals (13), (20)).
 - As required by point 43(c) of the Temporary Framework, (i) aid is granted for a period of no more than twelve months, namely for seven months in total (see recital (18)¹⁴), (ii) for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID- 19 outbreak (see recital (24) of the present decision and recital (15) of the initial decision), (iii) subject to the condition that the benefitting personnel is maintained in continuous

¹⁴ Amendment B will enter into effect as of 1 November 2020, however a total duration of seven months is taken into account due to the continuity of the ad hoc short-term work scheme, from June until December 2020.

employment for the entire period for which the aid is granted (see recital (24) of the present decision and recital (15) of the initial decision).

- As required by point 43(d) of the Temporary Framework, the monthly wage subsidy will not exceed 80% of the monthly gross salary (including the employer's social security contributions, see footnote (10) of the present decision and reference to recital (14) of the initial decision). The Commission notes the commitment of the French authorities that, even in the case of modification of the subsidy rates, either for all or for certain of the sectors covered, the amendment can only take place downwards, i.e. it can only be a reduction compared to the rates identified in recital (11) and under no circumstances will it surpass the ceiling of 80% of the employee's gross salary.
- As required by point 43(e) of the Temporary Framework, the Commission notes the commitment of the French authorities to continuously respect the cumulation and reporting obligations, as they have committed in recitals (19), (20), (21) of the initial decision (see recital (24)).
- The measure does not exclusively target employees from the financial sector (see recital (11)). The measure is therefore in line with points 20bis and 43bis of the Temporary Framework.

(38) The Commission therefore considers that the measures are 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