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**Subject: State Aid SA.60095 (2020/N) – France
COVID-19: Amendment to the scheme SA.57754 – «Modulation géographique du taux d'activité partielle et d'activité partielle de longue durée»**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 9 December 2020, France notified a modification to the State aid scheme SA.57754 *Dispositif d'activité partielle ad hoc* (the “measure”), 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, 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, and by Communication from the Commission C(2020) 7127 final - 4th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the

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- (2) The Commission has already approved four 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 2020³ (the “first decision”), 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 decision”), iii) SA.58689 – “*Amendment to the scheme SA.57754 – “Prolongation et amendement du dispositif d’activité partielle ad hoc”*” of 24 September 2020⁵ (the “third decision”), iv) SA.58978 “*Amendment to the scheme SA.57754 – “Ajout d’un taux dérogatoire pour l’APLD et des secteurs bénéficiaires”*” of 15 October 2020⁶ (the “fourth decision”). All four decisions are collectively referred to as “decisions approving amendments”.
- (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 1/1958,⁷ 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 redundancies⁸. 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.

Functioning of the European Union to short-term export-credit insurance, OJ C 340I/1, 13.10.2020, p. 1.

³ Commission Decision C(2020) 5347 final.

⁴ Commission Decision C(2020) 6295 final.

⁵ Commission Decision C(2020) 6703 final.

⁶ Commission Decision C(2020) 7219 final.

⁷ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁸ The French authorities submit that, due to the first wave of COVID-19, the economic activity in France was reduced by 18.9% in the second quarter of 2020 (compared to the fourth quarter of 2019). After a small improvement in the third quarter (where the economic activity was reduced up to 4.1%), the second wave of COVID-19 had as a result a reduction of 13% in the economic activity in the last quarter of 2020. In the period between March and June 2020, the French authorities received approximately 1 402 000 applications of employers requesting to be covered by the short-term work scheme. Since then, approximately 2 million employees have been put under the short-term work scheme in July 2020; 1.3 million employees in August and September 2020 and 1.6 million employees in October 2020. Due to the second wave of COVID-19 and a new round of restrictions, the number of employees covered by the scheme is expected to be even higher for the following months.

- (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 (the “ad hoc 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 decision⁹. The professional activities covered by the initial decision were listed in Annexes 1 and 2 of the “Décret n° 2020-810 du 29 juin 2020”¹⁰ (as described in recital (6) of the initial decision).
- (7) Further modifications to the ad hoc short-term work scheme were approved by the decisions approving amendments. Most notably, the fourth decision approved a prolongation of the duration of the ad hoc short-term work scheme until 31 May 2021; in addition, a very similar preferential regime (providing a higher wage subsidy to certain employers) was introduced within the “long-term work scheme” (as described in Section 2.2.2. of the fourth decision), also applicable until 31 May 2021.

2.2. Elements of the Measure

- (8) By the notification in question, France intends to further modify both the ad hoc short-term work scheme and the preferential regime of the long-term work scheme by extending the scope of beneficiaries. In particular, France intends to subject a new category of beneficiaries to the higher maximum rate of subsidy of 70% of the employee’s gross salary¹¹.
- (9) While keeping the wage subsidy schemes under constant review, the French authorities observe that the epidemic situation differs in various geographical territories of the country and that, in order to avoid a nationwide lockdown, many restrictive measures are being imposed at a limited territorial level. Therefore, the

⁹ 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.

¹⁰ Available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000042056541&categorieLien=id>

¹¹ As regards the ad hoc short-term work scheme, a detailed presentation of the eligible beneficiaries is laid down in recital (13) of the initial decision and Annexes 1 and 2 of the “Décret n° 2020-810 du 29 juin 2020”, as amended by the decisions approving amendments. As regards the preferential long-term work scheme, a detailed presentation of the eligible beneficiaries is laid down in recital (19) of the fourth amendment. The present amendment introduces the new category of beneficiaries both to the ad hoc short-term work scheme and to the preferential long-term work scheme.

objective of this amendment is to ensure that the increased subsidy rate will be granted to undertakings, which are located in areas where local lockdown measures have been put into effect, thus reducing economic activity and substantially restricting the conditions for carrying out business. The higher subsidy will be granted to all undertakings located in the particular area, irrespective of the economic sector to which they belong. The French authorities consider that this measure will offer targeted support to employers who are effectively not allowed to conduct their business activities, while also maintaining employment in areas which are being severely hit by the ongoing COVID-19 crisis.

- (10) By the present amendment, a new category of eligible employers is introduced both to the ad hoc short-term work scheme and to the preferential long-term work scheme: employers who are located in geographical areas (“*circonscriptions territoriales*”), where: (i) a state of emergency in respect of health has been declared¹² and (ii) lockdown measures have been put into effect, restricting the conditions for carrying out economic activity in order to mitigate the effect of the COVID-19 outbreak. Those restrictions may be imposed by the Government, the “Préfet” (local representant of the State), or the “Agence Régionale de Santé”. For the purpose of the present wage subsidy scheme, the following measures are considered by France as restrictions on the conditions of carrying out economic activity:
- (a) The regulation, partial or total prohibition of movement of persons and vehicles; the regulation of the conditions of use, as well as the partial or total prohibition of access to means of public transport; as regards air and maritime transport, the partial or total prohibition of movement of persons, vehicles and circulation of means of transport, with the exception of movements for strictly necessary, family, professional or health reasons.
 - (b) The regulation of the public access, including the conditions of access and presence of public, to one or more categories of establishments relating to services provided to the public, as well as of meeting places, while ensuring access to essential goods and services.
 - (c) The temporary closure of one or more categories of establishments relating to services provided to the public, as well as of meeting venues, where it is not possible to put into place measures limiting the spread of the COVID-19 outbreak,
 - (d) Curfew measures, which restrict the movement of persons and the economic activity of certain enterprises, i.e. the prohibition of movement of persons outside their residence between specific times during the day (e.g. between 21.00h and 06.00h), with the exception of movement for strictly necessary, family, professional or health reasons.
- (11) The French authorities clarify that, in case the local restriction measures only apply to a specific economy sector, only the employers belonging to this sector

¹² The state of emergency in the particular geographical area may be declared by the government or by the local representative of the state.

will be eligible for the higher subsidy¹³. However, while taking into account the categories of eligible employers as already defined in the decisions approving amendments¹⁴, certain employers may be eligible under more than one category. The French authorities submit that, in such a case, the employer may be declared eligible only under one category upon its application¹⁵. With each application, the employer will have to commit that the benefitting personnel is maintained in continuous employment for as long as the aid is granted. Against this backdrop, the French authorities confirm that this amendment is consistent with the already existing provisions and in particular those concerning companies whose main activity relates to services provided to the public and which is interrupted due to the spread of the COVID-19 outbreak¹⁶. In addition, the French authorities confirm that the pertinent authorities are responsible to check the truthfulness and correctness of the applications, including the eligibility criteria. In this context, the pertinent authorities will also check the overall period for which the employer receives aid, in order to ensure that aid will not be granted for a period of more than 12 months in total.

- (12) The French authorities consider that the criterion introduced by this amendment, namely the geographical criterion, is appropriate as it ensures support to undertakings, which have sustained a significant reduction in their business activity due to restriction measures taken at a local level. Therefore, it further supports the maintenance of employment in certain regions, which may be more severely affected by the dispersion of COVID-19 and, consequently, subject to stricter restriction measures than others.
- (13) The French authorities confirm that, apart from the introduction of this new category, all characteristics of both the ad hoc short-term work scheme and the preferential long-term work scheme remain unchanged. Therefore, the content, characteristics, conditions and commitments, including the cumulation and reporting commitments, as approved by the initial decision and the decisions approving the amendments, continue to apply in full, both with respect to the scheme as already approved and amended, as well as with respect to the present measure.
- (14) This amendment will be put into effect as of 1 January 2021.

¹³ For instance, if a local restriction measure only applies to the catering and restauration sector, then only employers active in this sector will be eligible.

¹⁴ As regards the ad hoc short-term work scheme, the categories are described in recital (13) of the initial decision, as amended. As regards the preferential long-term work scheme, the categories are described in recital (19) of the fourth amendment.

¹⁵ For instance, if a local restriction measure only applies to the catering and restauration sector, then the employers belonging to this sector will be eligible for the 70% subsidy both under recital (19)(a) of the initial decision and under the category added by the present measure. In such a case, the employer may choose one of the two categories for its application and eligibility will be declared on that basis. If the employer ceases to be eligible under the chosen category, but could be eligible under the other category, it will have to submit a new application for the scheme and be declared eligible under that other category.

¹⁶ See recital (19)(c) of the initial decision.

2.3. Legal basis

- (15) The legal basis for the Measure is the Decree which will be issued following the adoption of the present decision and will modify the measures relating to work schemes (“Ordonnance portant mesure d’urgence et prorogation des mesures d’urgence en matière d’activité partielle”).

2.4. Budget and duration of the Measure

- (16) The estimated budget of the measure is around EUR 4.1 billion.
- (17) Aid may be granted under the measure as from 1 January 2021 until no later than 31 May 2021.

2.5. Beneficiaries

- (18) The final beneficiaries of the measure are undertakings, irrespective of their size or economy sector, which are established in a territorial area subject to measures restricting the conditions for the exercise of economic activity, as defined in recital (10). Eligible employers under the measure will benefit from the increased rate of partial benefit, as it has been approved by the initial decision and amended by the decisions approving amendments.

2.6. Regional scope of the measure

- (19) The Measure applies to the entire territory of France, except for New Caledonia.

3. ASSESSMENT

3.1. Lawfulness of the measures

- (20) The national legal basis for the measure will be issued and the measure will be implemented following the notification of the present decision (recital (15)). Therefore, 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 the initial decision (recitals (23) – (28) of the initial decision), as well as in recitals (27) and (28) of the decision SA.58689 (the fourth decision). However, the following considerations should be taken into account.
- (22) With respect to selectivity, the measure is selective since it only benefits certain employers located in specific geographical areas, where a state of emergency has been declared and restrictions have been put into force, thereby severely affecting the undertaking’s economic activity (recital (10)). In addition, the Commission considers that the notified amendment does not alter the conclusions on selectivity of the aid scheme as set out in the initial decision, as well as in the decisions approving amendments.
- (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 measure adopted by this amendment 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 in various parts of the French territory. In particular, the measure aims at supporting employees and avoiding lay-offs in areas of the French territory, which have been severely affected by the current health crisis and have been subject to restrictions affecting the economic activity. Thus, the wage subsidy provided to the beneficiaries ensures liquidity for a large number of employers, while also discharging them of the usual costs relating to the short-term and long-term work schemes.
- (26) The Commission accordingly considers that the measure is 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.
- (27) The Commission refers to its compatibility analysis as set out in recitals (29) – (36) of the initial decision, as well as in recitals (43) to (47) of the fourth decision. However, the following additional remarks should be taken into account:
- (a) As required by point 43(a) of the Temporary Framework, the aid is aimed at avoiding lay-offs during the COVID-19 outbreak (recitals (9), (12)). The Commission considers that a geographical criterion is appropriate to support employment in areas, which may face more severe health and economic disruption, compared to others.
 - (b) As required by point 43(b) of the Temporary Framework, aid under the present measure is granted in the form of a scheme to undertakings located in specific regions, which are subject to significant restrictions to their economic activity, due to the measures imposed by the pertinent authorities (see recital (10)). In particular, the measure aims at supporting employers, whose economic activity has been disrupted by lockdown measures imposed at the particular geographical area, where they carry out their business activities.
 - (c) As required by point 43(c) of the Temporary Framework, aid under the measure, as well as aid under the scheme (as approved by the decisions mentioned in recitals (1) and (2)): (i) will be granted for a period of not more than 12 months in total (recitals (11) and (13)), (ii) will be granted for employees that would otherwise have been laid off as a consequence of the COVID-19 outbreak (recitals (12) and (13)), and (iii) subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (recitals (11) and (13))
 - (d) The French authorities confirm that the cumulation, monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (13)).

(28) The Commission therefore considers that the measure does not alter the Commission's conclusions on the compatibility of the scheme as set out in the decisions mentioned in recitals (1) and (2).

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

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