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**Subject: State Aid SA.57754 (2020/N) – France  
COVID-19: Dispositif d'activité partielle ad hoc**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 25 June 2020, France notified the aid scheme *Dispositif d'activité partielle ad hoc* (“the ad hoc short-term work scheme” or “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).<sup>1</sup>
- (2) 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,<sup>2</sup> and to have this Decision adopted and notified in English.

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<sup>1</sup> 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 and 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.

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Son Excellence Monsieur Jean-Yves le Drian  
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## **2. DESCRIPTION OF THE MEASURE**

- (3) 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 redundancies.<sup>3</sup> The measure thus aims to preserve employment. Employees, due to the COVID-19 outbreak, would otherwise have been laid off. The measure also aims to allow undertakings to resume their activities immediately after the lockdown period.
- (4) 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.

### **2.1. The nature and form of aid**

- (5) The measure provides aid in the form of direct grants, namely wage subsidies for employees.

### **2.2. Legal basis**

- (6) The law No 2020-734 of 17 June 2020 relating to various provisions linked to the health crisis, to other urgent measures and to the withdrawal of the United Kingdom from the European Union, enables the government to set the ground discipline of an ad hoc short-term work scheme by means of an order (“the Order”)<sup>4</sup>. The Order is complemented by a decree (“the Decree”), also issued by the French government, which lays down the details for the application of the scheme. The applicability of the measure is conditional upon the entry into force of the Decree.

### **2.3. Administration of the measure**

- (7) The Ministry of Employment is responsible for administering the measure. The operational management of the procedure is delegated to the Services and Payments Agency.

### **2.4. Budget and duration of the measure**

- (8) The estimated budget of the measure is around EUR 207 million.
- (9) Aid may be granted under the measure as from its approval until no later than 30 September 2020. The measure will have retroactive effect as of 1 June 2020.

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<sup>3</sup> 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.

<sup>4</sup> Ordonnance n° 2020-770 du 24 juin 2020 relative à l'adaptation du taux horaire de l'allocation d'activité partielle, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000042032623&dateTexte=&categorieLien=id>

## **2.5. Beneficiaries**

- (10) The final beneficiaries of the measure are employers in the private sector. The subsidy claim is made by the employers, who must fall under one of the following categories of economy sectors:
- (a) Catering, restauration, hotel and accommodation industry, tourism, passenger transport, event organisation, production of films, videos and television programmes, arts, culture and sports, as detailed in Annex 1 to the Decree.
  - (b) Upstream or downstream activities of the sectors mentioned above, as detailed in Annex 2 to the Decree.
  - (c) Any other sector, apart from those mentioned above, which relates to services provided to the public and was forced to interrupt its activities due to the spread of COVID-19.

## **2.6. Sectoral and regional scope of the measure**

- (11) The measure is open to the sectors identified above. It applies to the whole territory of France, except for New Caledonia.

## **2.7. Basic elements of the measure**

- (12) The measure consists of an amendment to the pre-existing short-term work scheme, which according to the French authorities is applicable to all employees of the private sector, irrespective of the size or the economy sector of the employer. By that mechanism, the employee receives 70% of his or her gross salary and the employer is compensated for that amount by the State.
- (13) Under the ad hoc short-term work scheme, the percentage of the amount compensated is being reduced to 60% of the gross salary. However, the percentage of 70% will continue to apply for the following categories of employers in the above mentioned sectors and subject to the respective conditions:
- (a) Employers active in the sectors of catering and restauration, hotel industry and accommodation, tourism, passenger transport, arts, culture and sports, as identified in Annex 1 to the Decree.
  - (b) Employers active in upstream or downstream sectors linked to the sectors mentioned above, as identified in Annex 2 to the Decree. Employers falling under that category must also prove that they have sustained a loss amounting at 80% of their total revenue during the period from 15 March to 15 June 2020. It can be confirmed by comparing the revenue corresponding to the same period of 2019 or by comparing the average monthly turnover of the year 2019 with that of the last two months.
  - (c) Employers active in any other sector, apart from those specified above, which involves services provided to the public and whose activity was interrupted by the spread of COVID-19. Voluntary interruptions of activity are excluded from that category.

- (14) The French authorities confirm that the wage subsidy to the employer consists in the payment of up to 70% of the employees' monthly salary [excluding the employers' social security contributions, but including contributions to CSG (6.2 %) and CRDS (0.5 %)]<sup>5</sup>. Even in cases of a minimum payment of an hourly subsidy of EUR 8.03, this will remain in all cases below the maximum aid intensity of 80% of the monthly gross salary.
- (15) The French authorities will ensure that the measure is granted to employers who have sustained a reduction in their business activities and subject to the condition that the employees will remain in constant employment for the period for which the subsidy is received. The purpose of the measure is the avoidance of lay-offs and the maintenance in continuous employment of the personnel for the period during which the aid is granted.
- (16) Eligible employers must submit an application through a special platform and prove that they fulfil the particular requirements. The application includes all the necessary information for the competent authority to verify that the conditions for eligibility of the applicants are fulfilled. The French authorities confirm that the application of the beneficiaries in the above-mentioned sectors should have been made in order to benefit from the initial short-term work scheme, and thus before 1 June 2020. On the basis of that information, the administration will either grant or refuse the placement of the employees under the subsidy scheme. In the former case, the employer will thus be able to submit their monthly claims for compensation.
- (17) In case of non-compliance with the conditions of the aid measure, the competent authority must order the reimbursement of the amounts granted, along with any penalties applicable.
- (18) The measure will apply as of 1 June 2020 until 30 September 2020.

## **2.8. Cumulation**

- (19) The French authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>6</sup> or a Block Exemption

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<sup>5</sup> The "Contribution Sociale Généralisée" (CSG) and the "Contribution au Remboursement de la Dette Sociale" (CRDS) are levies imposed on the income of individuals at the respective rates of 6,2% and 0,5%. The former aims at funding social security and unemployment benefits, while the latter aims at absorbing the social security debt.

<sup>6</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

Regulation<sup>7</sup> provided the provisions and cumulation rules of those Regulations are respected.

- (20) The French authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (21) The French authorities confirm that aid granted under the measure may be combined with aid granted under other generally available measures or with aid schemes in the form of employment support measures duly authorised by the Commission, provided the total amount of combined aid does not lead to overcompensation of the wage costs of the personnel concerned.

## **2.9. Monitoring and reporting**

- (22) The French authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

## **3. ASSESSMENT**

### **3.1. Existence of State aid**

- (23) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on undertakings. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (24) The measure is imputable to the State, since it is administered by the Ministry of Employment and it is based on the law 2020-734 of 17 June 2020 and the relevant Order and Decree to be issued following the adoption of this Decision. It is financed through State resources, since it is financed by public funds.

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<sup>7</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

- (25) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those undertakings of costs, which they would have had to bear under normal market conditions.
- (26) The advantage granted by the measure is selective for several reasons, since it ensures a higher coverage only to certain undertakings in the private sector, in particular those active in the following sectors:
- (a) catering and restauration, hotel industry and accommodation, tourism, passenger transport, arts, culture and sports,
  - (b) the upstream and downstream sectors linked to the sectors mentioned above, provided that they have sustained a loss of revenue amounting at 80%,
  - (c) any other sector, apart from those mentioned above, which involves services provided to the public and was forced to interrupt its activities due to the spread of COVID-19.
- (27) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (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.

### **3.2. Compatibility**

- (29) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (30) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (31) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that *“the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”*. The Commission concluded that *“State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”*.
- (32) The measure aims at preserving employment and avoiding redundancies during the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of the Member States. In particular, the measure aims at supporting employees and avoiding lay-offs in sectors of the economy, which have been severely affected by the current health crisis, by ensuring liquidity for a large number of employees, while also discharging the employers of the usual costs relating to the short-term work scheme.

- (33) The measure is one 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 entire French economy. 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.
- (34) 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. 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 recital (3)].
  - As required by point 43(b) of the Temporary Framework, aid is granted in the form of schemes to undertakings in the specific sectors that are particularly affected by the COVID-19 outbreak, namely: (i) catering and restauration, hotel industry and accommodation, tourism, passenger transport, arts, culture and sports, (ii) upstream and downstream sectors linked to the sectors formerly mentioned, provided that they have sustained a loss of revenue amounting at 80%, (iii) any other sector, which involves services provided to the public and was forced to interrupt its activities [see recitals (10) and (11)].
  - As required by point 43(c) of the Temporary Framework, the wage subsidy is granted under the measure (i) over a period of not more than twelve months, namely 4 months in total in total [see recital (18)], with applications having been made also before that date [see recital (16)], (ii) for employees that would otherwise have been made redundant as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak [see recital (15)] 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 [see recital (15)].
  - 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) of the benefitting personnel [see recitals (13) and (14)].
  - As required by point 43(e) of the Temporary Framework, the French authorities confirm that if wage subsidies granted under the measure are combined with other generally available or selective employment support measures, overcompensation of the wage costs of the personnel concerned will be excluded [see recitals (19), (20) and (21)].
  - The measure does not exclusively target employees from the financial sector [see recitals (11) and (12)]. The measure is therefore in line with points 20bis and 43bis of the Temporary Framework.

- (35) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (see recital (21)). The French authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected [see recitals (19), (20) and (21)].
- (36) 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.

### **3.3. Lawfulness of the measure**

- (37) By notifying the measure before putting it into effect, the French authorities have respected their obligations under Article 108(3) TFEU.

## **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

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
**EUROPEAN COMMISSION**