



Brussels, 27.7.2021
C(2021) 5750 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.62999 (2021/N) – France
COVID-19: Aid in the form of exemptions from social security
contributions (« Régime d'aides sous forme d'exonérations de
cotisations sociales »)**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 13 July 2021, France notified aid in the form of wage subsidies to cover the social security contributions (Régime d'aides sous forme d'exonérations de cotisations sociales, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹
- (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

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

Son Excellence Monsieur Jean-Yves Le Drian
Ministre de l'Europe et des Affaires étrangères
37, Quai d'Orsay
F - 75351- PARIS

Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) France considers that the COVID-19 outbreak affects the real economy and puts at risk the jobs of workers and employees of undertakings that have reduced or suspended partially or entirely their activities due to the state of emergency and containment measures enforced by the national authorities. This is particularly the case in the sectors covered by the measure (listed in recital 12), which have experienced important decrease in revenues and/ or have been closed to the public as a result of containment measures.³ There is therefore a risk of significant redundancies in these sectors. The measure thus aims to preserve employment which, due to the COVID-19 outbreak, would have otherwise been laid off and to allow undertakings to resume their activities immediately after containment measures are lifted.
- (4) France confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) 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

- (6) The measure provides aid in the form of reductions of social security contributions intended as a wage subsidy, contributing to the wage cost borne by the employers in relation to the employees concerned.

2.2. Legal basis

- (7) The legal bases for the measure are Article 65 of Law n°2020-935 of 30 July 2020, Article 9 of Law n°2020-1576 of 14 December 2020, Article 9 of the draft law n°4215 of 2 July 2021 and an implementing Decree that will modify the Decree n° 2021-75 of 27 January 2021 and will be adopted following the approval of the measure by the Commission.

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

³ According to data provided by the French authorities, the GDP of France decreased by 9% in 2020. The sectors covered by the measure are among the ones that were the most impacted by COVID-19 outbreak. For example, according to the INSEE, the revenues of undertakings active in the hotel and restaurant sectors diminished by 70% in April 2020 and by 60% in November and December 2020, compared to pre-crisis levels. The revenues of undertakings active in the sport sector diminished by 21% during 2020, compared to 2019 levels, and 25% of these undertakings declared a decrease of revenues of at least 50%. For more information, see: <https://www.insee.fr/fr/statistiques/4796809?sommaire=4473296>

2.3. Administration of the measure

- (8) The granting authority is the Ministry of Public Action and Accounts. The Agence centrale des organismes de sécurité sociale (ACOSS), the Unions de recouvrement des cotisations de sécurité sociale et d'allocations familiales (URSSAF) and the Caisses générales de sécurité sociale (CGSS) are responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 8.4 billion.
- (10) Aid may be granted under the measure as from the adoption of an implementing decree that will be adopted following the approval of the measure by the Commission until no later than 31 December 2021.

2.5. Beneficiaries

- (11) The beneficiaries of the measure are undertakings of less than 250 employees.

2.6. Sectoral and regional scope of the measure

- (12) The measure is open to i) undertakings of less than 250 employees active in the tourism, hotel, restaurant, sport, culture, air transport and event sectors as well as sectors dependent on those sectors and ii) undertakings of less than 50 employees that are closed to the public as a result of containment measures.

2.7. Basic element the measure

- (13) The measure consists in i) exemptions from employer's social security contributions and ii) aid for the payment of social security contributions.
- (14) Article 65 of Law n°2020-935 of 30 July 2020 provides for i) an exemption from the payment of employer's social security contributions and ii) an aid for the payment of social security contributions amounting to 20% of the employer's payroll covering the employment periods between February and May 2020. These measures apply to the following undertakings:
- a) Undertakings of less than 250 employees active in the tourism, hotel, restaurant, sport, culture, air transport and event sectors;
 - b) Undertakings of less than 250 employees active in sectors that depend on the sectors mentioned in item b), which experienced a decrease in revenues of at least 80% compared to the same period in 2019⁴ and
 - c) Undertakings of less than 10 employees active in other sectors, which activities necessitate to be open to the public, and that were closed down as a result of containment measures (excluding voluntary closures).
- (15) Article 9 of Law n°2020-1576 of 14 December 2020 provides for i) an exemption from the payment of employer's social security contributions and ii) an aid for the

⁴ Or a decrease of 30% of their annual revenues, in case of seasonality of their activities.

payment of social security contributions amounting to 20% of the employer's payroll. It covers the employment periods between i) September 2020 for employers located in regions under curfew and October 2020 for other employers till ii) April 2021. These measures apply to the following undertakings:

- a) Undertakings of less than 250 employees active in the tourism, hotel, restaurant, sport, culture, air transport and event sectors, which either i) are closed to the public or ii) experienced a decrease in revenues of at least 50% compared to the same period in 2019⁵. For professional sport clubs the conditions of being closed to the public and experiencing a 50% decrease in revenues are presumed to be met as a result of containment measures applicable to them (audience limits and closed doors);
 - b) Undertakings of less than 250 employees active in sectors that depend on the sectors mentioned in item b), which either i) are closed to the public or ii) experienced a decrease in revenues of at least 50% compared to 2019 and
 - c) Undertakings of less than 50 employees active in other sectors which were closed to the public as a result of containment measures.
- (16) The benefit of the measures provided under Article 65 of Law n°2020-935 of 30 July 2020 and Article 9 of Law n°2020-1576 of 14 December 2020 is currently limited to EUR 1.8 million, pursuant to the Decree n° 2021-75 of 27 January 2021. These measures were granted on the basis of an umbrella scheme approved as State aid SA.56985 (and following amendments)⁶ under Section 3.1 of the Temporary Framework.
- (17) The French authorities confirmed that no amount exceeding the ceiling of EUR 1.8 million has been granted. However, according to the French authorities, the vast majority of employers who exceeded the ceiling have benefited from deferrals of their social security contributions under general measures.
- (18) An implementing decree to be adopted following the adoption of this Decision will extend the benefit of the measures provided under Article 65 of Law n°2020-935 of 30 July 2020 and Article 9 of Law n°2020-1576 of 14 December 2020 beyond the ceiling of EUR 1.8 million. The notified measure concerns the amounts which exceed the ceiling of EUR 1.8 million and are therefore not covered by the scheme SA.56985.
- (19) In addition, Article 9 of the draft Law n°4215 of 2 July 2021 provides that, for the employment periods between May 2021 and August 2021, the measures provided under Article 65 of Law n°2020-935 of 30 July 2020 and Article 9 of Law n°2020-1576 of 14 December 2020 (i.e. the exemptions from the payment of employer's social security contributions and the aid for the payment of social security contributions amounting to 20% of the employer's payroll) will be

⁵ Or a decrease of 15% of their annual revenues, in case of seasonality of their activities.

⁶ SA.56985: COVID-19: Régime cadre temporaire pour le soutien aux entreprises, which the Commission approved by Decision of 20 April 2020 C(2020) 2595 final, amended by Decisions SA.57299 of 20 May 2020 C(2020)3460 final, SA.58137 of 31 July 2020 C(2020) 5413 final, SA.59722 of 9 December 2020 C(2020) 9072 final and SA.62102 of 16 March 2021 C(2021) 1902 final.

replaced by an aid for the payment of social security contributions amounting to 15% of the employer's payroll.⁷

- (20) The French authorities committed that, in order to benefit from the notified measure, employers will have to maintain in continuous employment the personnel for whom the benefit of the notified measure is asked for a period of 3 months following the moment they will benefit from the aid.
- (21) Furthermore, the French authorities committed to require from employers who have already paid their social security contributions relating to the employment periods between February and May 2020 and September 2020 and April 2021 exceeding the ceiling of EUR 1.8 million that those will have to show that they meet the conditions to lay-off personnel on economic grounds set out in Article L. 1233-3 of the French Labour Code at the moment they will benefit from the aid.⁸
- (22) According to the French authorities, the exemption of employer's social security contributions and the aid for the payment of social security contributions provided under Article 65 of law n°2020-935 of 30 July 2020 and Article 9 of law n°2020-1576 of 14 December 2020 represent 36% of the benefiting employees' monthly gross salary (including the employer's social security contributions). The aid for the payment of social security contributions provided under Article 9 of the draft Law n°4215 of 2 July 2021 represents 9 % of the benefiting employees' monthly gross salary (including the employer's social security contributions).

2.8. Cumulation

- (23) The French authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations⁹ or the Block Exemption Regulations¹⁰ provided the provisions and cumulation rules of those Regulations are respected.

⁷ The aid may be prolonged after the employment period of August 2021 for undertakings that would remain closed to the public as a result of containment measures.

⁸ The economic difficulties that can be invoked in order to proceed to lay-offs for economic reasons include i) a decrease of orders or turnover, ii) operating losses or iii) erosion of cash flow or gross operating profit.

⁹ 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, 26.4.2012, p. 8).

¹⁰ 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

- (24) 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.
- (25) The French authorities confirm that aid granted under the measure may not be combined with support granted under other generally available measures (other than the deferral measures mentioned in recital (17)) or with aid schemes in the form of employment support measures covering the same benefitting personnel and employment periods.

2.9. Monitoring and reporting

- (26) 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 2021, 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. Lawfulness of the measure

- (27) As explained in recital (17), no amount of aid exceeding the ceiling of EUR 1.8 million has been granted yet under Article 65 of Law n°2020-935 of 30 July 2020 and Article 9 of Law n°2020-1576 of 14 December 2020. The notified measure concerns amounts of aid exceeding the ceiling of EUR 1.8 million, which will be granted following the adoption of an implementing decree that will modify the Decree n° 2021-75 of 27 January 2021 and will be adopted following the adoption of this Decision. Further, Article 9 of the draft Law n°4215 of 2 July 2021 has not yet been adopted.
- (28) 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

- (29) 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 its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (30) The measure is imputable to the State, since it is granted by the Ministry of Public Action and Accounts and it is based on Article 65 of law n°2020-935 of 30 July 2020, Article 9 of law n°2020-1576 of 14 December 2020, Article 9 of the draft law n°4215 of 2 July 2021, and an implementing decree to be adopted following

Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

the approval of the measure by the Commission. It is financed through State resources, since it is financed by public funds.

- (31) The measure confers an advantage on its beneficiaries in the form of reductions of social security contributions. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings and sectors, in particular: i) undertakings of less than 250 employees active in the tourism, hotel, restaurant, sport, culture, air transport and event sectors as well as sectors dependent on those sectors and ii) undertakings of less than 50 employees that were closed to the public during the period for which the aid is asked as a result of containment measures.
- (33) 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.
- (34) 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

- (35) 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.
- (36) 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”*.
- (37) 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”*.
- (38) The measure aims at preserving employment and/or 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.
- (39) 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 measure aims to preserve employment and economic continuity in the sectors listed in recital (12). Furthermore, the measure has been designed to meet the requirements of a specific category of aid (*“Aid in the form of wage subsidy”*) described in section 3.10 of the Temporary Framework.

- (40) 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:
- Aid granted under the measure is aimed at avoiding redundancies during the COVID-19 outbreak (recital (3)). The measure therefore complies with point 43(a) of the Temporary Framework.
 - Aid is granted in the form of schemes to undertakings in specific sectors that are particularly affected by the COVID-19 outbreak (recitals (3) and (12)). The measure therefore complies with point 43(b) of the Temporary Framework.
 - The individual aid awards under the measure are granted no later than 31 December 2021 (recital (10)), 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 (recitals (3) and (21)). The measure is subject to the condition that the benefitting personnel is maintained in continuous employment for a period of 3 months following the moment the employer will benefit from the aid (recital (20)) and covers employment periods until August 2021. The benefitting personnel will therefore be maintained in continuous employment for the entire period for which the aid is granted and the measure thus complies with point 43(c) 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 for the relevant period of time during which the measures will be implemented under section 3.10 of the TF. The exemption of employer's social security contributions and the aid for the payment of social security contributions provided under Article 65 of law n°2020-935 of 30 July 2020 and Article 9 of law n°2020-1576 of 14 December 2020 represent 36% of the benefitting employees' monthly gross salary (including the employer's social security contributions). The aid for the payment of social security contributions provided under Article 9 of the draft Law n°4215 of 2 July 2021 represents 9 % of the benefitting employees' monthly gross salary (including the employer's social security contributions). The measure therefore complies with point 43(d) of the Temporary Framework.
 - The French authorities confirm that the wage subsidies granted under the measure may not be combined with other generally available or selective employment support measures covering the same benefitting personnel and employment periods (other than the deferral measures mentioned in recital (17)) (recital (25)). Any risk of overcompensation of the wage costs of the personnel concerned will therefore be excluded. The measure therefore complies with point 43(e) of the Temporary Framework.
 - The measure only applies to certain categories of employers active in the sectors listed in recital (12) and thus do not target employees from the financial sector. The measures are therefore in line with points 20bis and 43bis of the Temporary Framework.

- (41) The French authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).
- (42) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (26)). 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 and the cumulation rules of the relevant Regulations are respected (recitals (23) and (24)).
- (43) 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