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**Subject: State Aid SA.102799 (2022/NN) – France
COVID-19: Modifications to SA.62999 (2021/N) - 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 29 June 2022, France notified amendments (the “notified amendments”) to the State aid measure 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 »)¹, as amended by SA.100959 (2021/N) – France – COVID-19: Prolongation des régimes d'aides d'État SA.56709, SA.56985, SA.57367, SA.57695, SA.57754, SA.61330, SA.62568, SA.62999, SA.63564 et SA.63656², (collectively, the “existing aid scheme”) under the Temporary Framework for State aid measures to support the economy in the current

¹ Decision C(2021) 5750 final of 27 July 2021 (the “initial decision”)

² Decision C(2021) 9880 final of 20 December 2021 (the “first amending decision”)

Son Excellence Madame Catherine Colonna
Ministre de l'Europe et des Affaires étrangères
37, Quai d'Orsay
75351- PARIS
FRANCE

COVID-19 outbreak (the “Temporary Framework”).³ The French authorities provided additional information on 11 and 12 July 2022.

- (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 1/1958⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) As explained in recitals (16) to (18) of the initial decision, the existing aid scheme concerns amounts of aid which are not covered by the umbrella scheme SA.56985⁵. Following the increase in the aid ceiling for aid granted under the scheme SA.56985⁶ approved by the Commission in case SA.100959 (2021/N) – France – COVID-19: Prolongation des régimes d’aides d’État SA.56709, SA.56985, SA.57367, SA.57695, SA.57754, SA.61330, SA.62568, SA.62999, SA.63564 et SA.63656, the existing aid scheme covers amounts of aid exceeding EUR 2.3 million. Aid may be granted under the existing aid scheme no later than 30 June 2022.
- (4) The present decision concerns the following amendments:
- (5) First, by Decrees n°2021-709 of 3 June 2021, n°2021-1410 of 29 October 2021 and n°2021-1956 of 31 December 2021, France prolonged without modifications the exemption 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 provided by Article 9 of Law n°2020-1576 of 14 December 2020⁷, to the following eligible employers and employment periods:
 - (a) Employers active in the sectors listed in recital 15 of the initial decision who were subject to capacity gauges of less than 50% during the employment period of May 2021;

³ 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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

⁵ 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, SA.62102 of 16 March 2021 C(2021) 1902 final and SA.100959 of 20 December 2021 C(2021) 9880 final.

⁶ Decision C(2021) 9880 final of 20 December 2021 concerning SA.100959 (2021/N) – France – COVID-19: Prolongation des régimes d’aides d’État SA.56709, SA.56985, SA.57367, SA.57695, SA.57754, SA.61330, SA.62568, SA.62999, SA.63564 et SA.63656.

⁷ See recital (15) of the initial decision for a description of these aid measures.

- (b) Discotheques during the employment periods of May, June, July, November and December 2021; and
 - (c) Employers active in the sectors listed in recital 15 of the initial decision and located in the overseas territories where the state of emergency was prolonged during the employment periods of July and August 2021.
- (6) Second, by Decree n°2022-170 of 11 February 2022, France prolonged and amended the existing aid scheme for the employment periods of December 2021 and January 2022 as follows:
- (a) Employers who either were closed to the public or experienced a decrease in revenues of at least 65% compared to the same month in one of the two preceding years are eligible to the exemption 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;
 - (b) Employers who experienced a decrease in revenues of at least 30% (but less than 65%) compared to the same month in one of the two preceding years are eligible to the aid for the payment of social security contributions amounting to 20% of the employer's payroll;
 - (c) The aid measures are limited to the social security contributions due on the part of employees' salaries not exceeding 4.5 times the French minimum salary ("SMIC").
- (7) Third, by Decree n°2022-806 of 13 May 2022, France further prolonged the existing aid scheme as amended by Decree n°2022-170 of 11 February 2022 for the employment period of February 2022 and reduced the aid for the payment of social security contributions to 15% for employers who experienced a decrease in revenues of at least 30% (but less than 65%) compared to the same month in one of the two preceding years.
- (8) Fourth, the estimated budget of the existing scheme was increased by EUR 500 million.⁸
- (9) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.

⁸ The total budget of the measure will be EUR 8.9 billion.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (10) The Commission observes that France has put into effect the notified amendments before the Commission's approval. The Commission regrets that France introduced the notified amendments before the Commission has adopted its decision, in breach of Article 108(3) TFEU. However, the Commission has decided, based on the assessment below, not to raise objections to the notified amendments on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) TFEU.

3.2. Existence of State aid

- (11) 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 be liable to affect trade between Member States.
- (12) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (29) to (34) of the initial decision. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (13) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of Section 2 and Section 3.10 of the Temporary Framework for the reasons set out in recitals (35) to (43) of the initial decision. The Commission therefore refers to the respective assessment of the initial decision.
- (14) The notified amendments do not affect that conclusion. In particular:
- (a) The amendment described in recital (5) prolongs the application of the scheme to employers that were particularly affected by the COVID-19 outbreak. The scheme therefore continues to comply with point 43(b) of the Temporary Framework.
 - (b) The amendment described in recital (6)(a) strengthens the requirement that the existing scheme benefits undertakings that are particularly affected by the COVID-19 outbreak by increasing the loss in revenue required to benefit from the existing scheme from 50% to 65%. The scheme therefore continues to comply with point 43(b) of the Temporary Framework.

- (c) The amendment described in recital (6)(b) provides for a lower amount of aid for employers who experienced a decrease in revenues of at least 30% (but less than 65%) compared to the same month in one of the two preceding years. The Commission considers that this measure remains targeted at undertakings that are particularly affected by the COVID-19 outbreak and complies with point 43(b) of the Temporary Framework. Further, it provides for a lower aid intensity than the initial measure and therefore complies with point 43(d) of the Temporary Framework.
 - (d) The amendment described in recital (6)(c) limits the amount of social security contributions that can be exempted and/or for which an aid for their payment can be granted. It therefore lowers the amount and intensity of the aid. The measure therefore continues to comply with point 43(d) of the Temporary Framework.
 - (e) The amendment described in recital (7) further reduces the amount of aid for employers who experienced a decrease in revenues of at least 30% (but less than 65%) compared to the same month in one of the two preceding years. The measure therefore continues to comply with point 43(d) of the Temporary Framework.
 - (f) The estimated budget increase of the existing scheme (recital (8)), does not affect any of the conditions set out in Sections 2 and 3.10 of the Temporary Framework.
- (15) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.
- (16) The Commission therefore considers that the notified amendments 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 they meet all the relevant conditions of the Temporary Framework. The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the scheme, as amended, 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President