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**Subject:** **State Aid SA.60965 (2021/N) – France**  
**COVID-19: « Régime d’aides sous la forme d’une compensation pour les congés payés acquis en période d’activité partielle »**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 15 January 2021, France notified the aid scheme “*Régime d’aides sous la forme d’une compensation pour les congés payés acquis en période d’activité partielle*” (the “measure”), under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).<sup>1</sup>

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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, 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 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 of 13 October 2020 on the Fourth Amendment of 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 Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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- (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.

## **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 therefore aims at providing temporary relief and preserving employment at undertakings in sectors particularly hit by the containment measures, which would otherwise have laid off part of their workforce, thus allowing undertakings to resume their activities immediately after the lockdown period.
- (4) France confirmed 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 section 3.10 of the Temporary Framework.

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

- (6) The measure provides aid in the form of direct grants.

### **2.2. Legal basis**

- (7) The legal basis for the measure is the Government Decree n° 2020-1787 of 30 December 2020 “On exceptional support for enterprises providing services to the public in respect of paid leave taken by their employees between 1 and 20 January 2021” (*“Décret n° 2020-1787 du 30 Décembre 2020 relatif à l'aide exceptionnelle accordée aux entreprises accueillant du public au titre des congés payés pris par leurs salariés entre le 1er et le 20 Janvier 2021”*), published in the

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

<sup>3</sup> 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. Due to the second, even more acute, wave of COVID-19, a new round of restrictions targeted firstly at local and regional level (accommodation and catering, cultural and sporting activities) were adopted as early as the end of September and then reinforced in October with the introduction of a curfew, initially restricted to a few departments and then extended to others. As the epidemic continued to spread, a new containment measures entered into force from 30 October to 15 December 2020. Certain sectors, namely those engaging in providing services to the public (tourism, hotels, restaurants, sport, culture, air transport and events) are particularly affected by the measures and recommendations adopted by the French Government since they will remain closed until at least the 20<sup>th</sup> of January 2021.

official French Gazette on 31 December 2020 (*Journal officiel de la République Française n° 0316 du 31 décembre 2020*). This decree has been amended by the Government Decree n° 2021-44 of 20 January 2021 “Relating to the exceptional support granted to enterprises providing services to the public in respect of paid leave taken by their employees”<sup>4</sup> (“*Décret n° 2021-44 du 20 janvier 2021 relatif à l'aide exceptionnelle accordée aux entreprises accueillant du public au titre des congés payés pris par leurs salariés*”), published in the official French Gazette on 21 January 2021 (*Journal officiel de la République Française n° 0018 du 21 janvier 2021*”).

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

- (8) 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**

- (9) The estimated total budget of the measure is around EUR 200 million.
- (10) Aid may be granted under the measure as from the notification of the present decision to France until no later than 31 May 2021. France commits that, even though the national legal basis has already been put into effect, no application for aid will be examined and no aid will be granted by the managing authorities until the notification of the present decision to France.

### **2.5. Beneficiaries**

- (11) The beneficiaries of the measure are employers of undertakings of all sizes, active in the private sector and engaging in economic activities relating to providing services to the public. Beneficiaries must fulfil one of the following conditions:
  - (a) The undertakings must have been shut down and therefore not allowed to provide services to the public in the entirety or in part of its establishment for a total period of at least 140 days between 1 January 2020 and 31 December 2020<sup>5</sup> or
  - (b) The undertakings must have suffered an aggregate turnover decline of more than 90% in the two periods where the state of emergency has been declared, i.e. from 24 March to 10 July 2020 and from 17 October to 31 December 2020, compared with the respective periods of 2019.

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<sup>4</sup> Pursuant to this amending decree, the deadline until which the employees can take the days of paid leave has been extended to 7 March 2021 (instead of 21 January 2021, which was laid down by the Decree of 30 December 2020).

<sup>5</sup> The criterion of 140 days reflects the aggregate days of the two lockdown periods of 2020, during which it was prohibited for those undertakings to provide services to the public. In particular, these periods are (i) from 15 March to 2 June, namely 79 days, and from 30 October to 31 December, namely 62 days, resulting to a total of 141 days.

- (12) The French authorities recognise that, in practice, the measure will mostly cover economic sectors relating to hotel and accommodation services, tourism, restauration and catering, organisation of events, sports and culture.

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

- (13) The measure is open to the undertakings identified in recital (11). It applies to the whole territory of France.

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

- (14) The French authorities submit that the measure is crucial in order to maintain employment in the sectors covered, which have been severely affected by the COVID-19 outbreak ever since spring 2020. These undertakings are currently facing the second mandatory disruption of their business activities during the COVID-19 outbreak due to the lockdown imposed by the French government on 30 October 2020 and have thus suffered a severe reduction in their revenue, which translated into reduced liquidity and ability to cover their expenses, including wage costs and relevant obligations. The French authorities also submit that salary costs corresponding to days of paid leave are included in wage costs, the financial burden of which is borne by the employer and is not covered by any other support measure put into effect by the government so far. Thus, the measure aims at providing full support to the undertakings most affected by the current health and economic crisis, while also ensuring their business continuity and avoiding layoffs.
- (15) The measure consists of a wage subsidy reimbursing the wage costs corresponding to days of paid leave to which employees were entitled throughout 2020 (according to the French Labour Code, during periods of partial employment), but did not use in that year. The employees have the possibility to use maximum 10 of those days of paid leave during the period from 1 January to 7 March 2021.
- (16) For those days of paid leave, the employer will pay to the employee 100% of its gross salary, while the employer will receive a wage subsidy amounting to 70% of the employee's gross salary. The French authorities confirm that the gross salary, which excludes the employer's social security contributions, but includes contributions to CSG (6.2 %) and CRDS (0.5 %)<sup>6</sup>, is calculated according to the rules laid down in the French legislation, and in particular in the Labour Code<sup>7</sup>.
- (17) For days of paid leave taken in the period from 1 February to 7 March 2021, employers will be able to benefit from the present scheme only if at least one of

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<sup>6</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>7</sup> The calculation takes place in accordance with the conditions laid down in Article L. 3141-24 of Article L. of the Labour Code, reduced to an hourly amount limited to 4.5 times the hourly rate of the SMIC. This hourly rate may not be less than EUR 8.11, except for employees on an apprenticeship or professionalisation contract. The hourly rate is calculated by referring each day of paid leave to the daily working time applicable to the employee or, if that period cannot be determined, to seven hours.

their employees have been placed under the ad hoc short-term work scheme<sup>8</sup> or the preferential regime within the long-term work scheme<sup>9</sup> during the same period, i.e. from 1 February to 7 March 2021. Not all employees, for whom aid under the present scheme is granted, must have also been placed under one of the other two wage subsidy schemes, but it is sufficient that at least one of the employees of the same employer is placed under one of those schemes during the same period.

- (18) Eligible employers must submit an application for aid and prove that they fulfil the relevant requirements, including the commitment to maintain the employees in continuous employment for the entire period for which the aid is granted. According to the national administrative procedure, the applications must be submitted by 30 April 2021 at the latest.
- (19) The French authorities submit that under no circumstances will the amount of subsidy exceed 80% of the employees' monthly gross salary. In this respect, the French authorities clarify that it is likely that several undertakings may qualify both under this scheme and under the ad hoc short-term work scheme<sup>10</sup> or the preferential regime within the long-term work scheme<sup>11</sup>. In such cases, the employer will not be allowed to benefit from both schemes at the same time, for the same employee and for the same working days. For example, if an employee decides to use 10 days of paid leave in January 2021, the employer will be reimbursed through the present measure scheme for these days and through the other applicable scheme (either the ad hoc short-term work scheme or the preferential regime within the long-term work scheme) for the remaining 21 days of the same month.

## 2.8. Cumulation

- (20) The French authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations<sup>12</sup> or the General Block

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<sup>8</sup> Commission decision of 29 June 2020 SA.57754 (2020/N) – “COVID-19: Dispositif d'activité partielle ad hoc”, C(2020) 4512 final, as amended by the following decisions : (i) SA.58108 of 30 July 2020, C(2020) 5347 final, (ii) SA.58522 of 10 September 2020, C(2020) 6295 final, (iii) SA.58689 of 24 September 2020, (iv) SA.58978 of 15 October 2020, C(2020) 7219 final, (v) SA.60095 of 15 December 2020, C(2020) 9339 final.

<sup>9</sup> As approved by the Commission decision of 15 October 2020 SA.58978 – « COVID-19: Amendment to the scheme SA.57754 – «Modulation géographique du taux d'activité partielle et d'activité partielle de longue durée », C(2020) 7219 final

<sup>10</sup> See footnote 8.

<sup>11</sup> See footnote 9.

<sup>12</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, 26.4.2012, p. 8.).

Exemption Regulation (GBER)<sup>13</sup> provided the provisions and cumulation rules of those Regulations are respected.

- (21) 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.
- (22) The French authorities confirm that aid granted under the measure may be combined with support 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 support does not lead to overcompensation of the wage costs of the personnel concerned. In particular, the French authorities commit that, in any event, in case of cumulation of more than one wage subsidy schemes during the same period, the maximum amounts of aid laid down in Section 3.10 of the Temporary Framework will be respected.

## **2.9. Monitoring and reporting**

- (23) 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 30 June 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**

- (24) Pursuant to the standstill clause of Article 108(3) TFEU, new aid measures must not be put into effect before the Commission has taken a decision authorising such aid. The legal basis for the measure was adopted on 30 December 2020 and amended on 21 January 2021 (recital (7)). However, the Commission observes that the French authorities committed neither to grant any aid, nor to process or approve any application submitted to the competent national authority in the context of that scheme before the notification of the present decision to France (recital (10)). The Commission therefore considers that, the French authorities have respected their obligations under Article 108(3) TFEU.

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<sup>13</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.

### 3.2. Existence of State aid

- (25) 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.
- (26) The measure is imputable to the State, since it is administered by the Ministry of Employment, and it is based on the Government Decree n° 2020-1787 of 30 December 2020 “On exceptional support for enterprises hosting the public in respect of paid leave taken by their employees between 1 and 20 January 2021”, as amended on 21 January 2021 (recital (7)). It is financed through State resources, since it is financed by public funds (recitals (8) and (9)).
- (27) The measure confers an advantage to its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (28) The advantage granted by the measure is selective, since it is awarded only to certain undertakings which fulfil the criteria described in recital (11)).
- (29) 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.
- (30) 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

- (31) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.
- (32) 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*”.
- (33) 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*”.
- (34) The measure aims at preserving employment and avoiding redundancies in the sectors most affected by the COVID-19 outbreak, which is causing severe disturbances in the real economy of the Member States. In particular, the measure aims at preserving employment and business continuity in the fields which relate

to providing services to the public and have been mandatorily shut down for at least 140 days during 2020 or have sustained a significant reduction in their turnover in the periods where the state of emergency has been declared. The measure guarantees a level of liquidity to undertakings by partially discharging them of salary costs corresponding to days of paid leave, while also ensuring that employees remain in continuous employment. This will enable undertakings to maintain their personnel in continuous employment for as long as the measure applies.

- (35) The measure is part of a wider 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 measures has been designed to meet the requirements of specific categories of aid described in section 3.10 of the Temporary Framework.
- (36) 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:
  - (a) Aid granted under the measure aims at preserving employment and avoiding redundancies during the COVID-19 outbreak. In this case, the measure translates in reduction of employers' wage costs and greater employment security for employees occupied in heavily affected economic sectors, who would run a high risk of being laid off, given the reduced economic activity of their employers (recital (14)). The fact that the salary costs reimbursed relate to days of paid leave does not alter the nature of the present measure, since paid leave is an integral part of the employment costs. Thus, the Commission considers that the measure aims at and achieves the purpose of maintaining employment, which is the critical feature of schemes assessed under Section 3.10 of the Temporary Framework. Therefore, the measure complies with point 43(a) of the Temporary Framework.
  - (b) Aid is granted in the form of a scheme to undertakings in certain sectors, that are particularly affected by the COVID-19 outbreak, namely the sectors, whose economic activity relates to providing services to the public and which have sustained significant disruptions in their economic activities due to the COVID-19 outbreak (recital (11)). Therefore, the measure complies with point 43(b) of the Temporary Framework.
  - (c) The wage subsidy under the measure is granted: i) for a period of not more than twelve months after the application for aid (recital (10)), 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 (recital (14)), 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 (recital



(18)). Therefore, the measure complies with point 43(c) of the Temporary Framework.

- (d) The wage subsidy will not exceed 80% of the monthly gross salary (including the employer's social security contributions) of the benefitting personnel since it will be limited to maximum 70% of the monthly gross salary of the employee (recital (16)). Therefore, the measure complies with point 43(d) of the Temporary Framework.
- (e) The French authorities confirm that if the aid granted under the measure is combined with other generally available or selective employment support measures, overcompensation of the wage costs of the personnel concerned will be excluded (recital (22)). In particular, the Commission takes note of the clarification of the French authorities that the beneficiaries will not be able to benefit from two different wage subsidy schemes at the same time, namely for the same employee and for the same days (recital (19)). In addition, the Commission takes note of the commitment of the French authorities that, in any event, in case of cumulation of more than one wage subsidy schemes during the same period, the maximum amounts of aid laid down in Section 3.10 of the Temporary Framework will be respected (recital (22)). Therefore, the measure complies with point 43(e) of the Temporary Framework.
- (f) The measure does not exclusively target employees from the financial sector (recital (11)). Therefore, the measure complies with points 20bis and 43bis of the Temporary Framework.

- (37) The French authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (see recital (23)). The French authorities further confirm that the aid under the measure of the scheme 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 (recitals (20) and (21)).
- (38) 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