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**Subject: State aid N 408/2008 - Germany -
Technologiefonds Mecklenburg-Vorpommern**

Sir,

1. PROCEDURE

- (1) By letter dated 18 August 2008, registered on the same day, Germany notified the above mentioned aid measure, pursuant to Article 88(3) of the EC Treaty. By letter dated 8 October 2008, the Commission asked for additional information, which was received by letters dated 14 November 2008, 17 December 2008, 23 January, 12 February 2009 and 23 March 2009, all registered on the same day.

2. DESCRIPTION OF THE MEASURE

2.1. Object

- (2) According to the German authorities, the entrepreneurial activity in the Land of Mecklenburg-Vorpommern (hereinafter MV) suffers from an equity gap, which

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hinders the economic development of MV. Germany has provided studies showing the lack of risk capital in MV. The notified measure therefore aims at filling in this equity gap with the establishment of a risk capital funds, the Technologiefonds Mecklenburg Vorpommern (hereinafter Technologiefonds).

- (3) The Technologiefonds invests in target enterprises with an establishment or operating in MV. MV is an assisted area, i.e. it falls within the scope of the derogations contained in Article 87(3)(a) or (c) of the EC Treaty.
- (4) It complements other measures undertaken by MV to foster entrepreneurial activity such as business plan competitions, direct grants, university lectures etc.
- (5) The Technologiefonds has two objectives: Firstly, to provide risk capital to SMEs, together with private investors (hereinafter the Risk Capital part), under the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (the "RC-Guidelines")¹. The Risk Capital part is described in section 3 of this decision.
- (6) The second objective is to support young innovative enterprises (hereinafter YIE) through risk capital investment, silent participations and loans (hereinafter the YIE-part) and will be assessed under the Community Framework for State Aid for Research and Development and Innovation² (the "R&D&I Framework"). The YIE part is described in section 4 of this decision.
- (7) The investment principles (Beteiligungsgrundsätze) of the Technologiefonds cover both measures. The main difference is that risk capital investment under the Risk Capital part will be accompanied by at least 30% private investment, whereas the YIE part does not require private co-investors, and has a narrower definition of target enterprises, namely YIEs.

2.2. Legal basis

- (8) The legal basis for both parts of the scheme is the Landeshaushaltsordnung Mecklenburg-Vorpommerns and the Beteiligungsgrundsätze des Technologiefonds Mecklenburg-Vorpommern.

2.3. Granting authority, duration and budget

- (9) Aid to YIE and Risk Capital aid is granted by the Ministerium für Wirtschaft, Arbeit und Tourismus Mecklenburg-Vorpommern, D-1048 Schwerin. The payouts will occur through the Technologiefonds, which will be described below.
- (10) The total budget of the notified measure is up to EUR 6 million. Germany expects the YIE-part to cover about EUR 4 million and the Risk Capital part to cover about EUR 2 million.
- (11) The scheme is scheduled to start after the approval by the Commission. The German authorities committed not put the scheme into effect before the Commission has taken a decision authorising it.

¹ OJ C 194, 18.8.2006, p. 2.

² OJ C 323, 30.12.2006, p. 1.

2.3.1. Duration of the Risk Capital part

- (12) The first investment round of the Risk Capital part will end on 31 December 2013. Proceeds from sales of participations can be reinvested until 31 December 2016. The Technologiefonds intends to sell all participations by 31 December 2018, with the possibility to extend the disinvestment period until 31 December 2020.
- (13) According to the German authorities, that duration is justified by the fact that it is difficult to define beforehand when would be the ideal timing for the exit in terms of profitability of the fund, notably for investments undertaken after 2011.

2.3.2. Duration of the YIE part

- (14) The duration of the YIE-part ends on 31 December 2013. If proceeds from sales of participations are reinvested, it will end on 31 December 2016.

3. DESCRIPTION OF THE RISK CAPITAL PART

3.1. Participants in the measure

3.1.1. The investors

- (15) The Technologiefonds will be funded only by the Land of MV. Germany has quoted a study by FHP Private Equity Consultants which shows the reluctance of institutional investors to invest in German venture capital funds. Furthermore Germany explains that due to the relatively small size of the Technologiefonds and due to its regional focus, little or no interest was given for a private investment at the level of the fund.
- (16) Private investors will join at the level of the invested companies. MV will publish a call for tender in the Official Journal of the European Union to invite private investors to invest alongside the Technologiefonds in target enterprises.

3.1.2. The fund

- (17) The Technologiefonds is constituted as a private company with limited liability.
- (18) The fund has a size of up to EUR 6 million. The funding will occur through a reimbursable loan (zweckgebundene bedingt zurückzahlbare Zuwendung) to the Technologiefonds by the land MV. Germany describes that the only objective of the Technologiefonds is to pass on the funding to the target enterprises. After the expiration of the scheme, the returns (zurückfließende Fondsmittel) of the Technologiefonds will be used to fund the aid policy (Förderpolitik) of MV, possibly for a similar measure (revolving funds). This would be the object of a new notification.
- (19) The Technologiefonds will carry out risk capital investments in SMEs. Furthermore, the fund can also grant aid to YIE, as will be further detailed in section 4.

3.1.3. *The management of the fund*

- (20) The fund will be managed on the basis of a management contract (Geschäftsbesorgungsvertrag) by the Genius Venture Capital GmbH Managementgesellschaft (hereinafter "Genius Fund Management"), a private company with limited liability. Genius Fund Management has been selected on the basis of a set of predefined non-discriminatory criteria through a public tender procedure, amongst others published in the Official Journal of the European Union.
- (21) According to Germany, Genius Fund Management made the most economical offer and fulfilled all criteria required.
- (22) The management remuneration is made of two elements:
- Firstly, the management will receive an annual fee equal to 3.5% of the available funds, with a minimum amount of EUR 80.000 guaranteed. After the investment phase, hence from 1 January 2014 onwards, the yearly management fee will be reduced to 2.5% of the funds under management. For the optional disinvestment phase (2019-2020) the yearly fee will be 2% of the funds under management.
 - The second component of the remuneration of fund managers is profit-dependent. Once the proceeds from exits exceed the invested capital plus all costs incurred at fund level, Genius Fund Management will receive 20% of the profits.
- (23) According to the German authorities, this mechanism guarantees that management remuneration is connected to fund performance.
- (24) As regards the management fee, Germany considers this remuneration to be in line with market conditions: Firstly, Genius Fund Management made the most economical offer in an open non-discriminatory tender. Secondly, the Technologiefonds is of relatively small size, which justifies a higher percentage compared to 2.5% normally paid to funds with a size of EUR 50 Mio. or above. Thirdly, the specificities of the fund (low population density, time intensive and hands-on mentoring in early stage, screening costs) justify a higher percentage.

3.1.4. *Enterprises invested in*

- (25) Micro- and small enterprises falling within the Community SME-definition³ and active in the technology sector are eligible for investments under the scheme. Investments can be done in the seed, start-up or expansion phase. The number of beneficiaries is estimated to be from 11 to 50. Beneficiaries will have an establishment or operate in MV. Private investors will be independent from the target enterprises
- (26) Capital will not be provided to firms in difficulty, as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁴. Further,

³ OJ L 124, 20.5.2003, p. 36.

⁴ OJ C 244, 1.10.2004, p. 2.

financing of firms in the shipbuilding, coal and steel sectors, as well of export-related activities will also be excluded from the scope of the scheme.

3.2. Design of the Risk Capital part

3.2.1. Form of risk-capital measures under the scheme

- (27) The scheme allows for aid in the form of constitution of an investment fund ("Technologiefonds") in which public authorities act as investors.

3.2.2. Maximum investment tranches

- (28) Investment tranches will not exceed EUR 1.5 million per target SME over each period of 12 months. Payout will normally be in tranches depending on milestones reached. Follow-on investments within these thresholds are possible. Normally the Technologiefonds will acquire minority participations.

3.2.3. Restriction to the seed, start-up and expansion phase

- (29) The risk capital measure is restricted to provide financing in the seed, start-up and expansion phases to small enterprises. *Seed capital* is defined as financing provided to study, assess and develop an initial concept, preceding the start-up phase. *Start-up capital* means financing provided to companies, which have not sold their product or service commercially and are not yet generating a profit for product development and initial marketing. *Expansion capital* means financing provided for the growth and expansion of a company, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development or the provision of additional working capital.

3.2.4. Prevalence of equity and quasi-equity investment instruments

- (30) The German authorities have confirmed that the Technologiefonds will provide at least 70% of the budget in the form of equity or quasi investment instruments.
- (31) The scheme allows aid in the form equity or quasi equity investments (open or typical silent participations) in target enterprises by the Technologiefonds. Investments in quoted companies, the purchase of existing shares in a company from other shareholders(replacement capital) and the purchase of at least a controlling percentage of the company's equity from the current shareholders (buyouts) are excluded
- (32) Silent participations will be quasi equity (eigenkapitalähnlich) as they bear a risk (subordination in the case of bankruptcy) and the remuneration is depending on the profits. The silent participations are subject to a fixed interest rate of 7% plus a profit dependent remuneration of 10% of the profit. Under German law, typical silent participation count as own capital (wirtschaftliches Eigenkapital).

3.2.5. Private participation

- (33) Private investors will be independent from the target enterprises and account for at least 30% of the investment in each target company. It is intended to publicise the Technologiefonds in the Official Journal of the European Union in order to invite private investors to become co-investors in target enterprises. Investments by public and private investors will be done under the same conditions ("pari

passu"), i.e. public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination.

3.2.6. Profit-driven character of investment decisions

- (34) With public investment in target companies limited to a maximum of 70% of the total investment and with at least 30% coming from private investors, the notified measure encourages private investment. Investment decisions are made on a commercial basis, as specified in the investment principles (Beteiligungsgrundsätze) for the Fund Management
- (35) The German authorities confirm that an investment decision is always made on the basis of a business plan, which will include information on the high innovative element, a clearly identifiable customer value, a unique selling proposition, above average growth- and profit opportunities in an expanding, ideally global market, a coherent clearly structured business concept and detailed and sustainable planning, which can show a clear exit strategy and appear to be profitable in the long term.
- (36) The Technologiefonds will diversify its investments in different sectors in order to reduce the risk.
- (37) The exit strategy of the Technologiefonds will be based on 'buy back' by the founders, secondary purchase, trade sale or going public. It will be done according to market conditions.

3.2.7. Commercial Management

- (38) The management remuneration is made of two components: an annual fee calculated as a percentage of the funds under management, and a profit-based remuneration. As mentioned in section 3.1.3, according to the German authorities, such remuneration is in line with remuneration granted to the management of similar and relatively small funds.
- (39) As described in recital (20), the management company has been selected through an open, non-discriminatory tender.
- (40) Investment decisions are proposed by the fund management to the investment committee. The investment committee consists of representatives of private investors, entrepreneurs, representatives of liberal professions (lawyer, auditor, tax consultant), independent experts and/or representatives of credit institutions. It will make its investment decision with majority rule.
- (41) For its reporting and evaluation, the fund management will respect the established guidelines and codes established by the European Venture Capital Association (EVCA). According to the investment principles, the management has to be supervised by the granting authority, the ministry for economics of MV as regulatory authority.

3.3. Monitoring and reporting of the Risk Capital part

- (42) The German authorities committed to provide an annual report on the measure's implementation, containing:

- (a) A summary table with a breakdown of the investments effected by the fund under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures;
 - (b) Details of potential deals scrutinised and of the transactions actually undertaken;
 - (c) Performance of the investment vehicles, with aggregate information about the amount of raised capital.
- (43) The scheme will not be applied before the information is published on the following website: www.mecklenburg-vorpommern.de

3.4. Cumulation

- (44) Aid granted under the Risk Capital part can be combined with aid for R&D&I and aid under the Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur.
- (45) Germany undertakes to reduce the relevant aid ceilings or maximum eligible amounts by 50% in general and by 20% for target SMEs located in assisted areas during the first three years of the first risk capital investment and up to the total amount received, where the capital provided to a target enterprise under the risk capital measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents. This reduction does not apply to aid intensities provided for in the R&D&I Framework or any successor framework or block exemption regulation in this field.

4. DESCRIPTION OF THE YIE PART

- (46) The Technologiefonds will also grant aid to YIEs, in the form of risk capital. As described in this section, these conditions essentially consist of limiting the target enterprises to YIE in the meaning of section 5.4 of the R&D&I Framework and to fulfil the other requirements of the R&D&I Framework related to aid to YIEs. The investment decisions will be made by Genius Fund Management, the same management team dealing with investments done in the Risk Capital part.

4.1. Aid instrument and aid amount

- (47) The aid to YIE is awarded in the form of silent participations, soft loans and/or through risk capital.
- (48) The aid for YIE may not be higher than EUR 1 million in non-assisted areas; EUR 1.5 million in regions eligible for the derogation in Article 87 (3) (a) of the EC Treaty; and EUR 1.25 million in regions eligible for the derogation in Article 87 (3) (c) of the EC Treaty. MV is an assisted area; hence the aid for YIE will not be higher than EUR 1.5 million.

4.2. Beneficiaries

- (49) The measure is aiming at young innovative enterprises that have establishment or operate in MV. Germany expects 11-50 beneficiaries throughout the duration of the measure.
- (50) Firms in difficulty according to the Community Guidelines on State aid for rescuing and restructuring firms in difficulty are excluded; the same is valid for companies active in shipbuilding, fishery, coal- and steel-industry.
- (51) Aid for YIE is only foreseen if it the beneficiary is a small enterprise that has been of existence less than 6 years when the aid is granted. The aided R&D&I-project must not have started before the application.
- (52) The target enterprises are considered innovative in the following cases:
 - The enterprise applying for aid is either likely to develop products, services or processes in the foreseeable future, which are technologically new or substantially improved compared to the state of the art in its industry in the Community, and which carry a risk of technical failure as stated by an external expert.
 - Alternatively the enterprise applying for aid can prove, certified by an external auditor, that its R&D expenses represent at least 15 % of its total operating expenses in at least one of three years proceeding the granting of the aid. In the case of a start-up enterprise without any financial history, an audit of its current fiscal period can be undertaken.

4.3. Cumulation

- (53) The beneficiary may receive the aid only once during the period in which it qualifies as a YIE. This aid may be cumulated with other aid under the R&D&I Framework, and with aid approved by the Commission under the RC-Guidelines.
- (54) Through the application process and the evaluation process it will be ensured that the beneficiary may only receive State Aid other than R&D&I aid and risk capital aid only three years after the granting of the YIE aid.

4.4. Monitoring and reporting of the YIE-part

- (55) The German authorities have confirmed that they will submit annual reports in compliance with the requirements of the R&D&I Framework.
- (56) The German authorities will publish the full text of the aid measure on this website: www.mecklenburg-vorpommern.de.
- (57) The scheme will not be applied before the information is published on the internet. The German authorities undertook to maintain detailed records regarding the granting of aid under the measure for 10 years.

5. INVESTMENT UNDER DE MINIMIS

- (58) The Technologiefonds can enter into open and silent participations without private investors for investment tranches of up to EUR 200.000 per target

enterprise and per three-year period. Germany confirms that those participations fall under the de-minimis rules⁵ and that cumulation rules will be respected.

6. ASSESSMENT OF THE RISK CAPITAL PART

6.1. Legality

- (59) By notifying this measure before implementing it, the German authorities have fulfilled their obligations under Article 88(3) of the EC Treaty.

6.2. Presence of State aid

- (60) The Commission has examined the measure on the basis of the RC-Guidelines, which set out the application of Article 87(1) in the field of risk capital measures to SMEs.
- (61) In line with section 3.2 of the Guidelines, the assessment of the presence of State aid within the meaning of the Treaty will consider the possibility that the measure may confer aid on at least three different levels: aid to investors, aid to an investment fund and or/its manager, aid to the enterprises in which investment is made.

6.2.1. State aid at the level of investors

- (62) In accordance with Section 3.2 of the Guidelines, the Commission will consider the investment to be effected *pari passu* between public and private investors, and thus not to constitute State aid, where its terms would be acceptable to a normal economic operator in a market economy in the absence of any State intervention. This is assumed to be the case only if public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and normally where at least 50 percent of the funding of the measure is provided by private investors, which are independent from the companies in which they invest.
- (63) Private investment occurs at the level of the target company, not at the level of the Technologiefonds. The notified scheme guarantees that at least 30 percent of the investment in a target company is provided by private investors. In addition, Germany confirmed that public and private investors invest in the same conditions. The RC-Guidelines assume in section 3.2 that there is no aid to the investors only if public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and 'normally' where at least 50 percent of the funding of the measure is provided by private investors, which are independent.
- (64) As described in recital (33), these conditions are met, with the exception that private investors provide at least 30% of the funding and not at least 50%, as it is 'normally' required by the Guidelines. The Commission did not find any special factors which would suggest that an exception to the 'normal' requirement referred to above is justified. Furthermore, considering that the amount of public

⁵ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on ... de minimis aid; OJ L 379, 28.12.2006, p.5.

investment can reach up to 70%, the Commission can not exclude that private investors receive an advantage of scale through the measure in question. The use of State resources therefore constitutes an advantage in the sense of Article 87 (1) of the Treaty on the level of investors. Given that only a number of co-investors will be selected, the measure is also selective.

- (65) Therefore, the Commission concludes that there is State aid in the sense of Article 87(1) of the EC Treaty at the level of the investors involved in the scheme.

6.2.2. State aid at the level of the Fund

- (66) The notified scheme provides for risk capital measures through the constitution of an investment fund. According to Section 3.2 of the RC-Guidelines, the Commission generally considers an investment fund to be an intermediary vehicle for the transfer of aid, rather than a beneficiary of aid itself, unless there are indications to the contrary.
- (67) As described in section 3.1.2, the Technologiefonds can be considered a purely intermediary vehicle for the transfer of aid. It is therefore not considered as beneficiary of State aid in the sense of Article 87(1) of the EC Treaty.

6.2.3. State aid at the level of the Fund management

- (68) Section 3.2 of the Guidelines also provides for criteria as to whether an aid measure constitutes State aid at the level of a fund's management. Accordingly, aid to the fund's managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantages granted by the State.
- (69) The selected management company has been selected by means of an open non-discriminatory tender. In addition, based on the studies and information provided by the German authorities, it seems credible that the remuneration of the fund managers reflects market remuneration in similar situations. The Commission notes that the Technologiefonds is relatively small, which might result in higher importance of fixed costs and hence justify a higher annual fee of 3.5% of the funds under management, compared to 2.5% often seen for larger funds.
- (70) Consequently, the Commission considers that the measure does not constitute State aid at the level of the investment funds' management, in the sense of Article 87(1) EC.

6.2.4. State aid at the level of the SMEs invested in

- (71) According to point 3.2 of the Guidelines, in cases where the investment is made in terms which would be acceptable to a private investor in a market economy in the absence of any State intervention, the enterprises in which the investment is made will not be considered as aid recipients. The Commission has assessed the existence of State aid within the meaning of Article 87(1) EC as follows:
- (a) The measure involves State resources as the government of MV will contribute to the establishment of the fund.

- (b) The measure is selective as it only targets micro- and small enterprises active in the area of MV.
 - (c) Although the fund's investors are considered to behave as normal economic operators in a market economy, it cannot be excluded, given the regional focus of the measure, that the measure provides an advantage to the target enterprises as it will provide them with privileged access to equity financing, compared to other sectors or locations.
 - (d) The measure has the potential to affect trade between Member States, as there is the possibility that the eligible SMEs are engaged or will get engaged in activities involving intra-Community trade.
- (72) The Commission therefore considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty at the level of undertakings in which investment is made.

7. COMPATIBILITY OF THE RISK CAPITAL PART

- (73) As the measure in question constitutes State aid at the level of private co-investors and at the level of SMEs invested in, its compatibility has to be assessed pursuant to the conditions laid down in the RC-Guidelines. Section 4.3 of the RC-Guidelines provides for specific compatibility conditions. If these conditions are fulfilled, the incentive effect, the necessity and the proportionality of the aid can be considered as present, and the overall balance of the potential negative and positive effects of the aid can be considered positive.

7.1. Form of aid

- (74) Section 4.2 of the Guidelines defines the types of risk capital measures, among which point 4.2(a) specifies constitution of investment funds in which the State is a partner, investor or participant. As described in section 3.1.2, the measure provides for the constitution of the Technologiefonds in which the Land MV is investor. The form of aid is therefore in line with point 4.2(a) of the Guidelines.

7.2. Maximum level of investment tranches

- (75) Section 4.3.1 of the Guidelines stipulates that tranches of finance, whether wholly or partially financed through State aid, must not exceed EUR 1.5 million per target-SME over each period of 12 months.
- (76) The Technologiefonds will invest maximum EUR 1.5 million per target SME for any given 12 month period, as described in recital (28). Hence, section 4.3.1 of the RC-Guidelines is met.

7.3. Restriction to seed-, start-up and expansion financing

- (77) According to section 4.3.2 of the Guidelines, the risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium sized enterprises located in assisted areas.
- (78) As described in section 3.2.3 of this decision, the Technologiefonds will only invest in small enterprises in seed-, start-up and expansion phase. The definitions

of said phases for the purposes of the measure, as described further above, are in line with the definitions laid down in points 2.2 (e), (f) and (h) of the Guidelines. Hence, the measure complies with section 4.3.2 of the Guidelines.

- (79) Germany has confirmed that the Technologiefonds will not invest in quoted companies and that replacement capital and buyouts are excluded. The scheme is therefore in line with section 2.2 (i) of the Guidelines.

7.4. Prevalence of equity and quasi-equity investment instruments

- (80) Section 4.3.3 of the Guidelines requires that at least 70% of the measure's budget must be provided in the form of equity and quasi-equity investment instruments.
- (81) As outlined in recital (30), the German authorities confirmed that the Technologiefonds will invest at least 70 % of its total budget in the form of equity and quasi-equity investment instruments into target SMEs. The scheme is therefore in line with section 4.3.3 of the Guidelines.

7.5. Participation by private investors

- (82) As stipulated by section 4.3.4 of the Guidelines, at least 50 % of the funding of the investments made under the risk capital measure must be provided by private investors, or at least 30 % in the case of measures targeting SMEs located in assisted areas.
- (83) As described in recitals (3) and (48), the Land of MV is an assisted area and public participation will never exceed 70% in the Risk capital part of the measure. Private participation for the purposes of section 4.3.4 of the Guidelines is therefore guaranteed.

7.6. Profit-driven character of investment decisions

- (84) The profit driven criterion is considered to be met if all the following conditions under point 4.3.5 of the Guidelines are fulfilled.

7.6.1. Involvement of private investors

- (85) Pursuant to point 4.3.5(a) of the RC-Guidelines, the measures must have significant involvement of private investors, providing investments on a commercial basis (that is, only for profit) directly or indirectly in the equity of the target enterprises.
- (86) The notified measure guarantees that public investment will not exceed 70%. Private individuals invest into eligible SMEs alongside the Technologiefonds. According to the Investment strategy described in section 3.2.6, each investment carried out by the Technologiefonds is profit driven. The measure, therefore, is in line with point 4.3.5(a) of the Guidelines.

7.6.2. Investments on the basis of business plans

- (87) Pursuant to point 4.3.5(b) of the RC-Guidelines, a business plan must exist for each investment, establishing the ex ante viability of the project.
- (88) As explained in section 3.2.6, each investment decision will be based on the existence of a detailed business plan that establishes the viability of each project,

on the basis of a number of other relevant criteria. Therefore, the measure is in compliance with point 4.3.5 (b) of the Guidelines.

7.6.3. Clear and realistic exit strategy

- (89) In accordance with point 4.3.5(c) of the RC-Guidelines, a clear and realistic exit strategy must exist for each investment.
- (90) As outlined in recital (37), an exit strategy under market conditions investment is foreseen for the individual investments. The basis exit strategy of the Technologiefonds is trade sale. However, if more profitable exit strategies exist, they will be chosen. Hence, point 4.3.5(c) of the RC-Guidelines is met, too.
- (91) As all the conditions of section 4.3.5 of the RC-Guidelines are fulfilled, the investment-decisions to be taken under the measure are deemed to be profit-driven.

7.7. Commercial management

- (92) The commercial management criterion is considered to be present where all the following conditions of point 4.3.6 of the RC-Guidelines are fulfilled, ensuring that the management of a risk capital measure is effected on a commercial basis.

7.7.1. Performance-based remuneration

- (93) Point 4.3.6(a) of the RC-Guidelines requires an agreement between a professional fund manager or a management company and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments.
- (94) As outlined in section 3.1.3, the management's remuneration is constituted of two components (fixed fee and profit-related element). Remuneration is therefore directly related to the performance of the fund. The conditions laid down in point 4.3.6(a) of the RC-Guidelines are therefore met.

7.7.2. Private investors in decision-making

- (95) Pursuant to point 4.3.6(b) of the RC-Guidelines, private market investors must be represented in decision-making, such as through an investors' advisory committee.
- (96) As mentioned in recital (40), any investment proposal is submitted to the investment committee for approval. The Investment Committee is made of representatives of private investors, entrepreneurs and liberal professions. Therefore, the measure is in line with point 4.3.6(b) of the RC-Guidelines.

7.7.3. Best practices and regulatory supervision

- (97) According to point 4.3.6(c) of the RC-Guidelines, best practices and regulatory supervision must be applied to the management of funds.
- (98) As outlined in recital (41), the established practices of the European Venture Capital Association will be applied by the management of the designated funds and the management is subject to the regulatory supervision of a supervisory authority (Regulierungsbehörde), in line with point 4.3.6(c) of the RC-Guidelines.

- (99) Hence, Risk capital part will be managed on a commercial basis pursuant to section 4.3.6 of the RC-Guidelines.

7.8. Cumulation with other aid

- (100) Section 6 of the RC-Guidelines stipulates that, where capital provided to a target enterprise under a risk capital measure covered by the Guidelines is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. Section 6 further stipulates that this reduction does not apply to aid intensities provided for in the R&D&I Framework or any successor framework or block exemption regulation in this field.
- (101) Based on information provided by the German authorities and described in section 3.4 of the decision, aid under the notified scheme will be granted in compliance with the cumulation rule set out in section 6 of the RC-Guidelines.

7.9. Reporting and monitoring

- (102) Section 7 of the RC-Guidelines requires, according to Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Member States to submit annual reports to the Commission. The German authorities will provide the annual reports for the Technologiefonds, containing the elements required under section 7.1 of the Guidelines.
- (103) In line with section 7.1 of the RC-Guidelines, the German authorities will, as described in section 3.3 of this decision, publish the full text of the final aid scheme on the internet and communicate the internet address of the publication to the Commission before it is applied. Hence the reporting and monitoring conditions are met.

8. ASSESSMENT OF THE YIE-PART

8.1. Legality

- (104) By notifying this measure before implementing it, the German authorities have fulfilled their obligations under Article 88 (3) of the EC Treaty. Given the scope of the notified measure, the Commission has analysed the presence of aid and its compatibility in accordance with the rules established in the R&D&I Framework.

8.2. Presence of State aid

- (105) The notified measure allows a limited number of young and innovative enterprises to receive financial means, by means of State resources. Consequently, the financial aid from the State strengthens the position of the enterprises in relation to their competitors in the Community and therefore has potentially distorting effects on competition. Products of benefiting enterprises

are or might be subject to intra-Community trade and therefore the aid is likely to affect trade between Member States.

- (106) The Commission comes therefore to the conclusion that the notified measure constitutes State aid within the meaning of Article 87 (1) of the EC Treaty.

9. COMPATIBILITY CRITERIA OF THE YIE-PART

9.1. Compatibility criteria

- (107) Point 5.4 (a) of the R&D&I Framework requires beneficiaries to be small enterprises in existence for less than 6 years at the time of the grant. As described in recital (51) of this decision, this condition is met.
- (108) Point 5.4 (b) of the R&D&I Framework requires an external expert confirmation to show that the YIE will develop in the foreseeable future a new or substantially improved products, services or process. Alternatively, a young innovative enterprise should have R&D expenses of at least 15% of its operating costs based on the current year or one of the three preceding years. As described in recital (52), this condition is met.
- (109) Point 5.4 (c) of the R&D&I Framework requires the aid not to exceed certain maximum levels. As described in recital (48), this condition is met.

9.2. Incentive effect

- (110) Section 6 of the R&D&I Framework reads: " [...] If the aided R&D&I-project has not started before the application, the Commission considers that the incentive effect is automatically met for the following aid measures: [...] aid for young innovative enterprises." As described in recital (51), projects must not have started before the application. Hence the incentive effect is presumed to be met.

9.3. Cumulation

- (111) The Commission finds that the confirmation by Germany concerning the cumulation rules, as stated under section 4.3 above, meets the conditions laid down in the R&D&I Framework; therefore, the conditions related to cumulation are satisfied and the measure complies with section 5.4 and section 8 of the R&D&I Framework.

9.4. Annual reports, access to the full text of the scheme, information sheets

- (112) As described in section 4.4, the German authorities have committed to fulfil the requirements for reporting and monitoring pursuant to section 10.1 of the R&D&I Framework. The Commission therefore considers that the conditions related to reporting and monitoring are satisfied.

10. DECISION

- (113) The Commission concludes that the Risk capital part of the notified measure complies with all the conditions as set out in the Community Guidelines on State aid to promote risk capital investment in small and medium-sized enterprises.

- (114) The Commission concludes that the YIE-part of the notified measure complies with all the conditions as set out in the R&D&I Framework.
- (115) On the basis of the foregoing assessment, the Commission concludes that Risk capital part and the YIE-part of the notified measure is compatible with the EC Treaty in application of its Article 87(3) (c).
- (116) The Commission reminds the German authorities that, in accordance with Article 88 (3) of the EC Treaty, all plans to refinance, alter or change this aid schemes have to be notified to the Commission.
- (117) The Commission reminds the German authorities of their duty to communicate to the Commission the internet address on which the full text of the final aid scheme will be available.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B – 1049 Brussels
Fax No.: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission