



EUROPEAN COMMISSION

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**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State aid SA.32032 (2010/N) – Germany  
Prolongation of the guarantee scheme under the Temporary  
Framework ("Befristete Regelung Bürgschaften") (N27/2009)**

Sir,

## **1. PROCEDURE**

- (1) By electronic notification of 3 December 2010 Germany notified the prolongation of the existing guarantee scheme ("Befristete Regelung Bürgschaften") (N27/2009). By electronic communications of 10 December 2010 the German authorities submitted further clarifications and confirmations to the Commission. The existing aid scheme has been approved by the Commission on 27 February 2009 (N 27/2009)<sup>1</sup>.

## **2. DESCRIPTION OF THE NOTIFIED PROLONGATION**

- (2) The existing guarantee scheme was approved by the Commission on the basis of the previous Communication from the Commission – Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (Temporary Community Framework)<sup>2</sup>. Now the German authorities notify the prolongation of the existing aid scheme accompanied

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<sup>1</sup> OJ C 152, 4 July 2009, p.4.

<sup>2</sup> OJ C 83, 7 April 2009, p.1, as amended OJ C 261, 31 October 2009, p.2 as amended OJ C 303, 15 December 2009, p.6.

Seiner Exzellenz Herrn Dr.Guido WESTERWELLE  
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by the introduction of stricter conditions on the basis of the Commission Communication of 1 December 2010 on the Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (Temporary Union Framework).<sup>3</sup>

- (3) Guarantees on the basis of the prolonged guarantee scheme ("Befristete Regelung Bürgschaften") can be granted under the conditions described below until 31 December 2011 at the latest.
- (4) The prolonged scheme stipulates that the annual premiums to be paid for new guarantees to the benefit of large enterprises are calculated on the basis of the safe-harbour premiums set out in the Annex of the recent Temporary Union Framework. The safe-harbour premiums may be applied for a maximum period of 10 years.
- (5) For small and medium sized companies (SMEs) the annual premiums are calculated on the basis of the safe-harbour premiums annexed to the Temporary Union Framework or through methodologies already accepted by the Commission (such as N 197/2007 for investment loans, N 541/2007 for working capital loans, N 762/2007 for special purpose undertakings). SMEs may benefit from a reduction of up to 15% of the annual premium during a maximum period of two years following the granting of the new guarantee. If the duration of the loan exceeds two years, the safe-harbour premiums set out in the Annex to the Temporary Union Framework may apply for an additional maximum period of eight years without reduction.
- (6) The German authorities confirmed that the determination of the applicable safe-harbour premium takes place on the basis of the situation of the beneficiary (credit rating) at the date of granting the aid. The categories of collateralisation will be defined in line with footnote 2 to the reference rate communication<sup>4</sup>, and will be established by the bank granting the loan.
- (7) For SMEs the prolonged scheme provides for new guarantees related to both investment and working capital loans, while for large companies, the new guarantees may relate to investment loans only.
- (8) Under the prolonged scheme the maximum loan does not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2010. In the case of companies created on or after 1 January 2010, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; as regards investment loans the granting authority may choose to calculate the maximum loan on the basis of the annual EU 27 average labour costs.
- (9) Guarantees under the prolonged scheme may not exceed 80% of the loan.

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<sup>3</sup> (not yet published in the OJ) [http://ec.europa.eu/competition/state\\_aid/legislation/temporary\\_framework\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/temporary_framework_en.pdf)

<sup>4</sup> Commission Communication on the revision of the method for setting the reference and discount rates, OJ C 14 of 19.1.2008, pp. 6-9.

- (10) Firms in difficulties as defined in point 2.1 of Community Guidelines on State aid for rescuing and restructuring firms in difficulties are excluded from the scope of the prolonged scheme.<sup>5</sup>
- (11) The German authorities estimate that the number of beneficiaries will be between 500 and 1000 during the prolonged period.
- (12) The aid volume available during the prolonged period has been estimated not to exceed EUR 2 500 million.
- (13) The prolonged scheme accompanied by the introduction of the above-mentioned stricter conditions will enter into force on 1 January 2011 and expire on 31 December 2011.
- (14) All other elements of the existing scheme remain unchanged.
- (15) The German authorities confirmed that the monitoring and reporting obligations laid down in particular in Section 4 of the Temporary Union framework will be respected.
- (16) Furthermore, the German authorities declared to respect the applicable rules in case of co-financing with the EU Structural Funds and other EU financing instruments.
- (17) The German authorities confirmed further that the notification does not contain business secrets and that, in view of the urgency of the measure, they exceptionally accept that the Commission decision is adopted in the English language.

### **3. ASSESSMENT**

- (18) In its decision of 27 February 2009 the Commission concluded that the guarantee scheme ("Befristete Regelung Bürgschaften") constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). It found that the measures were compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the German economy. To this end, the Commission had assessed the appropriateness, necessity and proportionality of the measure.
- (19) In view of the continued volatility of financial markets and the uncertainty about the economic outlook, the Commission decided that a prolongation until end 2011 of the Temporary Community Framework measures targeted to facilitate companies' access to finance was justified in order to assure a gradual return to normal state aid rules while limiting their impact on competition.
- (20) The Commission observes that the prolongation of the scheme is a response to the continuing difficulties that enterprises in Germany experience in obtaining funding by the banks. Even though in broad terms the health of the banking sector has improved compared with the situation one year ago, the recovery is still fragile as the future evolution of financing remains uncertain. Thus the risk persists that the

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<sup>5</sup> Communication from the Commission - Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p.2).

banking system may not be ready to sustain the recovery when credit demands picks up.

- (21) Against this background and taking into account the residual fragility of the recovery process and the possibility of setbacks in that process, the continuation of the guarantee scheme ("Befristete Regelung Bürgschaften") can be deemed necessary to facilitate companies' access to finance. The Commission considers that an abrupt withdrawal of the scheme might put further stress on the recovery process. The Commission therefore considers that the prolongation of the scheme until the end of 2011 is appropriate, necessary and proportional to remedy a serious disturbance of the German economy.
- (22) On the basis of the above, the notified prolongation of the guarantee scheme ("Befristete Regelung Bürgschaften") does not alter the Commission's previous assessment in the decision of 27 February 2009.
- (23) On the basis of these considerations, the prerequisites for the compatibility of schemes with Article 107(3)(b) TFEU that have been established by the Temporary Community Framework continue to apply. Furthermore, the Commission considers that the notified prolongation of the existing guarantee scheme ("Befristete Regelung Bürgschaften") accompanied by stricter conditions until 31 December 2011 (as described above under Section 2) complies with the requirements set out in point 2.3 of the Temporary Union Framework and is therefore compatible with the internal market.
- (24) The Commission notes that the notification does not contain business secrets, and that Germany has exceptionally agreed that the decision be adopted in English as its authentic language.

#### **4. DECISION**

- (25) The Commission has accordingly decided
  - to consider the notified prolongation of the aid scheme as compatible with Article 107(3)(b) of the TFEU.

Yours faithfully,  
For the Commission

Joaquin ALMUNIA  
Vice President