



EUROPEAN COMMISSION

Brussels, 19.2.2009
C(2009) 1217 final

Subject: State aid N 38/2009 – Germany
Federal Framework for low interest loans

Sir,

1. PROCEDURE

- (1) By electronic notification of 26 January 2009, Germany notified the Federal framework for low interest loans. By communication of 11 February 2009, Germany amended its notification.

2. DESCRIPTION

2.1. Objective of the aid scheme

- (2) Germany considers that the financial crisis starts affecting the real economy. The notified measure aims at remedying a serious disturbance in the economy of Germany by improving the access of firms to investment and operating loans.
- (3) The scheme is expressly based on Article 87(3)(b) ECT, as interpreted by Paragraph 4.4.2 of the Commission communication "Temporary framework for State aid measures to support access to finance in the current financial and economic crisis" (hereinafter referred to as the Temporary Framework)¹.

2.2. The nature and form of the aid

- (4) The aid will be provided in the form of subsidized public loans to finance investments and working capital.

¹ OJ C 16, 22.1.2009, p.1.

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2.3. Legal basis

- (5) The legal basis for the scheme is the Federal Framework for low interest loans ("Regelung zur vorübergehenden Gewährung niedrigverzinslicher Darlehen an Unternehmen im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise ("Bundesrahmenregelung Niedrigverzinsliche Darlehen")) in conjunction with several aid programs and budgetary regulations at federal, regional and municipal level.

2.4. Administration of the scheme

- (6) The scheme is a Framework scheme, allowing aid to be granted by aid granting authorities at federal, regional and local level, including public development banks ("Förderinstitute") at Federal and regional (Länder) level.

2.5. Budget and duration of the measure

- (7) The aid volume resulting from interest rate subsidization under this scheme amounts to € 6 billion. The schemes applies to loans that are granted from EU, national, regional, or local resources, as well as to loans granted by public development banks from their own resources.
- (8) The scheme applies to loan contracts concluded as from the date of Commission approval and before 31 December 2010. The reduced interest rates may be applied for interest payments due before 31 December 2012.

2.6. Sectoral and geographical scope

- (9) The scheme applies to the whole territory of Germany, and is open to all sectors of the economy, except undertakings that fall under the application of Law for the establishment of a financial market fund ("*Gesetz zur Errichtung eines Finanzmarktstabilisierungsfonds (FMStFG, § 2)*").

2.7. Beneficiaries

- (10) The potential beneficiaries of the scheme are SMEs and large enterprises.
- (11) The German authorities confirmed that no loans will be granted to large firms which were, on 1 July 2008, firms in difficulty in the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty², nor to SMEs which were on that date firms in difficulty within the meaning of Art. 1 (7) of the General Block Exemption Regulation³. SMEs are defined in accordance with annex I to the General Block Exemption Regulation.
- (12) The German authorities estimate that the total number of beneficiaries will exceed 1000.

² OJ C 244, 1 October 2004, pg. 2-17.

³ OJ L 214, 9 August 2008, pg. 3-47, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

2.8. Basic elements of the scheme

2.8.1. Loan contract

- (13) The loans under the scheme can be granted to finance investments and working capital. The scheme does not stipulate a maximum duration of the loans.
- (14) The interest rate reduction foreseen by the present scheme may be applied for interest payments due before 31 December 2012.

2.8.2. Calculation method of the reduced interest rate

- (15) The reduced interest rate will be equal or higher than the Euro OverNight Index Average (EONIA) plus 64 basis points plus the loan margin established by the Commission communication on the revision of the method for setting the reference and discount rates⁴ (Commission reference rate communication 2008), which reflects the rating of the beneficiary and the level of collateralisation of the loan. The rating is established on the basis of the situation of the beneficiary at the point of time where the loan contract is concluded.
- (16) For borrowers that do not have a credit history and/or a rating based on a balance sheet approach, such as certain special-purpose companies or start-ups companies, the loan margin is at least 400 basis points (depending on the available collateral), and the margin can never be lower than the one which would be applicable to the parent company.
- (17) The German authorities confirm that the conditions laid down in section 4.4.2 of the Temporary Framework for granting aid in the form of a subsidized interest rate will be respected. In particular, the German authorities confirm
- that the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1/1/2007 to 30/06/2008 is 64 basis points;
 - that the interest rate the loan beneficiaries have to pay will at no point in time be below the central bank overnight rate plus 64 basis points plus risk premium established according to the loan margin grid provided by the Commission's reference rate communication 2008.
 - that subsidized interest rates will be applied only to interest rate payments due before 31 December 2012, and that for interest rate payments after 31 December 2012, interest rates defined in line with the Commission reference rate communication 2008 (or the then applicable instrument) shall be payable ;
 - that the relevant overnight rates for Germany are available from the following website: http://www.euribor.org/html/content/eonia_about.html.

⁴ OJ C 14,19 January 2008, p.6.

2.9. Cumulation

- (18) The aid ceilings and cumulation maxima fixed under this scheme will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Community.
- (19) The temporary aid measure may not be cumulated with *de minimis* aid⁵ for the same eligible costs.
- (20) The amount of *de minimis* aid already received, insofar as it was granted after 1st of January 2008, shall be deducted from the amount of compatible aid granted for the same purpose.
- (21) Subsidised interest rates under this scheme may be cumulated with other compatible aid, which are not *de minimis* aid, or with other forms of Community financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block exemptions Regulations are respected.

2.10. Monitoring and reporting, language of decision, business secrets

- (22) The German authorities confirm that the monitoring and reporting obligations laid down in Section 6 and footnote 24 of the Temporary Framework will be respected (e.g.: by 31 July 2009, a list of schemes put in place on the basis of the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years; by 31 October 2009 a report on the measures put in place should be provided) .
- (23) The German authorities confirm that the notification does not contain business secrets.
- (24) The German authorities confirm their acceptance that the Commission decision is adopted in the English language due to exceptional circumstances.

3. ASSESSMENT

3.1. Legality of the measure

- (25) By notifying the aid measure before putting it into effect, the German authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Existence of state aid

- (26) State resources are involved in the notified scheme since the subsidized loans are made available from State resources.
- (27) The measure is selective since it will be granted only to a limited number of firms located in Germany.

⁵ OJ L 214, 28.12.2006, p. 3.

- (28) The measure confers an advantage by relieving the beneficiaries of costs which they would have to bear under normal market conditions since, without the intervention by the State, the borrowers would obtain loans only at higher costs, if at all.
- (29) The measure affects trade between Member States since the scheme is not limited to beneficiaries which are active in sectors where no intra-community trade exists.
- (30) In view of the above, the Commission considers that the notified measure constitutes State aid within the meaning of Article 87 (1) of the EC Treaty. The German authorities do not contest that conclusion.

3.3. Compatibility of the measure

- (31) Having established that the measure involves state aid within the meaning of Article 87 (1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (32) The measures aims at facilitating the access of firms to external finance in a period of time where the normal functioning of credit markets is severely disturbed through the financial crisis, and where the financial crisis ("credit crunch") is affecting the wider economy and is leading to severe disturbances of the economy of Member States.
- (33) By adopting the Temporary Framework on 17 December 2008, the Commission indeed acknowledged (section 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b)."
- (34) The notified measure is conceived to remedy a serious disturbance in the economy of a Member State and is designed to meet the requirements of the additional category of aid ("Aid in the form of subsidized interest rate") described in section 4.4.2 of the Temporary Framework.
- (35) The Commission considers that the notified measure meets all the conditions of the Temporary Framework: In particular,
- The reduced interest rate subsidies do not go below the interest rate threshold defined (central bank overnight rate plus 64 basis points plus risk premium established according to the loan margin grid provided by the Commission reference rate Communication 2008)
 - The cumulation rules with de minimis aid and aid for other purposes are respected.
 - Firms in difficulty (situation as of 1.7.2008) are excluded from benefitting from the scheme.
 - The benefit of reduced interest rates is limited to loan contracts concluded before 31 December 2010, and to interest rate payments due before 31 December 2012.
 - The monitoring and reporting rules laid down in the Temporary Framework will be respected by the German authorities.

- (36) The Commission reminds the German authorities that in case of the co-financing of the notified measures through Community Structural Funds, the Community law applicable to the Funds, and in particular the rules laid down in Council Regulation (EC) No 1083/2006 are to be respected.

3.4. Conclusion

- (37) For these reasons, the Commission considers that the notified measure is in conformity with the Temporary Framework and considers it to be compatible with the Treaty on the basis of Article 87(3)(b) EC. The Commission notes that the notification does not contain business secrets, and that Germany accepts that the decision be adopted in the English language.

4. DECISION

- (38) The Commission has accordingly decided
- to consider the notified aid scheme as compatible with the EC Treaty.
- (39) The Commission reminds the German authorities of their commitment to transmit the concrete implementing rules as soon as possible after the approval of the notified aid.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission