Subject: State aid N 426/2009 – Germany
Federal Framework for low interest loans for the production of green products

Dear Sirs,

1. PROCEDURE

(1) By electronic notification of 16.7.2009, registered on the same day, and following prenotification contacts, Germany notified the above mentioned aid measure under Article 88(3) of the EC Treaty. By emails dated 22.7.2009, 23.7.2009 and 24.7.2009, the German authorities submitted additional information.

2. DESCRIPTION

2.1. Objective of the aid scheme

(2) The scheme relies on the Commission communication 'Temporary Framework for State aid measures to support access to finance in the current financial and
economic crisis' (thereinafter 'the Temporary Framework')\(^1\), in particular on its Sections 4.5.2 concerning aid for the production of green products and 4.4.2 concerning aid in the form of subsidised interest rate. If aid measures fulfil the conditions set in the Temporary Framework, they can be declared compatible with Article 87(3)(b) of the EC Treaty.

(3) Germany considers that the financial crisis is affecting its whole economy. In view of this, the German authorities are considering a series of measures in order to strengthen private investment in particular, so that investors can overcome the so-called credit crisis.

### 2.2. Legal basis

(4) The legal basis for the scheme is the Federal Framework for low interest loans for the production of green products (\textit{Regelung zur vorübergehenden Gewährung von niedrigverzinslichen Darlehen zur Herstellung „grüner Produkte“ im Geltungsbereich der Bundesrepublik Deutschland während der Finanz- und Wirtschaftskrise}, 'Federal Framework' hereinafter), in conjunction with the budgetary regulations at federal, regional and local levels.

(5) According to the Federal Framework, the measure has to be approved by the Commission before being implemented by the German authorities.

### 2.3. Administration of the scheme

(6) The notified measure is a Germany-wide scheme, allowing aid to be granted at country, regional, and local levels and may be applied in a decentralised way by all relevant aid granting authorities.

### 2.4. Beneficiaries

(7) The scheme applies to all companies, irrespective of their location, size and economic situation.

(8) The German authorities confirmed that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulties in the meaning of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty\(^2\), nor to SMEs which were on that date firms in difficulties in the meaning of Art. 1 (7) of the General Block Exemption Regulation\(^3\). The aid may be granted to firms that were not in difficulty at that date, but entered into difficulty thereafter as a result of the global financial and economic crisis.

(9) They also mentioned that the measure is not open to undertakings that fall under the application of Law for the establishment of a financial market fund ("\textit{Gesetz zur Errichtung eines Finanzmarkstabilisierungsfonds (FMSfG)}").

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\(^1\) OJ C 83, 7.4.2009, p. 3.
\(^2\) OJ C 244, 1.10.2004, p. 2.
The German authorities confirmed that they will make sure that the abovementioned conditions are fulfilled before granting aid under the notified measure.

According to the German authorities, it is difficult to precisely estimate the number of potential beneficiaries, since the measure concerns a wide range of products and a large number of undertakings. Aid will be granted to companies producing products which belong to product groups covered by the Ecodesign Directive 2005/32/EC⁴; the German authorities also indicated that a number of undertakings active in the car industry will benefit from the measure.

2.5. Form of aid and aid amount calculation

The aid will be granted in the form of interest rate subsidy for investment loans for the production of green products.

According to Article 3(2) of the Federal Framework, the minimum interest rates for large enterprises and SMEs for the green product measure will be determined as follows: Central bank overnight rate plus a premium equal to 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 30.6.2008, plus the credit risk premium based on the rating of the beneficiary and collateral offered, as stipulated by the Commission communication on the revision of the method for setting the reference and discount rate⁵, taking into account the situation of the beneficiary at the moment when the loan is granted.

A reduction will be applied on the interest rates calculated in paragraph 13 for a maximum period of two years following the granting of the loan, depending on the size of the beneficiary (25% for large enterprises and 50% for SMEs)⁶. If the loan is still ongoing after this two-year period, the minimum interest rates calculated in paragraph 13 will apply until the 31.12.2012⁷. After the 31.12.2012⁸, the minimum rate will equal to the one defined according Commission communication on the revision of the method for setting the reference and discount rate⁹.

The German authorities apply the EONIA (Euro OverNight Index Average) as the central bank overnight rate.

They have calculated that the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1 January 2007 to 30 June 2008 equals to 0.64%.

The German authorities confirm that the level of rating and collateralisation of a given beneficiary will be established in accordance with the methodology outlined in the Commission communication on the revision of the method for setting the reference and discount rate. In particular, they indicated that for borrowers that do not have a credit history and/or a rating based on a balance sheet approach, such as

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⁶ See Article 3(3) of the Federal Framework.
⁷ See Article 3a of the Federal Framework.
⁸ See Article 3b of the Federal Framework.
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.

(18) Furthermore, the German authorities confirmed that the credit risk premium base on the rating of the beneficiary and collateral offered will take into account the situation of the beneficiary at the moment when the loan is granted.

(19) The German authorities provided a theoretical calculation example in order to illustrate the above described method. For instance, if a subsidised loan would have been granted on 1.1.2009 to a large enterprise whose credit rating is BB and offering a normal level of collateralisation, the resulting loan rate until 31.12.2010 would be:

- 2.20 % (central bank overnight rate);
- plus 0.64 % (difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1.1.2007 to 30.6.2008);
- plus 2.20 % (credit risk premium based on the rating of the beneficiary and collateral offered).

(20) This leads to an interest rate of 5.04% from which a 25 % discount is applied for large enterprises, i.e. a final subsidised loan rate of 3.78 % between 1.1.2009 and 31.12.2010.

(21) Subsequently, the subsidised interest loan rate will be 5.04% between 1.1.2011 and 31.12.2012 (i.e. a similar subsidised rate without the 25% discount), and 6.6% as from 1.1.2013 (i.e. the minimum interest rate as defined in the Commission communication on the revision of the method for setting the reference and discount rate).

2.6. Other eligibility conditions to the aid measure

(22) The subsidised interest rates relate to investment loans for financing projects which consists of the production of new products which significantly improve environmental protection. In addition, the measure may be applied to components integrated into the final product. In these cases the aid will only be granted to such components where their integration into the final products contributes to an early adaptation to or going beyond future Community standards.

(23) The aid is granted for launching a new project, existing projects may only receive aid if it becomes necessary due to current economic downturn which threatens the existing financing.

(24) The aid is granted only for projects consisting of production of products involving early adaptation to or going beyond future Community standards which increase the level of environmental protection and are not yet in force. In this context, the

10 See Article 4(a) of the Federal Framework.
11 See Article 4(c) of the Federal Framework.
12 See Article 4(b) of the Federal Framework.
German authorities confirm that they will apply the definition of future Community standards as laid down in footnote No. 25 of the Temporary Framework.13

(25) The investments should begin on 31 December 2010 at the latest with the aim of putting the products on the market at least 2 years before the standard enters into force.14

(26) Loans will cover the costs of investment in tangible and intangible assets with the exception of loans for investments which account for production capacities of more than 3% on product markets where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the European Economic Area's GDP over the same five year reference period.15

(27) The loans are granted on 31 December 2010 at the latest.16

(28) The subsidised interest rate applies during a maximum period of 2 years following granting of loan as regards the application of Section 4.5.2 of the Temporary Framework (i.e. applying a 25% and 50% rebate on the subsidised interest rate for large enterprises and SMEs respectively), then until 31.12.2012 as regards the application of Section 4.4.2 of the Temporary Framework (i.e. subsidised interest rate measure).

(29) The reduction in the interest rate may be applied to loans provided by the State or public finance institutions and to loans provided by private financial institutions. Non-discrimination is between public and private entities is ensured.18

(30) Germany confirmed that the aid will not be directly or indirectly transferred to financial entities.19

(31) As an example, the German authorities reckon that in view of the abovementioned conditions (especially time restrictions), the measure could be applied to the following future standards:

- For the car industry, Euro 6 Regulation covering emissions from light passenger and commercial vehicles.

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13 Future Community product standard means a mandatory Community standard setting environmental levels to be attained for products sold in the Community which has been adopted but is not yet in force.
14 See Article 4(d) of the Federal Framework.
15 See Article 4(e) of the Federal Framework.
16 See Article 4(f) of the Federal Framework.
17 See Article 3(1) of the Federal Framework.
18 See Article 2(1) of the Federal Framework.
19 See Article 2(1) of the Federal Framework.
20 The Ecodesign Directive is a framework directive. Therefore in practice binding Ecodesign standards are set later on by implementing measures specific to each product group.
2.7. **Budget**

The German authorities estimate that the budget of this notified measure is up to 500 million Euro.

2.8. **Cumulation**

As regards *de minimis* aid and other types of aid, the German authorities confirm that the rules laid down in Section 4.7 of the Temporary Framework will be respected.

2.9. **Monitoring and reporting, business secrets**

The German authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected.

In addition the German authorities undertake to provide information on the relevant future Community standards when providing detailed information on environmental benefits.

Furthermore, Germany confirms that it will provide the following information:

- A breakdown by sector or category of undertakings of the loans awarded in both absolute terms and percentage;
- A breakdown of the loans awarded distinguishing between (i) financing of new products and (ii) completion of already initiated projects;
- Impact of the restrictions contained in point 4.5.2 e) of the Temporary framework\(^\text{21}\) (e.g. number of applications rejected due to the non-compliance with this clause).

The German authorities confirmed that the notification does not contain business secrets\(^\text{22}\).

3. **ASSESSMENT**

3.1. **Legality of the measure**

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

3.2. **Existence of state aid**

According to Article 87 (1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

\(^\text{21}\) See paragraph 24 of the present decision.

\(^\text{22}\) Confidential information submitted by Germany after the notification was assessed by the Commission and taken into account in the Decision, but is not divulged therein.
State resources are involved in the notified scheme since the aid is granted from national, regional and local State resources, via the respective aid granting authorities at national, regional, or local level.

The measure is selective since it will be granted only to certain firms.

The measure conveys an advantage to beneficiaries by granting them investment loans with subsidised interest rates which would probably not be available on the market in the absence of the notified measure. Consequently, the aid will strengthen the financial position of beneficiaries in relation to its competitors in the Community and therefore will have potentially distorting effects on competition.

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.

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.

### 3.3. Compatibility of the measure

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.

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 the may be declared compatible with the common market on the basis of Article 87(3)(b). The German authorities submitted that there is a general disturbance in the economy. The sectors concerned by the measure (i.e. car industry and product groups covered by the Ecodesign Directive) account for an important part of the German economy. The German authorities provided evidence that these sectors are particularly affected by the economic crisis. On the basis of these elements, the Commission agrees that the measure is apt to remedy a serious disturbance in the German economy.

The Commission agrees that the German authorities respect the cumulation rules set in Section 4.7 of the Temporary Framework.

As regards the monitoring and reporting obligations, the Commission takes note that the German authorities committed to respect the obligations as laid down in Section 6 of the Temporary Framework. The Commission also notes in this context that the German authorities undertook to provide additional information concerning the applicable Community standards and further details on implementation of the notified measure as described in points 35 and 36 above.

#### 3.3.1. Compatibility of the measure for a maximum period of two years following the granting of the loan under Section 4.5.2 of the Temporary Framework

For a maximum period of two years following the granting of the loan, the notified measure is based on the Temporary Framework, in particular on provisions concerning aid for the production of green products in the form of interest rate
The Commission considers that the notified measure meets all the conditions of the Temporary Framework:

- The aid relates to investment loans for financing projects consisting of production of new products which significantly improve environmental protection (point 4.5.2 a);
- The aid is necessary for launching a new project; in the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project (point 4.5.2 b);
- The aid is granted only for projects consisting of production of products involving early adaptation to or going beyond future Community product standards which increase the level of environmental protection and are not yet in force (point 4.5.2 c);
- For products involving early adaptation to or going beyond future Community environmental standards, the investment starts on 31 December 2010 at the latest with the objective of putting the product on the market at least two years before the standard enters into force (point 4.5.2 d);
- Loans cover the costs of investment in tangible and intangible assets with the exception of loans for investments which account for production capacities of more than 3 % on product markets where the average annual growth rate, over the last five years before the start of the investment, of the apparent consumption on the EEA market, measured in value data, remained below the average annual growth rate of the European Economic Area's GDP over the same five year reference period (point 4.5.2 e);
- Loans are granted on 31 December 2010 at the latest (point 4.5.2 f);
- The aid is calculated on the basis of the methodology laid down in Section 4.4.2 and complies with the maximum reduction limits laid down in point 4.5.2 g), i.e. 25 % for large companies and 50 % for SMEs (point 4.5.2 g). In particular, the Commission agrees to the calculation submitted by the German authorities for the subsidised loan rate and the sources chosen for the central bank overnight and one year interbank rates.;
- The subsidised interest rate applies during a maximum period of 2 years following the granting of loan (point 4.5.2 h);
- The reduction in the interest rate applies to loans granted by the State or public finance institutions and to loans granted by private financial institutions. Non-discrimination between public and private entities is ensured (point 4.5.2 i);
- The aid is granted to firms which were not in difficulty on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis (point 4.5.2 j);
- Germany ensures that the aid is not directly or indirectly transferred to financial entities (point 4.5.2 k);

Accordingly, the abovementioned measure is compatible with Section 4.5.2 of the Temporary Framework.
3.3.2. Compatibility of the measure after the two-year period following the granting of the loan and until 31.12.2012 under Section 4.4.2 of the Temporary Framework

(51) The subsidised interest rate measure foreseen after the two-year period following the granting of the loan and until 31.12.2012 follows the compatibility conditions set in Section 4.4.2 of the Temporary Framework. In particular:

- The investments in the production of green products, as defined above, are eligible to aid under Section 4.4.2;
- The measure complies with the methodology for the calculation of the interest rates, since it is the same methodology as for Section 4.5.2 (apart from the 25% and 50% rebates for large enterprises and SMEs respectively, which only concern Section 4.5.2);
- The benefit of reduced interest rates is limited to contracts concluded before 31.12.2010, and to interest rate payments due before 31.12.2012;
- The aid is granted to firms which were not in difficulty on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis;

(52) Accordingly, the abovementioned measure is compatible with Section 4.4.2 of the Temporary Framework.

3.4. Conclusion

(53) 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 EC Treaty on the basis of Article 87(3)(b).

(54) The Commission notes that the notification does not contain business secrets.

4. DECISION

(55) The Commission has accordingly decided to consider the notified aid scheme 'Temporary aid for the production of green products' as compatible with the EC Treaty under Article 87(3)(b).

Yours faithfully,
For the Commission

Neelie Kroes
Member of the Commission

23 As of 1.1.2013, the minimum rates set in the Commission communication on the revision of the method for setting the reference and discount rate will apply.
24 Confidential information submitted by Germany after the notification was assessed by the Commission and taken into account in the Decision, but is not divulged therein.