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PUBLIC VERSION

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Subject: State Aid SA.56714 (2020/N) – Germany – COVID-19 measures

Excellency,

1. PROCEDURE

(1) By electronic notification of 20 March 2020, Germany notified aid in the form of two measures for subsidised interest rates for loans ("Sonderprogramm 2020 für Investitions- und Betriebsmittelfinanzierung") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (hereinafter referred to as the "Temporary Framework").[1]

(2) The German authorities confirm that the notification does not contain business secrets.

(3) By letter of 19 March 2020, Germany exceptionally agreed 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[2] and to have this Decision adopted and notified in English.

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html, not yet published in the OJ.

[2] OJ 17, 6.10.1958, p. 385.

Seiner Exzellenz Herrn Heiko MAAS
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2. DESCRIPTION OF THE MEASURES

(4) Germany considers that the COVID-19 outbreak affects the real economy. The notified measures aim to ensure that sufficient liquidity remains available in the markets, to counter the damage inflicted on impacted undertakings and to preserve the continuity of economic activity during and after the COVID-19 outbreak.

(5) The measures are expressly based on Article 107(3)(b) TFEU, as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(6) The aid will be provided in the form of subsidised interest rates for loans and will partly be channelled through credit institutions.

2.2. National legal basis

(7) The legal basis for the measures is the Article 2(4) of the Law Concerning Kreditanstalt für Wiederaufbau.

2.3. Administration of the measures

(8) The measures will be provided and implemented by Kreditanstalt für Wiederaufbau (“KfW”).

2.4. Duration of the measures

(9) Under both measures, aid can be granted as from its approval until 31 December 2020.

2.5. Beneficiaries

(10) The final beneficiaries of the measures are, in principle, all undertakings that require liquidity for their activities in Germany. However, credit institutions are excluded as eligible final beneficiaries. The aid may be granted to undertakings that are not in difficulty[3] and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak. The aid is to be granted either directly by KfW or through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measures

(11) The two measures are open to all sectors. They apply to the whole territory of Germany.

[3] As defined in Article 2 (18) of the 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.

2.7. Basic elements of the measures

(12) The two measures notified by Germany are:

(a) Measure A: Subsidized interest rates for loans to beneficiaries that will be channelled through banks for investment and working capital needs of the beneficiaries. KfW will take over up to 90% of a loan provided by a bank to a beneficiary, provided that:

(i) The loan amount is less than EUR 1 billion per beneficiary and limited to either twice the annual wage bill for 2019, 25% of the annual turnover 2019, or the specific liquidity needs of a beneficiary for the next 12 months (18 months for SMEs) based on appropriate justification and self-certification of the beneficiary of its liquidity needs. In addition, for loans above EUR 25 million, the loan amount may not exceed 50% of the total debt volume on the beneficiary's balance sheet;

(ii) The duration of the loan is limited to a maximum of five years;

(iii) The interest rates are at least as high as specified in point 27(a) of the Temporary Framework; and

(iv) KfW defines maximum interest rates for the loan contracts between the credit institutions and the final beneficiaries in the case of individual refinancing loans, in a manner which ensures the passing on of the advantages to the final beneficiaries, or agrees on a mechanism with the credit institutions to ensure that the advantage is passed on to the final beneficiaries in the case of a comprehensive lending agreement ("Globaldarlehen").

(b) Measure B: Subsidized interest rates for loans provided either directly by KfW together with private banks in a consortium to beneficiaries, or indirectly in the form of risk-sub-participations for investment and working capital needs of the beneficiaries, provided that:

(i) KfW does not assume more than 80% of the risk of any given loan;

(ii) KfW does not assume more than 50% of the total debt volume on the beneficiary's balance sheet;

(iii) The loan amount is less than twice the annual wage bill for 2019, 25% of the annual turnover 2019, or the specific liquidity needs of a beneficiary for the next 12 months (18 months for SMEs) based on appropriate justification and self-certification of the beneficiary;

(iv) The duration of the loan is limited to a maximum of six years; and

(v) Interest rates provided to KfW are the same as for the other participating banks in the consortium but at least the rates as specified in point 27(a) of the Temporary Framework. This applies equally for direct participations and risk-sub-participations.

(13) The measures above are open to all financial intermediaries in a non-discriminatory way as regards the channelling of aid to beneficiaries (Measure A) or as members of a consortium (Measure B), but not as final beneficiaries in their own right.

2.8. Cumulation

(14) The aid ceilings and cumulation maxima fixed under the measures will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(15) For the same underlying loan principal, aid granted under section 3.2 and section 3.3 of the Temporary Framework cannot be cumulated.

(16) Aid under these measures may be cumulated with other compatible aid, *de minimis* aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

2.9. Monitoring and reporting

(17) The German authorities confirm that the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework will be respected (*e.g.*, by 31 December 2020, a list of measures 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 upon granting of the aid). In particular, information will be obtained demonstrating that the beneficiary was not a company in difficulty on 31 December 2019.

3. ASSESSMENT

3.1. Legality of the measures

(18) By notifying the measures before putting them into effect, the German authorities respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(19) By virtue of Article 107(1) TFEU, "*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, in so far as it affects trade between Member States, be incompatible with the internal market.*"

(20) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(21) The notified measures are imputable to Germany since they are enacted by Article 2(4) of the Law Concerning Kreditanstalt für Wiederaufbau. They also involve

State resources since they are made available by KfW, which is a publicly owned German promotional bank. .

(22) The measures are selective since they are awarded only to certain undertakings. Measures A and B apply only to undertakings that fulfil the conditions detailed in recital (12) and as selected by the private banks providing the loans or syndicating the loan consortium. They apply to all sectors of activity, however, credit institutions are excluded as eligible final beneficiaries (recital (10)). Finally, the measures apply only to undertakings with an economic activity in Germany.

(23) The measures confer 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 beneficiaries would obtain loans only at higher costs, if at all.

(24) The measures affect trade between Member States and are liable to distort competition since the measures strengthen the competitive position of beneficiaries which are active in sectors where intra-Union trade exists.

(25) In view of the above, the Commission considers that the notified measures constitute State aid within the meaning of Article 107(1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility

(26) Having established that the measures involve State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measures can be found compatible with the internal market.

(27) 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*".

(28) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (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*".

(29) The notified measures aim at facilitating the access of firms to external finance in a period of time where the normal functioning of credit markets is severely disturbed the COVID-19 outbreak, and where the COVID-19 outbreak is affecting the wider economy and is leading to severe disturbances of the real economy of Member States.

(30) The notified measures are part of a series of measures conceived at national level by the German authorities to remedy a serious disturbance in their economy. The importance of the measures to stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measures are of a scale which can be reasonably anticipated to produce

effects across the entire German economy. Furthermore, the measures have been designed to meet the requirements of the specific category of aid ("*Aid in the form of subsidised interest rates for loans*") described in section 3.3 of the Temporary Framework.

(31) The Commission accordingly considers that the notified measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework. In particular:

(i) In conformity with point 27(a) of the Temporary Framework, the applicable interest rates are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission)[4] applicable on 1 January 2020 plus the relevant credit margins for each year for SMEs and for large enterprises, respectively, as set out in the table of point 27(a), (recital (12).

(ii) In conformity with point 27(c) of the Temporary Framework, the loan contracts are signed by 31 December 2020 at the latest and are limited to maximum 5 years as regards Measure A and maximum 6 years with regard to Measure B, (recital (12)).

(iii) For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (12) point a) sub-point (i) for Measure A and recital (12) point b) sub-point (iii) for Measure B). KfW will not take more than 90% (Measure A) and not more than 80% (for Measure B) of the total risk of the specific loan amount.

(iv) In conformity with point 27(f) of the Temporary Framework, the loans relate to investment and working capital needs, (recital (12)(a) for Measure A and recital (12)(b) for Measure B).

(v) In conformity with point 27(g) of the Temporary Framework, firms in difficulty (situation as of 31 December 2019) are excluded from benefitting from the measures. Aid may be granted to undertakings that were not in difficulty on 31 December 2019, (recital (10)).

(vi) In conformity with points 28-31 of the Temporary Framework, the measures introduce safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the measures to the final beneficiaries. As regards Measure A described in recital (12)(a), KfW defines maximum interest rates for the loan contracts between the credit institutions and the final beneficiaries or agrees on a mechanism with the credit institutions to ensure that the advantage is passed on to the final beneficiaries in the case of a comprehensive lending

[4] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

agreement. In case of Measure B described in recital (12)(b), KfW participates either directly together with the credit institutions at exactly same terms as all other members of the consortium or – in case it participates in the form of risk-sub-participations – follows the exact same conditions of the loan provided to the beneficiary, so that no separate margin remains with the financial intermediary. . This ensures that point 31 of the Temporary Framework is respected and the advantage is passed on to the final beneficiaries.

(vii) The German authorities have confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (17)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(32) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"**BRRD**"**)[5] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (**"**SRMR**"**),[6] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR, namely Articles 32(4)(d)(i) and (ii) and 18(4)(d)(i), respectively.

(33) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU under the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[7] Nevertheless, such indirect aid does not have the objective to preserve or restore the viability, liquidity or solvency of those institutions. The objective of the aid at issue is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, such aid does not qualify as extraordinary public financial support under Art. 2(1)(28) BRRD and Art. 3(1)(29) SRMR.

(34) Moreover, as indicated in recital (31)(vi) above, the notified measures introduce safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the notified measures to the final beneficiaries.

(35) The Commission therefore concludes that the notified measures do not appear to violate any intrinsically linked provisions of BRRD and of SRMR.

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[5] OJ L 173, 12.6.2014, p. 190-348.

[6] OJ L 225, 30.7.2014, p. 1-90.

[7] Points 6 and 29 of the Temporary Framework.

5. 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION