EUROPEAN COMMISSION

Brussels, 24.3.2020
C(2020) 1936 final

PUBLIC VERSION

This document is made available for information purposes only.

**Subject: State Aid SA.56787 – Germany -
COVID-19: Bundesregelung Bürgschaften 2020**

Excellency,

1. PROCEDURE

(1) By electronic notification of 21 March 2020, Germany notified aid in the form of a loan guarantee scheme ("*Bundesregelung Bürgschaften 2020*") 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) Germany exceptionally agrees 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.

2. DESCRIPTION OF THE MEASURE

(4) Germany considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to

[1] Communication from the Commission - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 of March 2020 (not yet published).

[2] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Seiner Exzellenz Herrn Heiko MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
D -10117 Berlin

ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(5) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of guarantees on loans.

2.2. National legal basis

(7) The legal basis for the measure is the *Regulation on the temporary provision of guarantees, counter-guarantees within the territory of the Federal Republic of Germany in relation to the outbreak of COVID-19* ("*Regelung zur vorübergehenden Gewährung von Bürgschaften, Rückbürgschaften und Garantien im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19","Bundesregelung Bürgschaften 2020").*

2.3. Administration of the measure

(8) The federal and regional authorities, the promotional banks of the federal and regional authorities and the guarantee banks ("Bürgschaftsbanken") are responsible for administering the measure.

2.4. Duration of the measure

(9) Aid may be granted under the measure as from its approval until 31 December 2020.

2.5. Beneficiaries

(10) The final beneficiaries of the measure are, in principle, all undertakings active in Germany. However, financial institutions are excluded as eligible final beneficiaries. Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER") or the other block exemption regulations[3] on 31 December 2019. It may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter because of the COVID-19

---

[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. Article 2 (14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3 (5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

outbreak. Aid is granted under the measure either directly or through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

(11) The measure is open to all sectors, except for financial institutions. It applies to the whole territory of Germany.

2.7. Basic elements of the measure

(12) The measure concerns a loan guarantee scheme, which is specified as follows:

(a) The annual guarantee premiums are set at 25 basis points ("bps") for SMEs and 50 bps for large enterprises for the first year. For the years two and three, they are set at 50 bps for SMEs and 100 bps for larger enterprises. For the years four to six, they are set at 100 bps for SMEs and 200 bps for larger enterprises.

(b) The maximum duration of the guarantees is limited to six years.

(c) The guarantees are granted by 31 December 2020 at the latest.

(d) The guarantee can relate to both investment and working capital loans.

(e) For guaranteed loans with a maturity beyond 31 December 2020, the loan amount is 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.

(f) For guaranteed loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than under (e) with appropriate justification and provided that proportionality of the aid remains assured.

(g) The public guarantee does not exceed:

(i) 90% of the loan principal where losses are sustained proportionally and under same conditions, by the credit institution and the State; or

(ii) 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee); and

(iii) in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount has to decrease proportionally.

(h) Financial intermediaries shall not be relieved from risks that they have already taken before the scheme has been adopted. In principle, financial institutions have to contribute an appropriate share of the financing themselves in the context of State-supported measures. Furthermore, in principle all financial institutions can act as a financial intermediary, enabling competition between them.

(i) The mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted.

2.8. Cumulation

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

(14) The German authorities confirmed that aid granted under section 3.2 of the Temporary Framework will be not to cumulated with other aid granted for the same underlying loan principal under section 3.3 of the Temporary Framework, and vice versa.

(15) In particular, guarantees cannot be granted on loans that have been granted in line with the Commission decision on the German measures regarding subsidised interest rates for loans[4].

2.9. Monitoring and reporting

(16) The German authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under 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, etc.). In particular, those authorities will provide information demonstrating that none of the beneficiaries were companies in difficulty on 31 December 2019 within the meaning of the GBER or the other block exemption regulations.

3. ASSESSMENT

3.1. Legality of the measure

(17) By notifying the measure before putting it into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(18) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(19) The measure is imputable to the State since it is administered by federal and regional authorities and the promotional banks of the federal and regional

[4] Commission decision of 22 March 2020 SA.56714 on German COVID-19 measures, C(2020) 1886 final.

authorities and it is based on the *Bundesregelung Bürgschaften 2020*. It is financed through State resources since it is financed by public funds.

(20) The measure confers an advantage on its beneficiaries in the form of guarantees on loans (recital (6)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.

(21) The advantage granted by the measure is selective, since it is awarded only to certain undertakings that meet the conditions in recital (12). It applies, in principle, to all sectors of activity, however, credit institutions are excluded as eligible final beneficiaries (recital (10)). Finally, the measure applies only to undertakings with an economic activity in Germany.

(22) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(23) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility

(24) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(25) 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*".

(26) 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*".

(27) The measure aims at facilitating the access of firms to external finance at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(28) The measure is one 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 measure to stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire German economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of guarantees on loans*") described in Section 3.2 of the Temporary Framework.

(29) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

(a) The measure sets minimum levels of applicable guarantee premiums at 25 basis points ("bps") for SMEs and 50 bps for large enterprises for the first year, for the years two and three, they are set at 50 bps and 100 bps, for SMEs and larger enterprises, respectively, for the years four to six, they are set at 100 bps and 200 bps, for SMEs and larger enterprises respectively (recital (12)(a)). It therefore complies with the guidance in point 25(a) of the Temporary Framework.

(b) Guarantees can be granted under the measure by 31 December 2020 at the latest (recital (12)(c)). The measure therefore complies with point 25(c) of the Temporary Framework.

(c) For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (12)(e)). For loans with a maturity until 31 December 2020, the higher amount of the loan principal needs to be justified appropriately and the proportionality of the aid needs to remain assured in line with point 25(e) of the Temporary Framework (recital (12) points (e) and (f)).

(d) The measure limits the duration of the guarantees to maximum six years (recital (12)(b)). Those guarantees cover only 90% of the loan principal, and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State. Those guarantees cover 35% when first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (12)(g)). The measure therefore complies with point 25(f) of the Temporary Framework.

(e) The guarantees relate to investment and working capital loans (recital (12)(d)). The measure therefore complies with point 25(g) of the Temporary Framework.

(f) Undertakings in difficulty (situation as of 31 December 2019) within the meaning of the GBER or the other block exemption regulations are excluded from benefitting from the measure (recital (10)). The measure therefore complies with point 25(h) of the Temporary Framework.

(g) The measure introduces 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 measure to the final beneficiaries. In particular, Germany confirmed that financial intermediaries shall not be relieved from risks that they have already taken before the approval of this measure. In principle, financial institutions have to contribute an appropriate share of the financing themselves in the context of State-supported measures. This implies that guarantees can only be granted for new loans. The Commission also takes into account the fact that all commercial banks have, in principle, access to the guarantee scheme, enabling competition between the banks. (recital (12)(h)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

(h) The German authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (16)).

(i) Lastly, the mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (12)(i)).

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

(30) 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 measure meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the measure does not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(31) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with 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, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure 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, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and Article 3(1)(29) SRMR.

(32) Moreover, as indicated in recital (29)(g) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(33) The Commission therefore concludes that the measure does not appear to violate any intrinsically linked provisions of BRRD and of SRMR.

---

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