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Subject: State Aid SA.56790 (2020/N) – DE – Federal Framework "Small amounts of aid 2020" ("Bundesregelung Kleinbeihilfen 2020")

Excellency,

1. PROCEDURE

- (1) By electronic notification of 21 March 2020, registered by the Commission on the same day, Germany has notified the aid scheme Federal Framework "Small amounts of aid 2020" ("Bundesregelung Kleinbeihilfen 2020"), in compliance with Article 108(3) TFEU. By email of 24 March 2020, Germany submitted an amended version of the scheme. Germany has confirmed that the notification does not contain confidential information.
- (2) By letter of 22 March 2020, Germany has agreed to a language waiver. Therefore, the decision is adopted and notified in the English language only.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objective of the scheme

- (3) The scheme is designed to remedy the difficulties faced by undertakings and ensure that the disruptions caused by the outbreak do not undermine their viability. These difficulties must be linked to the repercussions of the outbreak of COVID-19.
- (4) The COVID-19 outbreak is a serious challenge for German citizens but also companies. Notably due to the economy's close international ties, German companies are affected by the impact of the pandemic. Cancellations of trade fairs and large-scale events, and the decline in travel, are affecting the service sector, especially in the areas of logistics, trade, gastronomy and tourism. At the same

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time, foreign demand is dropping and international supply chains are being disrupted, which affects production in Germany. Finally, after a steep increase of COVID-19 cases in Germany, on 22 March 2020, the German Federal Government and the Länder had to extend confinement measures to restrict social contacts in Germany to a minimum in order to prevent the uncontrolled increase in the number of COVID-19 cases and to keep the health care system efficient. It is not yet possible to accurately quantify the effects that the pandemic will have on the German economy, because meaningful economic indicators will not be available until later, due to their inherent time lag.

- (5) The notified measure is part of a wider package of State aid schemes notified under the Commission communication "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak"¹ (hereinafter referred to as "TF COVID-19"). Those measures include:
- (6) First, upon notification by Germany the Commission decided under the case number SA.56714 on 22 March 2020 to approve two separate support measures under the TF COVID-19, implemented through the German promotional bank Kreditanstalt für Wiederaufbau ("KfW"). The measures will allow the KfW to provide liquidity in the form of subsidised loans to companies affected by the coronavirus outbreak.
- (7) Second, Germany has notified to the Commission under the case number SA.56787 "Bundesregelung Bürgschaften 2020" (Federal Framework for Guarantees 2020) that is based on point 3.2. of the TF COVID-19. That measure is accompanied by, third, the "Bundesregelung Kleinbeihilfen 2020" (Federal Framework for small amounts of aid 2020) that is the subject of the present decision. The scheme "Small amounts of aid 2020" is explicitly based on Article 107(3)(b) TFEU, and relies on section 3.1 of TF COVID-19.

2.2. Duration

- (8) The scheme will enter into force upon its approval by the Commission. It expires on 31 December 2020, i.e. it is possible to grant aid under this scheme until that date. If the aid is granted in the form of tax advantages, this deadline does not apply and the aid is deemed to have been granted when the tax return for 2020 is due.

2.3. Budget

- (9) According to the German authorities, it is very difficult to estimate the budget for the scheme, as it is not possible to quantify the effects that the pandemic will have on the German economy (see recital (4)). The aid volume available under this scheme has therefore not yet been definitely adopted, but is estimated by the German authorities not to exceed EUR 45 billion.

2.4. Beneficiaries

- (10) The beneficiaries of the notified aid scheme are undertakings of all sectors (small and medium-sized enterprises, large undertakings) affected by the economic repercussions of COVID-19 and having temporary financial difficulties. The German authorities estimates that the number of beneficiaries will exceed 1 000. The selection of beneficiaries will be the responsibility of the granting authorities at Federal, regional and local level.

¹ Communication from the Commission C(2020) 1863 final of 19 March 2020 on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

- (11) The aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation²) 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 in difficulty thereafter as a result of the COVID-19 outbreak.
- (12) Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014³.

2.5. Legal basis

- (13) The legal basis for the scheme is the “Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19 („Bundesregelung Kleinbeihilfen 2020“)⁴ of the Federal Ministry of Economic Affairs and Energy, as submitted to the Commission services on 21 March 2020. Additionally, the budgetary rules at Federal, Länder and local level will apply.

2.6. Administration of the scheme

- (14) The notified scheme is a Federal framework scheme, allowing aid to be granted at Federal, regional (Länder), and local level, and is applied in a decentralised way by all relevant economic policy actors.

2.7. Form of aid and amount of aid

- (15) Aid under the scheme will be granted up to an amount of EUR 800 000 per undertaking in the form of direct grants, repayable advances and tax or payment advantages.
- (16) The aid granted to undertakings active in the processing and marketing of agricultural products will be conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.
- (17) The aid will be limited to EUR 120 000 per undertaking active in the fishery and aquaculture sector⁵ or EUR 100 000 per undertaking active in the primary production of agricultural products⁶.

² 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.

³ Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

⁴ "Regulation for the temporary granting of small amounts of aid within the territory of the Federal Republic of Germany during the duration of the COVID-19".

⁵ Products listed in Annex I to Regulation No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, OJ L 354, 28.12.2013, p. 1.

⁶ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector, cf. previous footnote 18.

- (18) Where an undertaking is active in several sectors, to which different maximum amounts apply, the granting authorities by appropriate means such as separation of accounts, ensures that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total.
- (19) Aid to undertakings active in the primary production of agricultural products will not be fixed on the basis of the price or quantity of products put on the market.
- (20) All figures used are gross, that is, before any deduction of tax or other charge.

2.8. Cumulation and reporting

- (21) Cumulation of aid under the framework is allowed with grants under the “Bundesregelung Bürgschaften 2020” (SA.56787), the de-minimis Regulations^{7 8 9} and with aid based on sections 3.3 and 3.5 of the TF COVID-19.
- (22) The German granting authorities shall ensure that, for each individual aid granted under this scheme, that the relevant information¹⁰ on each individual aid granted under this scheme is published on a comprehensive State aid website within 12 months from the moment of granting.
- (23) By 31 December 2020, Germany will provide the Commission with a list of measures put in place on the basis of this schemes approved scheme.
- (24) The German granting authorities must ensure that detailed records regarding the granting of aid provided under this scheme are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.

3. ASSESSMENT OF THE AID MEASURE

3.1. Legality of the aid measure

- (25) The German authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the aid measure before putting it into effect. The Commission takes note of the fact that the scheme will enter into force only after approval by the Commission.

3.2. Existence of aid within the meaning of Article 107(1) TFEU

- (26) Article 107(1) TFEU defines State aid as ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to

⁷ Commission Regulation (EU) No 1407/2013 of 18. December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, Official Journal of the European Union L 352, 24.12.2013, p. 1.

⁸ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fisheries and aquaculture sector, Official Journal of the European Union L 190, 28.6.2014, p. 45.

⁹ Commission Regulation (EU) No 1408/2013 of 18. December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agricultural sector, Official Journal of the European Union L 352, 24.12.2013, p. 9.

¹⁰ Referring to information required in Annex III of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 and of Annex III of the Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

distort competition by favouring certain undertakings or the production of certain goods [...], in so far as it affects trade between Member States’.

- (27) 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.
- (28) 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.
- (29) The measure conveys an advantage by making available financing which would not be available to the beneficiaries without the measure.
- (30) The measure is selective since only undertakings affected by the Covid-19 outbreak and selected for the scheme will benefit from it. The selection of the beneficiaries will be up to the granting authorities at Federal, regional and local level.
- (31) As the scheme covers sectors and undertakings involved in trade between Member States, there is a risk that the aid could affect such trade.
- (32) In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 107 (1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility assessment

- (33) As described under recital (4) the pandemic has a severe and wide reaching negative impact on the German economy.
- (34) Because of the pandemic and because of governmental measures taken in Germany and in other countries, many undertakings in Germany are facing and will face difficulties to continue their activities or pay their employees during the COVID-19 related confinement period. This might undermined their viability.
- (35) By adopting the TF COVID-19, the Commission has acknowledged the severe public health emergency for citizens and societies and the major shock the pandemic represents to the global and Union’s economies.
- (36) The Commission considers that temporary State aid measures to remedy the serious disturbance in the economy of a Member State can be found compatible with the internal market on the basis of Article 107(3)(b) TFEU. The TF COVID-19 sets out the compatibility conditions under which the necessity, appropriateness and proportionality of these aid measures will be assessed.
- (37) The measure notified by Germany meets all the conditions provided for by the TF COVID-19 for ‘temporary limited amounts of aid’:
 - The aid will be granted in form of direct grants, repayable advances or tax or payment advantages as laid down in paragraph 22(a) TF COVID-19.
 - The maximum aid amount per undertaking in the notified scheme (EUR 800,000) will not exceed the cash equivalent of EUR 800 000 as laid down in paragraph 22(a) TF COVID-19;

- The estimated budget of the scheme is indicatively provided by Germany. Therefore, the condition of paragraph 22(b) TF COVID-19 is considered to be met.
- In compliance with paragraph 22(c) TF COVID-19, the aid will only be granted to undertakings which were not in difficulty on 31 December 2019;
- The aid will be granted no later than 31 December 2020; if the aid is granted in the form of tax advantages, the aid is considered granted when the 2020 tax declaration is due; hence the condition set out in paragraph 22(d) TF COVID-19 is met;
- Undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers or put on market by such producers, hence the condition set out in paragraph 22(e) TF COVID-19 is met;
- The maximum aid amount per undertaking does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products, as laid down in paragraph 23(a) TF COVID-19;
- Aid to undertakings active in the primary production of agricultural products will not be fixed on the basis of the price or quantity of products put on the market, as laid down in paragraph 23(b) TF COVID-19;
- Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/201420, as laid down in paragraph 23(c) TF COVID-19;
- Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the TF COVID-19, the granting authorities, by appropriate means such as separation of accounts, ensure that for each of these activities the relevant ceiling is respected and that the highest possible amount is not exceeded in total, as laid down in paragraph 23(d) of the TF COVID-19;
- The German authorities committed to comply with all the monitoring and reporting provisions laid down in section 4 of the TF COVID-19. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

(38) The Commission considers therefore that by respecting these conditions, the notified measure is necessary, appropriate and proportionate to remedy the serious disturbance in the economy of Germany caused by the COVID-19 outbreak and its consequences.

4. CONCLUSION

For these reasons, the Commission considers that the notified measure is in conformity with the TF COVID-19. It 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) TFEU.

As your authorities have confirmed that the notification does not contain confidential information, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President