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Subject: State Aid SA.56863(2020/N) – Germany
COVID-19: Federal framework for subsidised loans 2020

Excellency,

1. PROCEDURE

(1) By electronic notification of 1 April 2020, Germany notified aid in the form of subsidised interest rates for loans (*Regelung zur vorübergehenden Gewährung von Beihilfen für niedrigverzinsliche Darlehen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19* „Bundesregelung Darlehen 2020" or "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[1]

(2) The German authorities confirm that the notification does not contain confidential information.

(3) Germany exceptionally agrees to waive its rights deriving from Article 342 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, 19 March 2020, C/2020/1863, OJ C 91I, 20.3.2020, p. 1-9.

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

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2. DESCRIPTION OF THE MEASURE

(4) Germany considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to 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 subsidised interest rates.

2.2. National legal basis

(7) The national legal basis for the measure is the „Bundesregelung Beihilfen für niedrigverzinsliche Darlehen 2020".

2.3. Administration of the measure

(8) The aid can be granted by the federal level, on the level of the Bundesländer, on communal level, and by the promotional banks of the federation and the Bundesländer. The respective authority is responsible for the administration of the measure.

(9) This new measure is set up in analogy to Measure A as approved by Commission decision in case SA.56714.[3] While in that case, the administration of the aid was entrusted to Kreditanstalt für Wiederaufbau ("KfW")[4], this new measure provides the basis for the public bodies listed in Recital (8) above to administer similar aid measures.

2.4. Duration of the measure

(10) Aid may be granted under the measure as from the date of its approval until 31.12.2020.

2.5. Beneficiaries

(11) The final beneficiaries of the measure are undertakings that require support for their activities in Germany. 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")[5] on 31 December 2019. It may be granted to

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3 Recital (12)(a) of Commission Decision of 22 March 2020 in case SA.56714 (2020/N) – Germany – COVID-19 measures.

4 Recital (8) of Commission Decision of 22 March 2020 in case SA.56714 (2020/N) – Germany – COVID-19 measures.

5 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)

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 outbreak.

(12) Aid is granted under the measure through credit institutions and other financial institutions as financial intermediaries as "pass-through" loans. The German authorities have confirmed that the measure is open for all financial institutions as intermediaries on a non-discriminatory basis.

2.6. Sectoral and regional scope of the measure

(13) The measure is open to all sectors. It applies to the whole territory of Germany. However, Germany has confirmed that credit institutions and other financial institutions are excluded as direct beneficiaries.

2.7. Basic elements of the measure

(14) The measure consists in subsidised interest rates for loans to beneficiaries that can be provided directly by the granting authorities or channelled through other financial intermediaries for investment and working capital needs of the beneficiaries, provided that:

- The loan contracts have been signed by 31 December 2020 at the latest;
- The duration of the loan is limited to a maximum of six years;
- The maximum loan amount per beneficiary is limited to the amounts specified in point 27(d) of the Temporary Framework;
- The interest rates are at least as high as specified in point 27(a) of the Temporary Framework; and
- The granting authorities define maximum interest rates for the loan contracts between the financial institutions involved and the final beneficiaries, in a manner which ensures the passing on of the advantages to the final beneficiaries. The interest rate to be paid by the final beneficiary should be as low as possible, calculated on the basis of the minimum interest rates specified in the Temporary framework while allowing financial intermediaries a market conform margin which allows to at least cover fixed costs associated with the pass-through of the loans.

(15) Loans with a maturity up to 31 December 2020 may cover a maximum loan amount above the threshold defined in point 27(d) of the Temporary Framework and as referred to in recital (14) above, based on appropriate justification and provided that the proportionality of the aid remains assured.

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.

(16) The granting authorities can take over up to 90% of the risk associated with a loan granted under this measure, provided that the beneficiary has been active on the market for at least 3 years.

2.8. Cumulation

(17) 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.

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

(19) The German authorities confirm that the above applies explicitly also to aid granted under other decisions taken by the Commission on the basis of the Temporary Framework.[6]

(20) In as far as one and the same beneficiary may benefit from multiple measures under the Temporary Framework in parallel, the German authorities confirm that it is ensured that the maximum thresholds on aid amounts per beneficiary as specified in point 27(d) of the Temporary Framework are respected.[7]

2.9. Monitoring and reporting

(21) 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.).

3. ASSESSMENT

3.1. Legality of the measure

(22) By notifying the measure before putting it into effect, Germany has respected its obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(23) 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

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6 Notably Commission decision in State aid case *SA.56787* – Germany – *COVID-19: Bundesregelung Bürgschaften 2020*.

7 This applies notably to Commission decision in State aid case SA.56714 (2020/N) – Germany – *COVID-19 measures*, Commission decision in State aid case *SA.56787* – Germany – *COVID-19: Bundesregelung Bürgschaften 2020*, and any other existing or future decision under the Temporary Framework.

be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(24) The measure is imputable to the State, since it is administered by public authorities or publically entrusted entities and it is based on a federal legislative decree ("Rechtsverordnung"). It is financed through State resources, since it is financed by public funds.

(25) The measure confers an advantage on its beneficiaries in the form of subsidised interest rates. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(26) The advantage granted by the measure is selective, since it is awarded only to certain undertakings as defined in recital (13). In particular, credit institutions and other financial institutions are excluded as eligible final beneficiaries.

(27) 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.

(28) 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

(29) 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.

(30) 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*".

(31) 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*".

(32) The measure aims at facilitating the access of firms to external finance at a time when the normal functioning of credit 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.

(33) 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 subsidised interest rates for loans*") described in Section 3.3 of the Temporary Framework and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.

(34) 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:

- The applicable interest rates are equal to the base rate (1 year IBOR or equivalent as published by the Commission)[8] applicable on 1 January 2020 plus a credit margin of 0.25% for SMEs, and 0.5% for large enterprises in the first year; for the years two and three, the credit risk margin is set at 0.5% for SMEs and 1.0% for larger companies; for the years four to six, the credit risk margin is set at 1.0% for SMEs and 2.0% for larger enterprises (recital (14)). In any case, the minimum all-in interest rate (base rate plus credit risk margin) for SMEs in the first as well as second and third year are at least 0.1%. The measure therefore complies with point 27(a) of the Temporary Framework.

- The eligible loan contracts will be signed by 31 December 2020 at the latest and will be limited to maximum six years (recital (14)). The measure therefore complies with point 27(c) of the Temporary Framework.

- 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 (14)). For loans with a maturity until 31 December 2020, a higher amount of the loan principal is justified appropriately and the proportionality of the aid remains assured in line with point 27(e) of the Temporary Framework (recital (15)).

- The eligible loans will relate to investment and working capital needs (recitals (14)). The measure therefore complies with point 27(f) of the Temporary Framework.

- Firms in difficulty (situation as of 31 December 2019) within the meaning of GBER are excluded from benefitting from the measure (recital (11)). The measure therefore complies with point 27(g) of the Temporary Framework.

- 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, including the definition of maximum interest rates that may be charged by financial intermediaries. In addition, given that the measure is open to all financial institutions as intermediaries, beneficiaries can profit from the positive effects of competition between financial intermediaries. Such safeguards ensure that these institutions, to

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8 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).

the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (14)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

- The German authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (21)).
- The applicable cumulation rules are respected (recitals (17) to (20)).

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

(35) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"BRRD"**)[9] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (**"SRMR"**),[10] in the event that an institution benefitting 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.

(36) 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.[11] 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 credit institutions or 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 Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(37) Moreover, as indicated in recital (34), 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.

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

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

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

[11] 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