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PUBLIC VERSION

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Subject: State Aid SA.56974 (2020/N) – Germany – Amendment to the approved schemes SA.56790 (2020/N) – Federal Framework “Small amounts of aid 2020” (“Bundesregelung Kleinbeihilfen 2020”) and SA.56863 (2020/N) Federal Framework for subsidised loans 2020 “Bundesregelung Darlehen 2020”

Excellency,

1. PROCEDURE

- (1) By electronic notification of 7 April 2020, registered by the Commission on the same day, Germany notified, according to Article 108(3) TFEU, a modification of the aid scheme SA.56790 on the Federal Framework “Small amounts of aid 2020” (“Bundesregelung Kleinbeihilfen 2020”), which the Commission had approved by Decision of 24 March 2020¹, as well as a modification of the aid scheme SA.56863 Federal Framework for subsidised loans 2020 “Bundesregelung Darlehen 2020”, which the Commission had approved by Decision of 2 April 2020². On 8, 9 and 10 April 2020, Germany provided additional information. Initially, Germany had also notified a modification of the aid scheme SA.56787 “Bundesregelung Bürgschaften”; on 10 April 2020 Germany removed that part from the notification.
- (2) Germany confirmed that the notification does not contain confidential information.

¹ Commission Decision C (2020) 1953 final of 24 March 2020 - SA.56790 (2020/N), hereinafter: “Decision of 24 March 2020”.

² Commission Decision C (2020) 2151 final of 2 April 2020 - SA.56863 (2020/N), hereinafter: “Decision of 2 April 2020”.

Seiner Exzellenz Herrn Heiko Maas
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- (3) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958³, and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE - AMENDMENTS TO “BUNDESREGELUNG KLEINBEIHILFEN 2020”

- (4) On 19 March 2020, the Commission adopted its Communication “Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak” (Temporary Framework”).⁴
- (5) Following an electronic notification of 21 March 2020, on 24 March 2020 the Commission on the basis of Article 107(3)(b) TFEU and section 3.1. of the Temporary Framework decided⁵ not to raise objections to the aid scheme “Bundesregelung Kleinbeihilfen 2020”.
- (6) On 3 April 2020 the Commission published its Communication C(2020) 2215 final on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“Amended Temporary Framework”).
- (7) The notified scheme⁶ adapts the existing aid scheme “Bundesregelung Kleinbeihilfen 2020” to the Amended Temporary Framework. The overall objective is to remedy the difficulties faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability (see recital (3) of the Decision of 24 March 2020).

Main elements of the notified scheme

- (8) The amendments to the “Bundesregelung Kleinbeihilfen 2020” have been adopted to reflect the new wording of section 3.1. of the Temporary Framework, as amended on 3 April 2020.
- (9) Besides some editorial changes (related to rephrasing in the Amended Temporary Framework), the main amendments concern the aid instruments:
- (a) Addition of the following aid instruments to those of the existing aid scheme⁷: loans, mezzanine financing⁸, guarantees⁹ and equity.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

⁴ Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020.

⁵ Decision of 24 March 2020.

⁶ Geänderte Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19 („Geänderte Bundesregelung Kleinbeihilfen 2020“)

⁷ Direct grants, repayable advances and tax or payment advantages, see recital 15 of the Decision of 24 March 2020.

⁸ Germany describes it as hybrid forms of financing with features of both loans and equity, e.g. a combination of equity with elements such as convertible loans.

⁹ Including guarantees of loans to private leasing companies. The aid granting authority agrees with the leasing companies that the refinancing advantage will be fully passed on to the lessee (in the form the deferral of the leasing payments, a favourable leasing rate vis-à-vis the lessee, or the fact that – because of the collaterals – the private leasing company is at all willing to conclude a new leasing

- (b) Clarification that ‘loans’ can be granted directly to the companies or via credit institutions and other financial institutions as financial intermediaries. Germany explained that in case of granting via financial intermediaries, there will be no indirect advantage for the latter. Germany confirmed that, in the case of loans granted through credit institutions or other financial intermediaries (“bankdurchgeleitete Darlehen”), the aid granting authority determines an interest rate at which the loans to the final recipient must be awarded by the financial intermediaries. The interest rate shall be returned to the aid granting authority, less a predetermined profit margin. The profit margin is calculated to cover the running costs of the financial intermediaries related to the servicing of the loan. In addition, the financial intermediaries receive a one-off fee set by the granting authority to cover their fixed costs.
- (10) Furthermore, according to the notified scheme, aid can be cumulated with other aid based on the Amended Temporary Framework¹⁰, in particular aid granted under the schemes “Bundesregelung Bürgschaften 2020”¹¹ and “Bundesregelung Darlehen 2020”¹². Provided the rules under the following Regulations are respected, cumulation is also allowed with aid granted under the General Block Exemption Regulation¹³, the sector-specific exemption regulations¹⁴ and the different de minimis Regulations¹⁵.

Legal basis

- (11) The legal basis for the scheme is the “Geänderte Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19 („Geänderte

contract with the lessee) and that the leasing companies will only receive a margin to cover their related costs (in particular risk costs).

¹⁰ §3(1) of the notified scheme: “Cumulation of aid under this scheme is allowed with other aid granted on the basis of the Communication from the European Commission C(2020) 1863 final of 19 March 2020 as amended on 3 April 2020 (C(2020) 2215 final), in particular [...]”

¹¹ Commission Decision C(2020)1936 final of 24 March 2020, SA.56787 (2020/N).

¹² Commission Decision C(2020)1863 final of 2 April 2020, SA.56863 (2020/N).

¹³ 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.

¹⁴ 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 on the Functioning of the European Union and 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 on the Functioning of the European Union.

¹⁵ 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 (OJ L 352, 24.12.2013, p. 1), 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 agriculture sector (OJ L 352, 24.12.2013, p. 9), 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 fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

Bundesregelung Kleinbeihilfen 2020")¹⁶ of the Federal Ministry of Economic Affairs and Energy, as submitted to the Commission services on 7 April 2020, with the additions of 8 and 10 April 2020. Furthermore, the budgetary rules at Federal, Länder and local level will apply.

3. DETAILED DESCRIPTION OF THE MEASURE – AMENDMENTS TO “BUNDESREGELUNG DARLEHEN 2020”

- (12) Regarding the amendment of the aid scheme “Bundesregelung Darlehen 2020” approved by decision of the Commission on the basis of Article 107(3)(b) TFEU (the “Decision of 2 April 2020”)¹⁷ by referring to the existing aid scheme “Sonderprogramm 2020 für Investitions- und Betriebsmittelfinanzierung” approved by the decision of the Commission on the basis of Article 107(3)(b) TFEU (the “Sonderprogramm Decision”)¹⁸ the notified amendments concern two types of changes.

Main elements of the notified scheme

- (13) First, several changes in the language of the legal base that do not alter the substance of the measure and that are mostly caused by the amendment of the Temporary Framework. In particular:
- (a) Clarification that the credit risk margin increase progressively as the duration of the loan increases;
 - (b) Clarification that aid may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019, thereby stating this condition more clearly than before;
 - (c) Clarification that as regards paragraph 27(d)(i) the wage bill may refer to the year 2019 or alternatively to the last year available;
 - (d) Correction of clerical errors in the text.
- (14) Second, changes of the legal base that alter the substance of the measure. In particular:
- (a) An adjustment of the applicable cumulation rules including the option to cumulate aid under the different sections of the Temporary Framework as amended on 3 April 2020, except (i) that it is not allowed to cumulate aid under section 3.2 and section 3.3 for the same underlying loan and (ii) that cumulation is also not allowed if the overall loan amount benefitting from aid under section 3.2 and section 3.3 exceeds the thresholds laid down in paragraphs 25(d) and 27(d) of the Amended Temporary Framework. However, aid may be cumulated with the block exemption regulations and the *de minimis* regulations provided that the rules under those regulations are respected.¹⁹

¹⁶ “Amended scheme 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”.

¹⁷ Commission Decision C(2020)1863 final of 2 April 2020, SA.56863 (2020/N).

¹⁸ Commission Decision C(2020) 1886 final of 22 March 2020, SA.56714 (2020/N).

¹⁹ 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 (General

- (b) An amendment to allow for subsidised interest rates for loans provided either directly by a granting authority 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) The granting authority does not assume more than 80% of the risk of any given loan;
 - (ii) The granting authority does not assume more than 50% of the total debt volume on the beneficiary's balance sheet or 30% of the balance sheet size;
 - (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 the granting authority are the same as for the other participating banks in the consortium but at least the rates as specified in paragraph 27(a) of the Amended Temporary Framework. This applies equally for direct participations and risk-sub-participations.
 - (c) The legal basis for the measure includes Article 2(4) of the Law Concerning Kreditanstalt für Wiederaufbau.
- (15) No further changes to the existing aid scheme are envisaged.

4. ASSESSMENT OF THE AID MEASURES

4.1. Lawfulness of the aid measures

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

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

- (17) 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 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 common market'.
- (18) The qualification of the measures as State aid was established in the Decisions of 24 March 2020 and 2 April 2020 and in the *Sonderprogramm* Decision. The

Block Exemption Regulation); 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 (OJ L 352, 24.12.2013, p.1); 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 agriculture sector (OJ L 352, 24.12.2013 p. 9); 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 fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45); Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

Commission therefore refers, for this analysis, to recitals (26) to (32) of the Decision of 24 March 2020, to recitals (22) to (34) of the Decision of 2 April 2020 and to recitals (18) to (31) of the *Sonderprogramm* Decision.

4.3. Compatibility assessment – Amendments to the “Bundesregelung Kleinbeihilfen 2020“

- (19) The Commission has examined the notified scheme pursuant to Article 107(3)(b) TFEU.
- (20) The Commission refers to its analysis of compatibility as set out in recitals (33) to (38) of the Decision of 24 March 2020. Concerning the amendments mentioned in recitals (9) and (10) of this Decision, the Commission found the following:
- Since the list of aid instruments in 22(a) Amended Temporary Framework is non-exhaustive, the additional aid instruments as mentioned in recital (9)(a) of this Decision, also the mezzanine financing, are in line with paragraph 22(a) of the Amended Temporary Framework.
 - Regarding the guarantees of loans to private leasing companies (see footnote 9 of this Decision), Germany explained that the leasing companies will only receive a margin to cover their related costs (in particular risk costs) and that the refinancing advantage will be fully passed on to the lessee. Thus there will be no indirect advantage for the leasing company.
 - The Commission also considers that the amendment in recital (9)(b) of this Decision is in line with the Provisions of the Amended Temporary Framework, since the system set up by Germany as explained above (profit margin only to cover costs), contains sufficient safeguards to avoid an indirect advantage to the financial intermediaries.
 - The provision on cumulation (see recital (10) of this Decision), is in line with paragraph 20 of the Amended Temporary Framework.
- (21) The Commission therefore considers that the notified scheme does not affect the compatibility analysis of the existing aid scheme as set out in the Decision of 24 March 2020.

4.4. Compatibility assessment – Amendments to the “Bundesregelung Darlehen 2020“

- (22) The Commission has examined the notified scheme pursuant to Article 107(3)(b) TFEU.
- (23) The Commission refers to its analysis of compatibility as set out in recitals (22) to (34) of the Decision of 2 April 2020 and to recitals (18) to (31) of the *Sonderprogramm* Decision.
- (24) The clarifications in the legal base mostly caused by the amendment of the Temporary Framework (see recital (13) above) have no impact on the compliance of the entire scheme, as amended, with Article 107(3)(b) TFEU.
- (25) As regards the changes in the legal base that alter the substance of the measure the Commission considers that:
- (a) The clarification on the cumulation rules (recital (14)(a)) complies with paragraph 20 and footnote 14 of the Temporary Framework as amended on 3 April 2020.

- (b) The amendment to allow for subsidised interest rates for loans provided either directly by a granting authority 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 (recital (14)(b)) has been assessed in recital 31 of the *Sonderprogramm* Decision and complies with paragraph 27 and paragraphs 28 to 31 of the Temporary Framework as amended on 3 April 2020.
- (26) Apart from the modifications referred to in recitals (13) to (14) above, the Commission notes that there are no other alterations to the existing aid scheme (recital (14)(c)).
- (27) The Commission therefore considers that the notified scheme does not affect the compatibility analysis of the existing aid scheme as set out in the Decision of 2 April 2020.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified schemes on the grounds that they are 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