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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State Aid SA.56941(2020/N) – Germany
COVID-19: First-loss portfolio guarantee on trade credit insurance

Excellency,

1. PROCEDURE

(1) On 31 March 2020, the German authorities informed the Commission about a proposal for a comprehensive mechanism including, among others, a first-loss guarantee on the portfolio of insurance claim exposures of trade credit insurers active in Germany, provided in return for a commitment given by the main insurance industry operators.

(2) By electronic notification of 13 April 2020, Germany notified aid in the form of a first loss guarantee on the portfolio of insurance claim exposures of the participating trade credit insurers ("the measure") pursuant to Article 108(3) of the Treaty on the Functioning of the European Union[1] ("TFEU").

[1] OJ C 115, 9.5.2008, p. 47.

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(3) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,[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 ensure that sufficient liquidity remains available in the market, to counter the damages inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak. In particular, its objective is to ensure that trade credit insurance services continue to be available to all companies of the real economy so that buyers of goods or services avoid paying in advance for goods or services, creating immediate liquidity needs, and that seller or service providers can continue market their products

(5) The measure is based on Article 107(3)(b) TFEU to remedy a serious disturbance of the economy. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")[3] is not applicable, because guarantees on credit insurance activities are not covered therein. However, the measure is designed in analogy to the principles set out in the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of a first-loss guarantee on the portfolio of insurance claim exposures of the participating trade credit insurers of the participating trade credit insurers.

2.2. National legal basis

(7) The legal basis for the measure is the Federal Budget Code (Bundeshaushaltsordnung), and the Budgetary Committee of the German Parliament will be informed. The measure will be implemented by way of agreements between the Federal Ministry of Finance with the participating credit insurers that will be confirmed by official certificates under public law. These contracts have not been concluded yet and drafts have not been shared with the Commission. This decision is therefore based solely on the term sheet provided by Germany, which provides the relevant framework for the individual contracts to be concluded.

2.3. Administration of the measure

(8) The Federal Ministry of Finance is responsible for granting the measure by concluding individual contracts under public law. It cooperates with the Federal Ministry of Economic Affairs and Energy in the administration of the measure.

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

3 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, p. 1–9*.

Germany will also appoint a mandatary to support the implementation and monitor the measure, which will act on its behalf.

2.4. Relevant context for the measure

(9) Trade credit insurance is a risk management product offered to all types of companies wishing to protect their accounts receivable from losses due to credit risks. In the absence of such products, sellers of goods or services may ask buyers to switch to paying for goods or services in advance or at the time of delivery resp. provision. This would have a direct impact on the ability of sellers to continue their business as usual. It would also have an indirect impact on the liquidity requirements of buyers up to a point where business activities may cease if liquidity were to be unavailable or too costly. This again would hurt suppliers. Hence, any reductions in limits of insurance coverage or sudden withdrawal of such coverage, would further weaken the resilience of the economy in the face of the COVID-19 pandemic.

(10) An important function of the trade credit products that insurers offer to the policy holders (the producer of a good or provider of a service) lies in the capacity of the insurers to constantly monitor the credit worthiness of buyers and immediately alert the policyholder of a deterioration of this credit worthiness. In the event of a creditworthiness downgrade of a buyer, under an ongoing insurance framework contract the credit insurance can thus immediately reduce the limit assigned to that buyer, up to the point that the buyer could be asked to pay in advance of delivery resp. provision. In normal times, this risk-monitoring function is relevant for policyholders, as in all trade credit insurance contracts, the policyholder still retains a minimum share of at least 10% of the amount of receivables on their own risk.

(11) In 2019, trade credit insurers reported an overall coverage volume of EUR 411 billion ("Total Coverage Volume") to the German Insurance Association ('Gesamtverband der deutschen Versicherungswirtschaft', "GDV"). This volume represents the maximum amount of limits possible within the contracts between the trade credit insurers and the policyholders currently in place. However, this amount is not always fully utilised due to the dynamic nature of the calculation of the limits, which are updated daily to reflect incoming payments from buyers and new deliveries of goods or services that increase the utilisation of the limit for the respective buyer. In 2019, approximately only EUR [200-400] billion of this overall coverage volume were actually utilised ("Utilised Coverage Volume").

(12) Under the present circumstances, given the abrupt deterioration of economic activity and the fear of an overall deterioration of credit worthiness, trade credit insurers may immediately reduce insurance limits, which could further reduce economic activity by aggravating the liquidity situation of companies.

2.5. Sectoral and regional scope of the measure

(13) The measure is open to all undertakings active in the trade credit insurance sector in Germany that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[4] on 31 December 2019.

2.6. The measure, budget and duration

(14) The measure sets out a mechanism intended to help companies to overcome the most critical economic phase related to the COVID-19 outbreak, and to avoid an aggravating of the contraction in the real economy. This mechanism comprises two elements.

(15) As a first element of this mechanism, Germany receives a binding commitment ("the commitment") from the Trade Credit Insurance Companies ("TCIs") active in Germany participating in this measure to retain their existing limits at least up to current levels. This includes explicitly also the limits towards companies that were not in difficulty as of 31 December 2019 but may face difficulties in view of the COVID-19 outbreak and the containment measures.[5] Only exceptionally the insurance limit for trade credit to a given purchaser of a good or service may be reduced under an ongoing insurance contract if that purchaser:

(i.) is in danger of insolvency and where public support measures cannot be reasonably expected; or

(ii.) has been reported to the trade credit insurer to have defaulted on a payment, leading to a claim covered by the respective trade credit insurance contract that cannot be addressed in any other way; or

(iii.) do not need the limit in the current amount due to a reduction in the turnover of the policyholder.

(16) The German authorities will appoint a mandatary to monitor and audit the implementation of the measure and report to them. In particular, the mandatary will be responsible to ensure that the claim processing and claim settlement is properly implemented.

(17) As a second element of this mechanism, Germany provides a guarantee (the "Guarantee" or "the measure") on the overall portfolios of those trade credit insurers active in Germany that have signed the commitment. The guarantee therefore covers not only particularly risky transactions but rather mirrors the full range of exposures of the industry.

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[4] 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.

[5] Germany has provided the following explanation to underline the binding commitment of participating TCIs: "Jeder Begünstigte sagt deshalb *verbindlich* zu, auf Unternehmen, die nach sachgerechter Prüfung und Ausübung billigen Ermessens des Begünstigten zum 31.12.2019 nicht in Schwierigkeiten waren und durch Corona in Schwierigkeiten geraten sind im bestehenden Umfang weiter Limite zu gewähren." For the avoidance of doubt, Germany has further clarified that the first-loss guarantee covers only risks related to undertakings that were not in difficulties as of 31 December 2019.

(18) The measure covers claims related to the delivery of goods or services that take place between 1 January 2020 and 31 December 2020, provided that the trade credit insurer participates in the measure. However, it excludes any claims that have been notified before 1 March 2020 to ensure that claims not related to the COVID-19 outbreak are excluded ("Einhaftung").

(19) The measure is open for trade credit originated by policyholders with activities in Germany and covers obligors inside and outside of Germany.

(20) The measure covers losses, stemming from covered receivables and/or other covered costs, of the participating trade credit insurer, based on respective individual contract conditions. Covered costs means insured costs for manufacturing or storage independent of the type of claim (e.g. insolvency, revocatory action, protracted default, political risk). In addition, covered damages include recovery costs and claim settlement costs, which the trade credit insurer incurs on covered receivables and/or covered costs.

(21) The mechanism will cover only trade credit provided before 31 December 2020. The payment of trade credit is often due after 90 days or 360 days for some goods. Germany foresees a period to claim damages on those trades that may take more time, but in any case no later than 31 December 2026 ("Aushaftung").[6]

(22) The measure is split along two thresholds. The first element of the measure comprises a guarantee up to a nominal amount of EUR 5 billion, including EUR 500 million to be provided by TCIs. The second element of the measure is the maximum theoretical volume (the "Guarantee Volume") that is capped at a maximum nominal amount of EUR 30 billion.

(23) The portfolio guarantee is designed as follows:

(i.) Each participating trade credit insurer is allocated its share of the overall Guarantee Volume as described in recital (25).

(ii.) To ensure an appropriate sharing of losses, trade credit insurers bear 10% of all claims losses up to a cumulative amount of EUR 5 billion. This means that each participating trade credit insurer covers an individually allocated share[7] of the collective total maximum amount of EUR 500 million.

(iii.) If the damages are higher than the trade credit insurer’s share of the capped amount, Germany covers 100% of the so called "first loss piece" up to the trade credit insurer’s share of the Guarantee Volume (i.e. less than 10% of Total Coverage Volume based on 2019 figures).

[6] The ‘Aushaftung’ until 2026 is restricted to the exceptional case that losses linked to a transaction concluded in 2020 materialise only significantly later. In practice, this will be only applicable to cases where the final payment to the policyholder is subject to lengthy legal proceedings.

[7] The allocation of this capped amount follows the same methodology as for the Guarantee Volume, described in recital (25).

(iv.) If the claims are higher than the trade credit insurer's share of the Guarantee Volume, the German authorities do not cover any additional losses. This implies that on a collective level, all claims above the theoretical maximum of the Guarantee Volume remain fully with the TCIs.

(v.) Any recoveries and proceeds from the sale of collateral will be allocated according to the coverage ratio. The guarantee does not change the legal rights and obligations between the TCI and the policyholders. This includes also the responsibility of the TCI to perform recovery. In this context it is important to note the incentive for recovery of the TCI because of the loss-sharing agreement as well as the obligations of the TCIs arising from the risk participation of the policyholders. Finally, the mandatary appointed by Germany will monitor all recovery activities to ensure that appropriate recovery action will be taken and verify the accounts of the insurers.

(24) As remuneration for this portfolio guarantee, the participating trade credit insurers will pay 65% of annual gross premiums on their entire portfolio for the full year 2020 as a lump-sum payment to Germany.

(25) The overall Guarantee Volume will be distributed among the participating trade credit insurers according to their share of the Total Coverage Volume in 2019 as reported to the GDV[8]. This Guarantee Volume accounts for approximately [7.5-15]% of the Utilised Coverage Volume.[9]

(26) To implement the mechanism, Germany will conclude a guarantee agreement ('Dokumentation') with each interested trade credit insurer, in which the terms and conditions for invoking the guarantee will be specified as well as the commitment by the insurer.

(27) The German authorities and the participating trade credit insurers will agree on a reporting on details concerning the covered receivables and the covered losses (as defined in recital (18)). Upon demand, each participating trade credit insurer will provide documents and information to allow the German authorities to check whether they are eligible to receive payments under the measure.

(28) If the covered damages are adjusted subsequent to the initial payment from the German authorities to the trade credit insurer, due to late payments or proceeds from the liquidation of collateral, the trade credit insurers will reimburse the German authorities accordingly.

8 Also credit insurers that have not reported their coverage volume to the GDV, may participate in the measure if they demonstrate their coverage volume in a plausible manner. To account for the potential other participating trade credit insurers, EUR 1.5 billion of the Guarantee Volume will only be allocated by 30 June 2020.

9 In the highly unlikely event that the coverage volume should change for whatever reasons in spite of the measure assessed in this Decision, the Guarantee Volume will be adjusted downwards to always remain below 35% of Total Coverage Volume in 2020.

2.7. Monitoring and reporting

(29) At the latest three months after the end of the calendar year, starting on 31 March 2021, the German authorities will provide a report to the Commission to provide figures on the actual payments and usage of the guarantee for reasons of transparency.

3. POSITION OF THE MEMBER STATE

(30) Germany considers that the proposed measure should be deemed compatible aid within the meaning of Article 107(3)(b) TFEU, which states that aid may be deemed compatible with the internal market if its objective is "*to remedy a serious disturbance in the economy of a Member State*".

(31) Germany submits that the effects of the COVID-19 outbreak have an impact on the economy of Germany and beyond that should be classified as a serious disturbance.

(32) Germany further explains that trade credit insurances have a systemic importance for the flow of goods and services in the economy. In the absence of such products, suppliers would be forced to require advance payments from their buyers. Such advance payments would lead to significant liquidity requirements for these companies that could not be addressed at short notice or may force them to cease business activities. Therefore, a potential withdrawal of existing limits would have a significant impact on the economy that is already affected by the current crisis.

(33) Notably, Germany considers that already at the current moment the continued coverage of credit insurance is at risk because of significant rating downgrades of companies from the retail, wholesale, tourism, transport and automotive sectors. Furthermore, the simultaneous supply and demand shocks triggered by the COVID-19 outbreak have put a larger number of both suppliers and buyers under severe strain, increasing the likelihood of domino effects in terms of liquidity squeezes, rating downgrades and even defaults.

(34) Germany states that without immediate action, an accumulated amount of EUR [0-100] billion in total limits (i.e. about […] of the Total Coverage Volume) would most likely be withdrawn by trade credit insurers immediately to limit overall risk for 2020. Germany explains that this expectation is based on the experiences from the financial crisis of 2008/2009.

(35) In addition, Germany explains that the trade credit insurance industry shows important signs of network effects. If individual insurers were forced to reduce limits for individual clients that may be particularly affected by the current shock, it would have a domino effect leading to a widespread cancellation of limits across wide parts of the economy. Therefore, Germany opens the scheme to the entire trade insurance sector and has indicated that it has received interest from market participants that cover about 90% of the sector in Germany.

(36) Such a widespread cancellation of insurance limits would also increase the likelihood of further domino effects in terms of liquidity squeezes, rating downgrades and even defaults in the economy. Because COVID-19 outbreak

related claims are already affecting existing transactions, Germany deems it necessary that the guarantee covers claims as of 1 March 2020.

(37) Furthermore, Germany explains that the measure is necessary, appropriate and proportionate because of the limits provided and the required risk-sharing of the trade credit insurers.

(38) In particular, Germany notes that the requirement to pay 65% of gross premiums to Germany in return for the guarantee coverage is an important contribution and ensures that over-compensation of the direct beneficiaries is clearly excluded. Based on aggregated numbers collected from the industry, Germany explains that the […] costs account to more than the remaining 35%, so that it is excluded that private insurers could realise any profits this year.

(39) Further, Germany argues that the 10% loss-sharing by the insurers, which can lead to them bearing losses of up to EUR 500 million.

(40) Finally, given the above, Germany claims that the advantage conferred to the insurers is more than offset by the remuneration and loss-sharing, which shows that the measure is proportionate.

4. ASSESSMENT

4.1. Legality of the measure

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

4.2. Existence of State aid

(42) 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.

(43) The measure is imputable to the State, since it is granted by the Federal Ministry of Finance and it is based on guarantee agreements that are confirmed by official certificates. It is financed through State resources, since it is financed by public funds.

(44) The proposed measure aims at stabilising the system of trade credit insurances and therefore the wider economy by providing a safety-net that enables to maintain supply chains between companies. In particular, it aims at ensuring that trade insurers commit to retain coverage limits to trade credit originated in the real economy and liquidity management in the real economy. The effects of the measure should therefore consist in a benefit to the real economy on different levels: suppliers can continue to deliver their products to customers under the existing trade credit protection system while their customers are protected from sudden additional liquidity requirements that would arise in case of a withdrawal of existing insurance limits. The measure is thus aimed at keeping the flow of

goods and services as well as at reducing the likelihood of liquidity squeezes, rating downgrades and even defaults.

(45) The measure is designed in a way that trade credit insurance providers are direct beneficiaries but entails design features to ensure that the advantage is as much as possible passed on to the wider economy.

(46) The stabilisation effect will be achieved by providing a guarantee to insurers of trade credit risk. The primary beneficiaries of the measure are thus all participating trade credit insurance providers with activities in Germany. These providers have committed in return for the guarantee to uphold currently existing limits and not to reduce covered volumes, subject to limited exceptions (see recital (15) above). This upholding of existing limits that would otherwise be withdrawn will provide systemic stabilisation for the whole economy.

(47) Therefore, the measure confers an advantage on the direct beneficiaries, i.e. the participating trade credit insurers, as it removes risks from their portfolios. At the same time, it is likely that they would have significantly reduced the coverage of trades by reducing limits on a supplier's counterparties under the existing contracts.

(48) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely participating trade credit insurance companies with operations in Germany.

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

(50) 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.

4.3. Compatibility

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

(52) 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*".

(53) 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*".

(54) The measure aims at facilitating trade between companies at a time when the normal functioning of markets, including the trade credit insurance market, is severely disturbed by the COVID-19 outbreak, and that outbreak is affecting the wider economy.

(55) While the Commission has provided guidance in the Temporary Framework as to when aid under Article 107(3)(b) TFEU can be declared compatible with the internal market in light of the current shock, this communication is not applicable to the measure proposed by Germany, as it does not cover guarantees on portfolios of trade credit insurance contracts.

(56) Therefore, the measure proposed by Germany has to be assessed based on general criteria for compatibility under Article 107(3)(b) TFEU. However, the Temporary Framework can provide general guidance and its principles can be applied in analogy *mutatis mutandis* as far as appropriate.

(57) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU provision must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other. It also requires taking into account the possibly systemic importance and position of the beneficiaries and the sector concerned and any safeguards proposed to avoid undue negative effects on competition and trade between Member States.

(58) For the avoidance of doubt, the Commission notes that the Banking Communication of 2013 (the "Banking Communication")[10] is not applicable to the measure, as the beneficiaries of the proposed measure are not credit institutions. The Commission considers further that it is also not appropriate to apply the principles of the Banking Communication by analogy to the current situation[11], because the measure is not intended to address concerns related to financial stability or existing liquidity or solvency needs of the trade credit insurers. This is because the insurers could simply avoid assuming any further risks that may over-burden their capital position by withdrawing existing limits going forward. By incentivising trade credit insurers to uphold limits also in the future, the measure addresses the direct consequences of the COVID-19 outbreak in the real economy. As a result, applying the Banking Communication to the measure would not be appropriate.

4.3.1. Appropriateness

(59) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the entire economy. This would not

[10] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ, C 216 of 30 July 2013, p. 1).

[11] See point (26) of the Banking Communication.

be the case if the disturbance disappeared in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

(60) First, the measure has to be seen in the light of the unique situation caused by the COVID-19 outbreak and the ensuing economic shock that is unprecedented in its severity and affects demand and supply at the same time.

(61) In addition, the measure is also unique as regards the direct beneficiaries and the specificities of the trade credit sector. TCIs can manage their risk effectively by adjusting insurance limits for a given purchaser for future trades as an immediate reaction to sudden credit risk changes as well as to their own capacity to bear risk going forward. Any measure that should have the intended effect needs to take this peculiarity into account, namely that the beneficiaries would not require support, unless they should be convinced to refrain from using their normal risk adjustment techniques for the sake of a wider policy consideration.

(62) In addition, the Commission considers that such a measure can only be fully effective if it is being applied by significant parts of the sector. The Commission notes in this respect Germany's explanation that five large TCIs, representing 90% of the market in Germany have already agreed to participate in the overall mechanism. In addition, the mechanism remains open for participation by the remaining operators.

(63) The Commission considers that the measure can provide secondary economic effects beyond the advantage provided to the direct beneficiaries, which will be able to continue offering their insurance products on the market. In particular, as regards the clients of trade credit insurers, the measure provides them with the indirect advantage to continue using trade credit insurance, in spite of the macroeconomic effects of the COVID-19 outbreak. As regards the wider economy, the measure therefore also prevents suddenly increasing liquidity needs that companies would likely be faced with in the absence of the measure, because suppliers would be forced to demand advance payments.

(64) Furthermore, the serious disturbance in the German economy due to the effects of the COVID-19 outbreak could multiply, if existing trade credit insurance were not available to the real economy. The impact on liquidity needs for purchasers that would be required to provide advance payments as well as the potential losses spreading on to suppliers would be significant, sudden and widespread across the whole economy.

(65) The deteriorating economic outlook due to the current shock requires trade credit insurance operators to reduce limits provided to policyholders. Any such reduction or withdrawal of limits would most likely lead to domino effects at the level of credit insurers and in the wider economy, as described by Germany in recital (33) above.

(66) In order to benefit from the proposed measure, trade credit insurers have committed themselves to uphold current limits, subject to certain exceptions (see recital (15) above). The measure therefore has the intended effect to keep the current trade credit insurance system in place without interruption and to avoid the negative effects described above which would lead to a significant deterioration of the economic situation in Germany.

(67) In light of the above, the Commission considers that the measure proposed by Germany is appropriate, because it directly addresses the imminent risk of a significant further disturbance of the German economy.

4.3.2. Necessity

(68) In order to meet the compatibility criterion of necessity, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective. In other words, if a lesser amount of aid was sufficient to remedy the serious disturbance in the German economy, the present measure would not be limited to the minimum necessary.

(69) First, it is important to note the extreme and fully unexpected situation of the insurance providers. It is inherent to the system of trade credit insurance that the delivery of a good or service under such protection deviates in time from the moment of payment. It is true that the prediction of credit worthiness of purchasers is the core competency of the insurance providers and is conducted based on complex models, involving numerous parameters. However, the current and unprecedented situation with the sudden widespread economic shock that affects demand and supply at the same time, the sudden increase in the demand for liquidity in the real economy and associated concerns on future credit worthiness of companies, was not predictable only a few months ago.

(70) Second, it should be considered that the normal risk remediation technique the trade credits insurers would take in absence of the measure – namely the significant de-risking going forward via reducing limits – is what the measure intends to avoid by asking a commitment from the insurers as described in recital (15). Therefore, it is important to assess the incentive effect of the guarantee measure in the context of the overall mechanism that rests on commitments by TCIs benefiting from the guarantee to provide to Germany. In legally binding contracts the TCIs will commit to the guarantee provider to retain currently existing limits subject to only limited exceptions. Germany has clearly stated that no other agreement can be reached with TCIs that would still convince them to bind themselves to these commitments.

(71) The Commission takes comfort that Germany will appoint an independent mandatary to oversee the implementation of the specific contracts and adherence of the TCIs to the commitments.

(72) Third, as regards the amounts proposed by Germany, the following should be considered:

(73) The EUR 5 billion threshold up to which insurers and the State will both participate in potential losses represent less than [0-2.5]% of the Utilised Coverage Volume and only 1.2% of the Total Coverage Volume. Nevertheless, claims in this magnitude imply an increase of claims by over ten times more than compared to 2019. In light of the current uncertainties, it cannot be excluded that a significant increase of losses may be expected in light of the unprecedented economic impact of the COVID-19 outbreak. Therefore, the Commission considers a threshold of this magnitude as justified.

(74) The Commission notes that Germany considers it as a possible scenario that losses would exceed the threshold of EUR 5 billion. Therefore, a second threshold amounting to the maximum cap of EUR 30 billion has been set as the Guarantee Volume to provide a sufficient buffer to enable the de-risking of the participating trade credit insurance providers. Even the latter amount represents less than 10% of the Total Coverage Volume of trade credit insurance contracts in Germany based on 2019 numbers.[12] The Commission notes that Germany further explains that only with such an amount, TCIs will refrain from withdrawing EUR [0-100] billion in limits at short notice.

(75) Fourth, it should also be taken into account that the guarantee is in any case contingent upon actual losses in the real economy and will only be utilised in an exceptional situation. In the current, unprecedented situation any estimates of future economic activity are fraught with a high degree of uncertainty beyond the limits of traditional financial modelling. At this stage of the Covid-19 crisis, robust data that would allow for a precise quantification of default probabilities in the real economy does not exist. With this in mind, the Commission considers that the maximum amount for the Guarantee Volume is calibrated to address the factual und unprecedented uncertainties in which TCIs are operating which requires a coverage also of less likely scenarios. The amount therefore appears justified to reach the intended result, namely to stabilise the trade credit insurance activity and to avoid negative effects leading to widespread reduction or cancellation of trade credit insurance limits of the real economy.

(76) Fifth, the coverage provided should be seen in relation to the remuneration provided. In return for the guarantee coverage, participating trade credit insurers will transfer the full amount of gross premia for the year 2020 less a fixed share of 35% to cover […] costs to the State. In fact, Germany has explained that 35% as cost ratio is even slightly below the amounts needed to cover […] costs, based on aggregate information Germany has received from insurance providers. The remuneration would thus result in the insurers passing on the profits net of […] cost on their annual activity for 2020 to the State even before participating in any losses.

(77) Sixth, the proposed measure is limited in time and applies only to contracts in place between 1 January and 31 December 2020. Because losses incurred before 1 March are excluded (see recital (18) above), the measure does not cover guarantee events that have occurred before the COVID-19 outbreak.

(78) Seventh, Germany has argued that in the current circumstances the speed by which the measure will show an effect on the underlying trades is of the essence. According to Germany, there are [40,000-45,000] policyholders in Germany, and in view of the restrictions in public life due to health precautions, it would take too long to adjust all contracts with a product to replace only the riskiest trades.

(79) Therefore, a measure that is designed to cover portfolios of exposures is an adequate reaction to address also the specific time constraints in the current situation.

[12] Even in case of significant changes to these levels of insurance coverage, the Guarantee Volume is limited to a maximum of 35% of total coverage volume.

(80) Finally, it is particularly important to note that the proposed portfolio-based measure covers bad as well as good risks. This means that 65% of all 2020 premia are also passed-on for those policies that will have remained profitable.

(81) In light of the above, the Commission considers that the proposed measure is limited to the necessary amount of aid and that no less distortive instrument is available that would be as effective.

4.3.3. Proportionality

(82) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(83) In a first step, it should be noted that the measure is designed in a way to keep market forces working under the safety net provided. By sharing risks and premia across the whole portfolio, it is excluded that private insurers conduct an adverse selection and transfer only bad risks to the State while keeping profitable business for themselves.

(84) This model of sharing risks and return on a full portfolio level also ensures that the vital function of credit risk assessment provided by the industry is upheld. By retaining a certain amount of risk with the insurers, they still have an incentive to provide an individualised credit risk assessment of purchasers – a function that is also vital for policy holders who also participate in potential losses stemming from a possible default of the trading partner. It therefore appears that the model chosen by Germany is well justified as a methodology that effectively limits State intervention while still providing the envisaged result that would not be achievable as an outcome of pure market forces alone.

(85) In a next step, and as already considered in recital (55) above, the Temporary Framework – although not directly applicable – provides a valuable source of inspiration to identify relevant principles to assess the proportionality of the measure.

(86) First, it should be considered that the coverage up to EUR 5 billion, i.e. the level up to which private trade credit insurers participate in any potential losses, assumes an increase of such credits events by more than 1000% as compared to 2019. Therefore, the participation of the direct beneficiaries covers an important part of likely losses.

(87) The fact that the "first-loss" piece as described by Germany goes up to a total Guarantee Volume of EUR 30 billion seems unlikely but is nevertheless required to convince private insurers to not withdraw current limits as would be the normal reaction to such a situation. However, even if such an extreme downside scenario would materialise, it should be considered that the Guarantee Volume is still limited to 10% of the likely covered volume.[13] Therefore, the total guarantee

[13] And even in the unlikely case of significant changes of annual volumes in any case capped to remain below 35%.

coverage remains in any case below the limits provided in point 25(f)(ii) of the Temporary Framework.

(88) Second, the measure requires trade credit insurers to participate in claims even before the "first-loss" element is applied. Trade credit insurers have to contribute own funds to cover losses up to the total capped amount of EUR 500 million. This implies that losses up to EUR 5 billion are split between the private insurers and the State proportionally with the trade credit insurers covering 10% and Germany covering 90% of the losses up to EUR 5 billion. A State coverage of 90% is also the threshold provided for in point 25(f)(i) of the Temporary Framework.

(89) Third, the guarantee premium to be paid amounts to 65% of the annual gross premiums charged by the trade credit insurers in 2020. Based on 2019 figures, this would amount to a total guarantee premium of EUR 500 million to EUR 600 million to be paid to the State. This amounts to more than 1.6% of the total Guarantee Volume of EUR 30 billion, which is significantly above the minimum premiums as defined in point 25(a) of the Temporary Framework for a one-year protection.

(90) Fourth, participating in losses up to EUR 500 million ensures a significant participation of the insurers in total costs and is intended to exclude any potential over-compensation as the insurers are required to pay the State the full premia for 2020, less […] costs,.

(91) Based on the points above, the Commission considers that the measure proposed by Germany ensures a participation of direct beneficiaries that is at least as strict as the one foreseen in the Temporary Framework.

(92) As regards the underlying logic of point (31) of the Temporary Framework, namely that any advantage of aid should be passed on to the economic operators in the real economy directly affected by the current shock to the largest extent possible, the following should be considered:

(93) First, in order to benefit from the proposed measure, trade credit insurers have to commit to uphold existing limits for policyholders, limited to only few exceptions. Therefore, the measure will have the effect of keeping current coverage volume for the real economy in place, in spite of the macro-economic shock stemming from the COVID-19 outbreak. This effect is particularly important to alleviate the risk of the aforementioned domino effects in the real economy.

(94) Second, it should be considered that the measure is open for all trade credit insurers with activities in Germany. This will lead to competition between these providers and therefore provide an additional lever to ensure that benefits are channelled through to the real economy to the largest extent possible.

(95) Third, the Commission notes that the risk-retention by the insurers, at least up to losses of EUR 5 billion, and the risk-retention by the policy holders of the trade credit insurance will still lead to an overall risk-monitoring by creditors, in line with the intention of Section 3.2 on guarantees in the Temporary Framework.

(96) Based on the above, the Commission considers that the measure as proposed by Germany is proportionate to reach the intended goal while minimising the distortive effects on competition.

(97) Finally, the Commission reminds Germany that the effectiveness of the mechanism to support the real economy crucially hinges on Germany exercising its responsibility to monitor and enforce its conditions. Given that the TCIs will provide individual and legally binding commitments in the respective contracts to be concluded with Germany, and that a mandatary will be appointed by Germany to monitor compliance, the Commission has no doubt that Germany will fully exercise its responsibility to ensure that the terms described above are adhered to in the implementation of the mechanism. Only a strict adherence to the terms on which this Decision is based will ensure that the significant amounts of taxpayer funds dedicated by Germany will have a beneficial effect also for the customers of the trade credit insurers, with the effect that they can continue to benefit from the coverage as before the current, unprecedented shock.

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) TFEU.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

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