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Subject: **State aid SA.57100 (2020/N) - Germany – COVID-19 – Federal Framework Scheme “Aid for Covid-19 related R&D, investments in testing infrastructures and production facilities” (“Bundesregelung Forschungs-, Entwicklungs- und Investitionsbeihilfen”)**

Excellency,

## 1. PROCEDURE

- (1) Following pre-notification contacts, Germany notified on 24 April 2020, for assessment under Article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted respectively by section 3.6, 3.7, and 3.8 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 health crisis (“the Temporary Framework”) as amended<sup>1</sup>, an aid scheme named “*Regelung zur vorübergehenden Gewährung von Beihilfen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19*”(in the following: “the “measure”). The measure is composed of three sub-measures that cover i) R&D aid for COVID-19 relevant R&D projects, ii) investment aid for the construction and upgrade of respective testing and upscaling infrastructures, and iii) investment aid for production facilities for COVID-19 related products and services.
- (2) The German authorities confirmed that the notification does not contain confidential information.

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9., as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1-9.

Seiner Exzellenz Herrn Heiko Maas  
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- (3) Germany exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>2</sup> and to have this Decision adopted and notified in English language only.

## **2. DESCRIPTION OF THE MEASURE**

- (4) The notified measure aims at supporting research and development activities, and testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, as well as to support investments into the production of products needed to respond to the COVID-19 outbreak. According to Germany, given the health crisis and the shortage of certain relevant products, it is crucial that the State can provide incentives to undertakings to timely direct their activities to the research and development, and/or production of certain products, which are essential in the current circumstances. Germany considers that the measure contributes addressing the public health crisis.
- (5) The measure is expressly based on Article 107(3)(c) of the TFEU, as interpreted by the Temporary Framework.

### **2.1. Nature and form of aid**

- (6) The notified measure provides aid in the form of direct grants, repayable advances, and tax advantages under all of its three sub-measures that is to support research and development activities, testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, and to support investments into the production of products needed to respond to the COVID-19 outbreak. In addition, under its sub-measures (ii) and (iii), loss cover guarantees may be granted, either in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure.

### **2.2. Legal basis**

- (7) The legal basis for the scheme is the “Regelung zur vorübergehenden Gewährung von Beihilfen im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19“ (“*Bundesregelung Forschungs-, Entwicklungs- und Investitionsbeihilfen*”) of the Ministry of Education and Research and the Ministry for Health. This legal basis and the aid scheme will enter into force on the same day the Commission adopts a formal decision authorising the measure. Additionally, the budgetary rules at Federal, regional *Länder* and local level will apply.
- (8) The German authorities submitted copies of the draft scheme to the Commission on 24 April 2020.

### **2.3. Administration of the measure**

- (9) The notified scheme is a Federal framework scheme, allowing aid to be granted at Federal, regional (*Länder*), and local level without further implementing rules, and is to be applied in a decentralised way by all relevant public policy actors.

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

## **2.4. Budget and duration of the measure**

- (10) According to the German authorities, it is very difficult to estimate the budget for the scheme, as it is not possible to quantify at this stage the precise volume of public support that will be necessary to address the current and urgent need for COVID-19 relevant R&D and products. There exists no formal decision on the aid volume to be made available under this scheme, but it is estimated by the German authorities not to exceed EUR 5.0 billion.
- (11) Pursuant to §§ 1 paragraph 7, 2 paragraph 10 and 3 paragraph 7 of the legal basis, to the extent that individual aid will be financed by the European Structural and Investment Funds (ESIF), granting authorities are obliged to make sure that the rules applicable under these Funds will be respected.
- (12) Individual aid may be granted under the measure until 31 December 2020 which will, pursuant to § 7 of the legal basis, expire on that date.

## **2.5. Beneficiaries**

- (13) The final beneficiaries of the measure are all undertakings, irrespective of their size, that are able to engage in COVID-19 relevant research, make available relevant testing and upscaling infrastructures, or produce COVID-19 relevant products, irrespective of their sector of activity.
- (14) Pursuant to § 4 paragraph 4 of the legal basis, aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>3</sup> before 1 January 2020.

## **2.6. Sectoral and regional scope of the measure**

- (15) The measure is open to all sectors as explained in recital (13) of this decision. It applies to the whole territory of Germany.

## **2.7. Basic elements of the measure**

### ***2.7.1. Aid for R&D projects***

- (16) The aid measure supports COVID-19 relevant research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products, including projects which were awarded a COVID-19 Seal of Excellence quality label under the Horizon 2020 SME instrument (see § 4 paragraph 3 lit .c) of the legal basis).

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<sup>3</sup> As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.]

The aid under this sub-measure is granted in form of direct grants, tax advantages or repayable advances.

- (17) The following R&D stages can be supported: fundamental research, industrial research, and experimental development<sup>4</sup>. Furthermore, aid under this sub-measure supports clinical trials, including trial phases I to IV, efforts for obtaining, validating and defending patents and other intangible assets, and for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment.
- (18) Under the measure, the following cost components are eligible for the duration of the project (§ 1 paragraph 2 of the legal basis):
- a) personnel costs;
  - b) costs of instruments and equipment, including costs of digital and computing equipment;
  - c) costs of contractual research and other relevant research services, including costs for digital and computing services;
  - d) knowledge and patents bought or licensed from outside sources in arm's length transactions;
  - e) other operating expenses, e.g. materials;
  - f) additional overhead costs incurred directly as a result of the R&D project;
  - g) costs for pre-clinical and clinical trials (trial phases I-IV);
  - h) costs for obtaining, validating and defending patents and other intangible assets;
  - i) costs incurred for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment.
- (19) Only costs directly related to, and necessary for the R&D project, and the subsequent IPR protection, clinical trial (phases I-IV) and regulatory procedures, are eligible.
- (20) Pursuant to § 1 paragraph 2 of the legal basis, assets (instruments, equipment, etc.) that are not used for the full duration of the R&D project and/or are used for other purposes than the R&D projects covered by the measure, will be taken into account only *pro rata* (i.e depreciation over the period of duration of the R&D project if applicable, or *pro rata* of the capacity used for the R&D project).
- (21) The German authorities confirmed that costs related to phase-IV trials are eligible as long as they allow further scientific or technological advance.

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<sup>4</sup> As defined in paragraph (84), (85) and (86) of Article 2 of 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.

- (22) Pursuant to § 4 paragraph 3 of the legal basis, the measure is made available for projects that have started as of 1 February 2020. Where the aid is necessary to accelerate works or to widen the scope of a project, which started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible.
- (23) The German authorities confirmed that under this measure aid will not be granted to undertakings carrying out contract research on behalf of other undertakings (see § 1 paragraph 8 of the legal basis).
- (24) Under the measure, the maximum allowable aid intensity (in the absence of collaboration bonuses as explained below), by category of research, is 100 % for fundamental research, and 80 % for industrial research and experimental development. Pursuant to § 1 paragraph 5 of the legal basis, where a R&D project consists of several working packages that fall under different categories of research (fundamental research, industrial research or experimental development), the aid intensity for industrial research and experimental development will be applied if the majority of costs do not qualify as fundamental research.
- (25) § 1 paragraph 4 of the legal basis provides for a collaboration bonus for industrial research and experimental development activities that are supported by more than one Member State, or that are carried out in cross-border collaboration with research organisations or other undertakings. The total collaboration bonus amounts to a maximum of 15 percentage points.
- (26) Pursuant to § 1 paragraph 6 of the legal basis, aid is granted subject to the condition that the aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the European Economic Area.
- (27) The German authorities confirmed that in all cases, individual aid under the scheme will be granted by 31 December 2020.
- (28) Pursuant to § 5 paragraph 2, 2<sup>nd</sup> sentence of the legal basis, aid for Covid-19 relevant R&D projects may be cumulated with other aid for the same eligible costs provided the combined aid does not exceed the ceilings defined under points 35 (d) and (e) of the Temporary Framework.

### ***2.7.2. Investment aid for testing and upscaling infrastructures***

- (29) The sub-measure supports the construction and upgrade of testing and upscaling infrastructures required to develop, test and upscale COVID-19 relevant products. These products comprise medicinal products (including vaccines and medicines) and treatments, as well as their intermediates, active pharmaceutical ingredients and raw materials and machinery and equipment needed for their production, medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment, as well as diagnostic tools) and necessary raw materials, disinfectants and their intermediary products and raw chemical materials necessary for their production, as well as data collection/processing tools and other specialized consultancy that may be needed for upscaling infrastructures.

- (30) The investment aid under this sub-measure is granted in form of direct grants, tax advantages, repayable advances or loss cover guarantees. Pursuant to § 2 paragraph 4 of the legal basis, the eligible costs are the investment costs (tangible and intangible assets) needed for constructing and upgrading, testing and upscaling infrastructures required to develop, test and upscale COVID-19 relevant products such as costs for the purchase or conversion – if those costs are amortisable and included in the assets of the undertaking receiving the aid – of machinery and equipment; pursuant to § 2 paragraph 5 of the legal basis, assets (equipment, buildings, land, etc.) that are not used for the full lifetime of the infrastructure are taken into account only *pro rata* (i.e. depreciation over this period, if applicable, or *pro rata* of the capacity used for testing infrastructure).
- (31) The maximum allowable aid intensity under the measure for this type of aid is of 75% (§ 2 paragraph 5 of the legal basis). This percentage may be increased by 15 percentage points if the project is completed within 2 months of the date of the decision (§ 2 paragraph 6 lit. a) of the legal basis).
- (32) Pursuant to § 2 paragraph 7 of the legal basis, a loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project.
- (33) The sub-measure is applicable to investment projects started as from 1 February 2020, as well as investment projects on which works had started before that date, provided the aid serves to accelerate their implementation, or to extend their scope. Where the purpose of the aid application is to accelerate works or to widen the scope of a project started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible (see § 2 paragraph 4 of the legal basis).
- (34) Moreover, pursuant to § 2 paragraph 3 of the legal basis, the investment project must be completed within six months of the date of the decision to grant the aid. Where the maximum implementation period of 6 months is not respected, for reasons attributable to the beneficiary, 25% of the support granted in form of direct grants or tax advantages shall be reimbursed. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid.
- (35) The price charged for the services provided by the testing and upscaling infrastructure must correspond to the market price pursuant to § 2 paragraph 8 of the draft measure. Pursuant to § 2 paragraph 9 of the legal basis, the aid beneficiaries must commit to grant open access to the infrastructure to several users based on non-discriminatory market terms and transparent conditions.
- (36) Finally, pursuant to § 5 paragraph 3 of the legal basis, aid for testing and upscaling infrastructures cannot be cumulated with other investment aid for the same eligible costs.

### ***2.7.3. Investment aid for the production of Covid-19 relevant products***

- (37) The sub-measure supports investments to manufacture COVID-19 relevant products and services, such as medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection/processing tools.
- (38) The investment aid under this sub-measure is granted in form of direct grants, tax advantages, repayable advances or loss cover guarantees. Pursuant to § 3 paragraph 3 of the legal basis, eligible costs relate to all investment costs necessary for the production of the products listed in recital (37) of this decision, and to the costs of trial runs of the new production facilities. Pursuant to § 3 paragraph 4 of the legal basis, assets (equipment, buildings, land, etc.) that are not used for the full lifetime of the infrastructure are taken into account only pro rata (i.e. depreciation over this period, if applicable, or pro rata of the capacity used for the infrastructure). Eligible costs may include:
- a) Costs of purchase of land and buildings,
  - b) Costs of purchase or conversion – if those costs are amortisable and included in the assets of the undertaking receiving the aid – of plant/equipment,
  - c) Costs of other tangible and intangible assets.
- (39) The maximum allowable aid intensity under the measure for this type of aid is of 80% (§ 3 paragraph 4 of the legal basis). This percentage may be increased by 15 percentage points, either if the investment is concluded within two months after the date of aid granting or date of application of the tax advantage, or if the support comes from more than one Member State (§ 3 paragraph 4 of the legal basis).
- (40) Pursuant to § 3 paragraph 6 of the legal basis, a loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project
- (41) The measure is applicable to investment projects started as from 1 February 2020, as well as investment projects on which works had started before that date, provided the aid serves to accelerate their implementation, or to extend their scope. Where the purpose of the aid application is to accelerate works or to widen the scope of a project started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible (see § 3 paragraph 6 of the legal basis).

- (42) Moreover, pursuant to § 3 paragraph 2 of the legal basis, the investment projects have to be completed within six months after the date of the granting of aid. If that deadline is not met, 25% of the support granted in form of direct grants or tax advantages shall be reimbursed. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid.
- (43) Finally, pursuant to § 5 paragraph 3 of the legal basis, aid for production of Covid-19 relevant products cannot be cumulated with other investment aid for the same eligible costs.

## **2.8. Cumulation**

- (44) The German authorities confirm that individual aid under the different sections of the notified aid measure may not be cumulated with each other for the same eligible costs.
- (45) Provided the rules of other Commission regulations, such as the GBER or *de minimis* Regulation<sup>5</sup> are respected, pursuant to § 5 paragraph 2 of the legal basis, the temporary aid measures covered by the notified aid measure may be cumulated in line with the cumulation rules set out in these regulations.
- (46) As regards individual aid for Covid-19 relevant R&D projects, aid may be cumulated with other aid for the same eligible costs provided the combined aid does not exceed the ceilings defined under points 35 (d) and (e) of the Temporary Framework COVID-19 as amended (recital (29)).
- (47) As regards individual aid for investment in testing and upscaling infrastructure and investment aid for the production of COVID-19 relevant products, aid will not be combined with other investment aid or other sources of support for the same eligible costs (recitals (37) and (44)).
- (48) Pursuant to § 5 paragraph 5 of the legal basis 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.

## **2.9. Transparency, monitoring and reporting**

- (49) The German authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework, including the obligation to publish relevant information on each individual aid

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<sup>5</sup> 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 of 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 of 26.4.2012, p. 8).



granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting, see also § 6 of the legal basis.

### **3. ASSESSMENT**

#### **3.1. Existence of State aid**

- (50) 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.
- (51) The measure is financed through State resources, stemming from national, regional and local budgets (see recitals 10 and (11) of the present decision).
- (52) The aid is imputable to the German authorities since it will be awarded by granting authorities at national, regional, or local level and was adopted but the competent national authorities under the legal basis referred to in recital (7) of the present decision.
- (53) The notified measure confers an advantage on its beneficiaries in the form of direct grants, repayable advances, tax advantages, and loss cover guarantees (see recital (6)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (54) The advantage granted by the measure is selective, since it will be awarded, upon application and based on a discretionary decision of the aid granting authorities, only to certain undertakings carrying out COVID-19 relevant research, testing or upscaling, or production of COVID-19 relevant products.
- (55) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since its beneficiaries are active in sectors in which intra-Union trade exists.
- (56) 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.

#### **3.2. Lawfulness of the measure**

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

#### **3.3. Compatibility**

- (58) 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.

- (59) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (60) By adopting the Temporary Framework on 19 March 2020, as amended on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to combat the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research, testing and upscaling, and at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. It has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development”, “Investment aid for testing and upscaling of infrastructure” and “Investment aid for the production of COVID-19 relevant products”) described in sections 3.6, 3.7 and 3.8 of the Temporary Framework.
- (61) The Commission accordingly considers that the notified measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to combat the health crisis. The Commission notes in this context in particular:

**3.3.1. Aid for R&D projects (sub-measure (i))**

- (62) When it comes to aid to R&D projects, the scheme meets all the conditions of the Temporary Framework, and in particular its section 3.6:
- R&D aid under this sub-measure is limited to the eligible research areas that are listed in paragraph 35 of the Temporary Framework (see recitals (16) and (17) of this decision).
  - In accordance with paragraph 35 lit. a) of the Temporary Framework, aid is granted in the form of direct grants, repayable advances and tax advantages (see recital (6)).
  - In accordance with paragraph 35 lit.b) of the Temporary Framework, eligible R&D projects under the sub-measure are projects started as from 1 February 2020, and projects on which works were started before that date, provided the aid serves to accelerate their implementation, or to extend their scope (see recital (22)).
  - As required by paragraph 35 lit.g) of the Temporary Framework, the aid beneficiaries have to commit to grant non-exclusive licences under market conditions to third parties within the EEA (see recital (26)).
  - Eligible costs under the sub-measure are defined in accordance with the provisions laid down in paragraphs 35 lit. c) of the Temporary Framework (see recitals (18) - (20)). Eligible are all the costs necessary for the R&D project for its duration. For projects started before 1 February 2020, only the costs incurred after in relation to the acceleration efforts or the widened scope of the project are eligible as required by paragraph 35 lit. b) of the Temporary Framework (see recital (22)), are eligible.

- The overall aid intensities under this sub-measure are defined in conformity with the provisions laid down in paragraphs 35 lit. d) of the Temporary Framework (see recital (24)). The cooperation/collaboration bonus does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 35 lit. e) of the Temporary Framework (see recital (25)).
- In case of cumulation with other aids for the same costs, the cumulation ceilings laid down in paragraph 35 lit. d), e) and f) of the Temporary Framework will not be exceeded (see recitals (28), (44), (45) and (48)).
- Moreover, aid cannot be combined with aid for the same costs under sections 3.7 and 3.8 as outlined in paragraph 20 of the Temporary Framework (see recital (46)).

### **3.3.2. *Investment aid for testing and upscaling of infrastructure (sub-measure (ii))***

(63) When it comes to investment and upscaling of infrastructure, the measure meets all the conditions of the Temporary Framework, and in particular its section 3.7:

- The aid is granted for the construction or upgrade of testing and upscaling infrastructures under the conditions outlined in paragraph 37 lit.a) of the Temporary Framework (see recital (30) of this decision);
- The aid is granted in the form of direct grants, repayable advances, tax advantages and loss cover guarantees in accordance with paragraph 37 lit.b) of the Temporary Framework (recital (30));
- In accordance with paragraph 37 lit.c) of the Temporary Framework, eligible investment projects under the aid measure are projects started as from 1 February 2020, and projects on which works were started before that date, provided the aid serves to accelerate their implementation, or to extend their scope (recital (33)).
- In accordance with paragraph 37 lit. d) of the Temporary Framework, the investment projects have to be completed within six month after the investment aid was granted. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants or tax advantages shall be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid (recital (34)).
- In accordance with paragraph 37 lit. e), eligible costs are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in point 37 lit. a) (see recital (30)). For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible, as required by paragraph 37 lit.c) of the Temporary Framework (see recital (33)).
- The overall aid intensities under this aid measure are defined in conformity with the provisions laid down in paragraph 37 lit. e) of the Temporary

Framework (recital (31)). No bonus will exceed 15 percentage points, and is granted under the conditions outlined in paragraph 37 lit. f) of the Temporary Framework recital (31)).

- In accordance with paragraph 37 lit. g) of the Temporary Framework, cumulation of the investment aid with other aid for the same eligible costs is not allowed (recital (36)).
- In accordance with paragraph 37 lit. i) of the Temporary Framework, the price charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price (recital (35)).
- In accordance with paragraph 37 lit. j) of the Temporary Framework, the testing and upscaling infrastructures shall be open to several users and access shall be granted on a transparent and non-discriminatory basis (recital (35)).
- In accordance with paragraph 37 lit. h) of the Temporary Framework, a loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee is issued within one month after the undertaking applied for it; the amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project (see recital 32)

### ***3.3.3. Investment aid for the production of COVID-19 relevant products (sub-measure (iii))***

(64) When it comes to COVID-19 related investment projects, the scheme meets all the conditions of the Temporary Framework, and in particular its section 3.8:

- Investment aid under this sub-measure is limited to creating production capacities for COVID-19 relevant products and services that are listed in paragraph 39 lit.a) of the Temporary Framework (see recital (37) of this decision).
- In conformity with paragraph 39 lit. b) and h) of the Temporary Framework, the aid is granted in the form of direct grants, repayable advances and tax advantages or loss cover guarantees (see recital (38))
- In accordance with paragraph 39 lit. c) of the Temporary Framework, eligible investment projects under the aid measure are projects started as from 1 February 2020, as well as investment projects on which works were started before that date, provided the aid serves to accelerate their implementation, or to extend their scope (recital (41)).
- Eligible investment costs under the aid measure are defined in accordance with the provisions laid down in paragraph 39 lit. e) of the Temporary Framework (recital (38)). For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened

scope are eligible, as required by paragraph 39 lit. c) of the Temporary Framework (recital (41)).

- In conformity with paragraph 39 lit. d) of the Temporary Framework, eligible investment projects have to be completed within six months after the investment aid was granted. If that deadline is not met, 25% of the support granted in form of direct grants or tax advantages shall be reimbursed. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid (recital (42)).
- The overall aid intensities under this a sub-measure are defined in conformity with the provisions laid down in paragraph 39 lit. e) of the Temporary Framework. A bonus does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 39 lit. f) of the Temporary Framework (recital (39)).
- In accordance with paragraph 39 lit. g) of the Temporary Framework cumulation of the investment aid with other aid for the same costs is not allowed (recital (43)).

#### **3.3.4. *Generally applicable requirements***

- (65) As required by paragraph 49 of the Temporary Framework, individual aid under the notified measure shall not be granted after 31 December 2020 (see recital (12) of this decision).
- (66) The Commission notes that the German authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework.
- (67) Pursuant to paragraphs 35 lit.h), 37 lit.k) and 39 lit.i) of the Temporary Framework, undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”) before 1 January 2020 are not eligible under this measure (see recital (14)).
- (68) In the light of the above elements, the Commission considers that the measure is compliant with the compatibility conditions set out by the Temporary Framework, through which the Commission took due consideration of the common objective pursued by such aid measures and their positive effects on tackling the health emergency crisis provoked by the COVID-19 outbreak when balancing them against the potential negative effects of such measures on the internal market.

#### **4. 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)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President