



Brussels, 7.8.2020
C(2020) 5554 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.57675 (2020/N) – Germany
COVID-19 - scheme for regional and local public passenger
transport**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts with the Commission services, by electronic notification of 6 August 2020, Germany notified the above-mentioned scheme (“the scheme”). Germany notified the scheme on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. The COVID-19 outbreak in Germany and the containment measures taken by the German authorities

- (3) The first case of the infectious disease SARS-CoV-2 (COVID-19) in Germany was confirmed on 28 January 2020. After at first occasional identified cases, clusters of cases emerged in various places in Germany from mid-February.

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

Seiner Exzellenz Herrn Heiko MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

Since the end of February, the number of cases increased sharply with cases spread across all German *Länder* (federal states).

- (4) As other countries did, in response to the COVID-19 outbreak, Germany has taken sequential mitigation measures (“containment measures”) to prevent the spread of COVID-19 in the country, as summarised below².
- (5) The first containment measures were taken by the public authorities at regional level between late February and early March 2020 (e.g. closure of nurseries in Bavaria and quarantine requirements in the Heinsberg district in North Rhine Westphalia). In the first two weeks of March 2020, they banned various events. Furthermore, in the first two weeks of March 2020 they closed schools and nurseries across Germany, which, combined with mandatory telework arrangements introduced by several large companies, resulted in a first sharp decrease of passenger numbers in regional and local public transport. In the same vein, universities were closed. Regular school and university operations were not resumed before the summer holidays³.
- (6) On 16 March 2020, the public authorities introduced nationwide contact and movement limitations. On 22 March 2020, a decision of the Chancellor and the heads of regional governments in the *Länder* introduced social distancing rules, including:
 - the obligation, to maintain a distance of at least 1.5 metres from people other than family members in public spaces;
 - the prohibition of interaction with others in public spaces, except for one additional person living in the same household or a relative;
 - a ban on group celebrations, both in public and private spaces.
- (7) Only certain essential activities such as going to work, doing groceries, attending medical appointments, providing emergency care continued to be allowed in terms of movement in the public space. The police were responsible for ensuring compliance with the rules described in recital (7) and violations were punishable by sanctions. The public authorities prolonged those measures several times.
- (8) Furthermore, taking into account regional trends in COVID-19 infection rates, subsequently there were differentiated restrictions at *Länder* level concerning the activities of schools and other educational establishments, cultural institutions, as well as the gastronomy and tourist sectors.

² A general overview and up to date information on the COVID-19 outbreak in Germany and the related containment measures is available at <https://www.bundesregierung.de/breg-de/themen/coronavirus>.

³ The planning of school holidays depends on the individual *Land*, with almost half of the *Länder* starting summer holidays between mid and end of July. Similarly, most universities start holidays in the last third of July.

- (9) On 17 March 2020, the German Federal Ministry of the Interior, Building and Community required citizens to refrain from journeys which were not necessary. Similar travel advice was issued in other Member States. Germany also imposed extensive entry restrictions at Germany's Schengen external borders on 17 March 2020 in order to further reduce the risks of infection caused by the COVID-19 virus.
- (10) At the end of March 2020 the public authorities ordered the closure of all non-essential businesses; thus only supermarkets, banks, post offices and other important facilities like pharmacies were allowed to provide continued services.
- (11) In addition, the public authorities put border closures, border controls and travel restrictions in place. The Federal Foreign Office issued a worldwide travel warning until 14 June 2020. A travel warning still applies for non-EU/EEA countries and some European countries, and it is foreseen that it will remain in place until at least 31 August 2020.
- (12) The reopening of non-essential businesses started gradually in certain regions with retailers as of 20 April 2020 and was later on extended to larger sales spaces as of 26 June 2020.
- (13) While certain confinement measures have gradually been lifted, social distancing, hygiene and contact limitation rules remain in place. Further, there is still a requirement to wear a face mask in public spaces such as public transport. Large events remain prohibited until 31 October 2020.
- (14) Furthermore, the *Länder* may decide on the application of more specific requirements as well as on whether to reintroduce a full lock-down in regional hotspots. On 26 June 2020, the Federal Government and the *Länder* adopted a decision that prohibits persons from affected areas to travel within Germany. Persons concerned may only travel provided they can provide a SARS-Cov-2 test certifying a negative test result. Furthermore, a rule was introduced according to which regional authorities have to take restrictive measures including lockdowns if the 7-day incidence rate exceeds 50 new cases per 100 000 inhabitants. Several *Länder* apply, however, more restrictive thresholds triggering those measures once the mark of 35 new cases (Bavaria) or 30 new cases (Schleswig Holstein, Berlin, Lower Saxony) is passed. On 16 July 2020, another decision was adopted which allows for a further, more granular restriction of travel as a reaction to local outbreaks.
- (15) Following the resurgence of COVID-19 cases, public authorities have recently introduced regional confinement measures in several areas, for example:
 - in late June/early July, local authorities imposed a lockdown in the Gütersloh district, affecting around 370 000 people (which was subsequently extended to the neighbouring Warendorf district) in North Rhine Westphalia, following an outbreak in one of the largest meat processing businesses in Germany;
 - in late July, an outbreak in a vegetable farm in Mamming (Bavaria) has led to quarantine requirements and lodging bans in various *Länder* for people coming from the Dingolfing-Landau district, where Mamming is situated, affecting around 100 000 people;

- in June-July, quarantine orders were issued for several hundred people to address local outbreaks in various areas of Lower Saxony, notably the Vechta district, Göttingen and Magdeburg (in this city several schools, youth centres and playgrounds were closed), as well as in Berlin.

2.2. The economic impact on regional and local public transport

- (16) As a consequence of the COVID-19 outbreak and the containment measures adopted by public authorities in response, the German economy has suffered considerable negative economic effects⁴, with the rail- and road-based regional and local public transport being particularly affected.
- (17) Based on information provided by Germany, passenger numbers have declined in a range between 70% and 90% (on average), as compared to 2019 levels. The suspension of school activities resulted in a halt to school transport. The closure of businesses in combination with extended telework arrangements where businesses continued operations in that form strongly reduced commuter traffic. School transport and commuter traffic together represents a significant proportion of total passenger traffic in local and regional public transport.
- (18) Despite such a dramatic drop in passenger numbers, following discussions with the relevant contracting authorities and in line with the contractual arrangements, the transport undertakings only slightly reduced their services⁵. In fulfilment of their contractual obligations and in response to the contractual requests by the contracting authorities, the various transport undertakings continued to discharge their public service obligations throughout the period in which the containment measures related to COVID-19 related were in place. Maintaining regional and local passenger transport services with sufficient frequency played a crucial role in ensuring continuously basic connectivity. That continued level of service was therefore indispensable for providing mobility for people without access to alternative means of transport, including for critical workers such as health professionals. Service levels have progressively returned to 90-100% of usual capacity between late April and early May in all of Germany. However, that gradual return to normal levels of service is not so much to respond to demand, which has only increased slowly⁶, but so as to be able to ensure the respect in vehicles of mandatory distancing measures introduced to reduce the risk of infection. Whilst services levels, in terms of frequency and capacity, are back to normal, passenger numbers are still far below pre-crisis levels and transport operators continue to face lower-than-normal revenue levels as well as additional high costs for protection in relation to COVID-19 infection.

⁴ According to data published by the German Federal Statistical Office, in the second quarter of 2020 the German GDP decreased by 11.7% as compared to the same quarter in 2019 (-10.1% compared to the first 2020 quarter). The number of people employed decreased in the second quarter of 2020 by 1.3% as compared to the same quarter in 2019 (-1.4% compared to the first 2020 quarter).

⁵ Service levels were reduced, on average, by ca. 9% in March and ca. 24% in April as regards rail-based services and by ca. 12% in March and ca. 20% in April for road-based services.

⁶ According to information provided by Germany, at the time of the present Decision the number of passengers is on average still only around 50-60% of 2019 traffic levels.

- (19) According to the German authorities, the fall in passenger numbers has caused a sharp decrease in fare revenues. Figures submitted by Germany show that in populous cities across Germany such as Munich, Stuttgart, Cologne and Hamburg the local operators are continuing to experience low passenger numbers and suffer revenue losses (as compared to the same period in 2019) even after the lifting of the strictest nationwide containment measures, i.e. throughout July, following a negative trend that is expected to continue beyond August⁷. The drop in revenues is exacerbated by additional costs incurred by transport operators in relation with measures aimed at infection prevention, notably enhanced cleaning of vehicles, the provision of disinfection materials, protective equipment for staff, etc. Therefore, whilst costs did not decrease substantially due to the continued provision of transport services, the revenue shortfall on which the *ex ante* agreed public service compensation⁸ is based has been increasing significantly and thus the compensation did not cover the cost anymore.
- (20) Despite a slight decrease of variable costs linked to slightly less frequencies and cost savings related to the publicly financed short-time allowance for employees, public transport operators continue to face a revenue shortfall with revenues not allowing to cover their cost, which has created serious liquidity problems and put at risk their very survival.

2.3. Objective of the measure

- (21) The scheme aims at compensating all providers of regional and local public passenger transport services in Germany for the damage suffered due to the COVID-19 outbreak and the containment measures introduced by Germany as described in recitals 2 to 13.
- (22) Germany submits that the scheme is designed to ensure that the damage compensation will be granted based on uniform conditions across Germany, guaranteeing equal and non-discriminatory treatment of all beneficiary undertakings. As described in section 2.10, the damage consists in the revenue shortfall incurred by each beneficiary in fulfilment of their contractual obligations under the circumstances determined by the COVID-19 outbreak and the resulting containment measures, due to lower fare revenues and lower public service compensation, as well as higher costs to ensure prevention of infection.

2.4. The nature and form of the measure

- (23) The aid takes the form of direct grants provided by the *Länder* or municipalities.

⁷ To ensure that the trends observed reflect an accurate comparison between the situation induced by the COVID-19 related restrictions and the pre-COVID-19 situation, Germany submitted figures for cities in *Länder* where summer holidays have either only started at the end of July (e.g. Bavaria, Baden-Württemberg) or at the end of June (North Rhine Westfalia, Hamburg). For the latter, it should be noted that, beyond a certain decline of commuters/work-related traffic in the holiday period, the revenue decrease in July also reflects a lower number of tourists/leisure passengers visiting large cities which are renowned tourist destinations such as Cologne and Hamburg.

⁸ In accordance with Article 3 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

2.5. National legal basis

- (24) The national legal basis of the scheme is a framework issued by the Federal Ministry of Transport and Digital Infrastructure⁹, which will enter into force upon approval of the scheme by the Commission.

2.6. Administration of the measure

- (25) The *Länder* and municipalities are responsible for the financing, implementation, monitoring and disbursement of the aid based on the federal scheme.

2.7. Budget and duration of the measure

- (26) Compensation under the notified scheme is partly financed through federal funds, the so-called “*Regionalisierungsmittel*” which are provided to the *Länder* by the Federal State¹⁰.
- (27) The overall estimated budget of the scheme is approx. EUR 6.1 billion. This amount results from the estimated sum of the financial impact of the following revenue losses and costs incurred in relation to the COVID-19 outbreak and the resulting containment measures: (i) ca. EUR 620 million¹¹, corresponding to the shortfall in the baseline compensation (“*Bestellerentgelte*”)¹² paid by the relevant contracting authority to the transport operator depending on the service levels provided; (ii) ca. EUR 5.2 billion in lost fare revenues; (iii) ca. EUR 310 million for extra hygiene costs incurred in connection with COVID-19 measures.
- (28) The scheme provides compensation to the beneficiaries for damage suffered during the period between 1 March 2020 and 31 August 2020. Beneficiaries may submit their application for aid until 30 September 2020. They are required to provide evidence of the damage actually incurred, in accordance with the methodology described in section 2.10 below, by 30 September 2021.
- (29) The German authorities confirm that the aid scheme will not enter into force nor any aid will be paid out before the Commission’s approval.

⁹ Regelung zur vorübergehenden Gewährung von Beihilfen zum Ausgleich von Schäden im öffentlichen Personennahverkehr im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von COVID-19 („Bundesrahmenregelung Beihilfen für den öffentlichen Personennahverkehr“).

¹⁰ As part of the scheme, the amount of annual *Regionalisierungsmittel* earmarked before the COVID-19 outbreak will be increased to compensate for part of the damages suffered by the transport operators as a result of the containment measures.

¹¹ This figure is based on a comparison with the most recent available figures concerning the level of ordering party’s fees (ca. EUR 6.2 billion in 2016-2017) and a rather conservative estimate of a 10% drop in service levels in 2020. The estimated amount of EUR 620 million will be reduced by deducting avoided costs and ordering party’s fees already received.

¹² “Bestellerentgelt” is defined as the baseline fee paid directly by the transport authority to the transport company on the basis of the transport service contract.

2.8. Beneficiaries

- (30) Beneficiaries are public and private undertakings that discharge public service obligations for the provision of road- or rail-based public regional or local passenger transport services in Germany¹³ that can demonstrate damages directly caused by the COVID-19 outbreak and the resulting containment measures.
- (31) Germany submitted that operators of regional and local public passenger transport services will benefit from the largest proportion of the aid with around 250 contracts. The number of road-based public transport operators eligible under the scheme is estimated to be approx. 2 700.

2.9. Sectoral and regional scope of the measure

- (32) The scheme is designed to support all providers of regional or local public passenger transport services in Germany based on uniform conditions as defined in this scheme.

2.10. Eligible costs and modalities for compensation

- (33) The eligible costs correspond to the damage caused to the beneficiaries by the COVID-19 outbreak.
- (34) The scheme compensates the beneficiaries for up to 100% of the damage incurred during the period 1 March 2020 to 31 August 2020 to the extent that the individual beneficiary can demonstrate a direct causal link between the damage incurred and the COVID-19 related measures.
- (35) The damage eligible for compensation under the scheme is calculated as the net costs suffered by the individual beneficiary, calculated based on a comparison between actual revenues and the revenues obtained in the same reference period in 2019 (i.e. 1 March-31 August) (“the reference scenario”)¹⁴. COVID-19 related hygiene costs may also qualify as eligible damages. In sum, the eligible damage may comprise each of the following elements:
- i. the shortfall in the baseline compensation, i.e. the difference between the reference scenario and the actual baseline compensation payments received;
 - ii. the difference between fare revenues¹⁵ expected in the reference scenario and the actual revenues obtained, taking into account any fare changes occurred since 2019; and

¹³ The beneficiaries must hold a licence in accordance with the relevant legislation and/or provide transport services based on public service contracts.

¹⁴ In case the transport undertaking cannot provide figures for 2019 (e.g. because it was not already entrusted with a public service contract in 2019), the comparison may exceptionally be based on the business plan for 2020.

¹⁵ Fare revenues include compensation payments for public service obligations subject to general rules in accordance with Article 3(2) and 3(3) of Regulation (EC) No 1370/2007 (see footnote 8).

- iii. the additional costs related to infection control (such as enhanced hygiene measures and vehicle conversions).
- (36) Avoided costs and cost savings (e.g. lower costs for staff, energy and fuel, maintenance and repair, infrastructure charges, etc.), as well as compensation payments from other sources are to be deducted from the above amount.
- (37) The German authorities confirm that the following safeguards will be put in place to avoid overcompensation:
- Following a provisional estimate of the damage, beneficiaries will be required to submit written documentation by 30 September 2021¹⁶ demonstrating the damage actually incurred in accordance with the methodology described in recitals (35) and (36), including proof of the amount of compensation which would have normally been due under the reference scenario. The damage calculation shall be audited by an independent expert. Payments in excess of the actual damage will be recovered including interest.
 - Beneficiaries are required to take all reasonable measures to mitigate the damage. Compensation to applicants responsible for the damage suffered is excluded.
 - Payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. In particular, compensation under the scheme can only be granted to the extent that the public service contracts or general rules on which the public service compensation is based do not already provide for the compensation of damages eligible for aid under the scheme; and
 - Payments in favour of undertakings that have benefited from earlier unlawful aid declared incompatible with the internal market by a Commission decision will be suspended until that aid is recovered.

2.11. Cumulation

- (38) The German authorities confirm that aid provided under the scheme cannot be cumulated with other aid for the same eligible costs, if the total aid received by each beneficiary exceeds the total amount of the damage suffered. Moreover, the beneficiaries will be required to declare any other aid requested or granted to compensate the damage caused by the COVID-19 outbreak and to pay back any overcompensation.

¹⁶ Germany submitted that the final calculations of the actual damage incurred will only be available in September 2021. This is due to the complex process in which fare revenues are allocated across transport undertakings and their respective transport associations (e.g. because a subscription can be used to travel with different operators, who are hence all entitled to a share of the related revenues).

2.12. Reporting

- (39) The German authorities committed to provide a report no later than 18 months after the Commission decision, specifying the amount of compensation and recoverable advances granted.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (41) For a measure to be categorised as State 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.
- (42) The measure is imputable to the State, since it is based on a legal act from the German Federal Ministry of Transport and Digital Infrastructure, as set out in recital (24). In addition, the aid is granted and administered by the *Länder* and municipalities. It is financed through State resources, since it is supported through public funds (see recital (25)).
- (43) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (23)). The advantage corresponds to the amount of compensation paid under the measure to each of the beneficiaries. The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.
- (44) The advantage granted by the measure is selective, as, as set out in recital (30), it is awarded only to regional or local public transport providers that can demonstrate damage caused directly by the COVID-19 outbreak and the resulting containment measures.
- (45) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (46) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (47) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the German authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.

(48) This assessment has led to the following observations.

3.3.1. *The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

(49) Article 107(2)(b) TFEU stipulates that aid to make good damages caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. The Commission, in line with the consolidated Union case-law¹⁷, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively as they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU.

(50) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field¹⁸. In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee¹⁹; (ii) significant scale/economic impact²⁰; and (iii) extraordinary²¹.

3.3.2. *COVID-19 as an exceptional occurrence*

(51) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese

¹⁷ Judgement of the Court of Justice of 11 November 2004, Spain v Commission, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, Atzeni and others, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

¹⁸ Exceptional occurrences that have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

¹⁹ Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

²⁰ Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France); (ii) the significant number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36); (iv) the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

²¹ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the alleged fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination did not constitute in itself an exceptional occurrence. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.

- (52) The WHO declaration of a pandemic²², associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption²³. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures needed to be adopted.
- (53) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where this is possible and various social distancing measures.
- (54) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market²⁴.
- (55) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. Causal link between the COVID-19 outbreak and the damage compensated by the scheme

- (56) As described in section 2.1, the German authorities adopted several sequential containment measures in response to the COVID-19 outbreak starting in March 2020. Following various limitations which were introduced at regional level, a decision of the Federal Chancellor and the heads of regional governments

²² WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

²³ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

²⁴ See for instance also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

imposed restrictions for the entirety of Germany in public spaces, such as physical distancing obligations, strict limitations concerning contacts with people outside one's household, as well as a ban on group gatherings and celebrations in both public and private spaces. The violation of such rules is subject to sanctions. Furthermore, individual *Länder* started to introduce restrictions including closure concerning the activities of schools, universities and other educational establishments, cultural institutions, as well as the gastronomy and tourist sectors, taking into account regional trends in COVID-19 infection rates. By the end of March all non-essential businesses were closed.

- (57) The Commission takes note that the various legal restrictions set out in recital (53) have led, compared to the corresponding period in 2019, to a significant passenger decrease of 70 to 90% between March and end of June 2020 and still remaining at ca. 50-60% of 2019 levels in July and August 2020, which negatively affects the regional and local public transport providers, both rail- and road-based. In that respect, the Commission notes that the closure of schools brought school transport to a complete halt. Similarly, the closure of universities had a significant impact on passenger numbers.
- (58) The Commission furthermore notes that the volume of commuter traffic, which represent a significant proportion of public passenger traffic, declined significantly because of the closure of businesses and the extensive use of mandatory telework arrangements (which largely remain in place until today). Finally, the Commission notes that the lockdown measures which restricted social life to a minimum has reduced usage of public transport to a minimum.
- (59) At the same time, the Commission takes note that, despite that significant decrease in passenger numbers, in order to fulfil their public service obligations set out in the public service contracts, providers of regional and local passenger transport had to largely maintain their offer throughout the duration of the containment measures. Those public service obligations aim at ensuring connectivity of citizens and they prevented transport operators from limiting their damage by reducing their offer and thus their variable costs.
- (60) The Commission takes note that the sharp decrease in fare revenues and to a certain extent compensation payments under the relevant public service contracts or general rules pursuant to Article 3 of Regulation (EC) No 1370/2007 (the amount of which depends on the level of service, as mentioned in recital (19)), together with additional costs to prevent infection have created serious and persisting liquidity shortages, which put at risk the very survival of the affected transport operators.
- (61) As regards the duration of the compensation period 1 March - 31 August 2020, the Commission considers that due account should be taken of the specific circumstances in which the regional and local public transport providers have been operating and are currently operating.
- (62) As described in recital (5), the first containment measures were already taken at regional level in the two most densely-populated *Länder* North Rhine Westphalia and Bavaria in late February.
- (63) As regards the end-date of the scheme, the Commission notes that all German schools including the nurseries remained closed until the beginning of the school

holidays, which in seven out of the 16 *Länder* were planned to start only between 16 and 30 July. In particular, holidays in Bavaria and Baden-Württemberg, the second and third biggest *Länder* in terms of population, started only on 27 July and 30 July, respectively. Similarly, the German universities remained closed from mid-March until the beginning of the holidays which were planned to start – depending on the university – between mid-July and end July. The Commission acknowledges that the closure of schools and universities has led to a significant decrease of this important passenger segment, which constitutes more than one-third of all users of public passenger transport. The Commission furthermore recognises that the loss of that important group of passengers had a significant impact on public transport operators in large parts of Germany until the end of July.

- (64) Further, it has to be noted that, while the strictest containment measures have meanwhile been lifted, certain travel restrictions as well as bans on large gatherings and cultural events are also still valid. The continued application of telework arrangements strongly reduces the number of commuters using public transport, a group that constituted a large portion of passengers in the period prior to the outbreak of COVID-19 and the associated control measures adopted by the public authorities. Further, as explained in recital (15), the resurgence of COVID-19 cases in several areas of Germany have led local/regional authorities to reintroduce containment measures of varying intensity, ranging from a full lock-down for a period of two weeks to quarantine requirements and lodgement bans for people coming from the affected areas which implicitly comprised a travel ban.
- (65) Therefore, those measures keep passenger numbers low, including in the weeks following the lifting of the strictest nationwide containment measures (see recitals (18) and (19)), and continue to have a significant impact on the revenues of public passenger transport providers. The Commission notes in particular that recent data comprising the period mid-July to end-July 2020 show that passenger numbers are still down by, on average, 50% compared to the 2019 period. The Commission furthermore notes that as soon as the 7-day incidence rate exceeds 50 new infections per 100 000 inhabitants the regional authorities are obliged to impose measures including local lockdowns. Some *Länder* even apply stricter thresholds of 30 or 35 new infections. In that respect, the Commission takes note that over the past weeks infection numbers have started to increase with local outbreaks across various *Länder*, leading – again – to local lockdowns of two weeks, which in turn have heavily affected public passenger transport operators in the area, with passenger numbers again plummeting. Furthermore, as explained in recital (18), the Commission notes that the undertakings eligible for aid under the scheme discharge public service obligations, and thereby fulfil a critical socio-economic function in ensuring mobility of citizens as well as contributing to the green transition supported by the European Commission by ensuring sustainable environmental friendly mobility²⁵. Indeed, throughout the duration of the COVID-19 containment measures the continued provision of regional or local public transport services has been crucial to ensure connectivity for people without alternative means of

²⁵ An overview of the European Green Deal strategy, including through sustainable mobility, is available at https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

transport and in particular for workers, including critical staff in the healthcare sector, thereby contributing to the proper functioning of the economy. At the same time, the return to almost 100% of normal service levels despite significantly reduced passenger numbers at the end of April/beginning of May has helped ensure observance of the social distancing measures on public transport. Moreover, the envisaged compensation for the revenue shortfall caused by the containment measures is coherent with the very nature of common public financing mechanisms for these essential public services.

- (66) The Commission notes for the reasons set out in recital (60) that due to the special nature of public services the beneficiaries under the scheme have not had the possibility until now to react to a changed market environment and to decreased demand. They have not had the choice to reduce capacity and thereby to reduce their fixed cost, as companies in other sectors have. As such, the beneficiaries have had to continue to offer almost full capacity despite the still very low number of passengers
- (67) In view of all of the above, the Commission considers that the duration of the notified compensation period (1 March – 31 August 2020) is justified, as its start coincides with the implementation of the first containment measures in reaction to the COVID-19 outbreak and its end takes into account the various factors summarised above. As regards the differences in the territorial and temporal scope of the various containment measures, the Commission considers that appropriate rules are in place to ensure that compensation can be granted only in those instances where the individual beneficiary can prove a direct link between the actual damage incurred and the relevant containment measures (see section 3.3.4). Therefore, the Commission reaches the conclusion that there is a direct link between the measures adopted by the German authorities in response to the COVID-19 outbreak and the damage suffered by the transport operators due to the decrease in fare revenues and public service compensation as well as the additional infection prevention costs.
- (68) Therefore, the Commission considers that the direct causal link between the damage caused by the exceptional occurrence and the aid under the scheme is ensured.

3.3.4. Proportionality of the aid

- (69) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (70) Aid granted under the scheme is strictly limited to compensation for the damage directly caused by the COVID-19 outbreak during the period 1 March - 31 August 2020. As described more in detail in section 2.10, the damage is calculated as the revenue shortfall resulting from the difference between (a) the actual fare revenues/public service compensation received by the individual aid beneficiary; and (b) the normally expected revenue/compensation payments. The extra costs for infection prevention measures are also added to the damage amount, whereas avoided costs/cost savings are deducted.

- (71) As described in recital (37), the German authorities have put in place the following additional safeguards to ensure that compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.
- i) First, compensation in excess of the damage actually incurred (calculated in line with the above methodology) will be recovered in all individual instances including interest.
 - ii) Second, beneficiaries are required to take all reasonable measures to mitigate the damage and payments to any applicants who are responsible for the damage suffered are excluded.
 - iii) Third, aid granted to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage.
 - iv) Fourth, no aid will be paid to undertakings subject to an outstanding recovery order following a negative decision by the Commission.
- (72) Furthermore, as explained in recital (38), aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.
- (73) Finally, as explained in recital (39), Germany committed to provide a report to the Commission specifying the amount of compensation and recoverable advances granted no later than 18 months after the date of the present Decision.
- (74) The Commission positively notes the above-mentioned safeguards and concludes that the mechanism put in place will ensure that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary due to the deficit caused by the COVID-19 outbreak.
- (75) In view of the above, the Commission considers that the scheme is proportional and consequently compatible with the internal market in accordance with Article 107(2)(b) TFEU.

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(2)(b) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

