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Subject: State Aid SA.63063 (2021/N) – Germany
COVID-19: German Travel Insolvency Fund

Excellency,

1. PROCEDURE

(1) By electronic notification of 8 June 2021, Germany notified aid in the form of a State guarantee for loans that may be taken out by the Travel Insolvency Fund (the "Fund"), under Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU") (the "measure"). As of its establishment in Germany, the Fund will accumulate and administer assets for the purpose of settling travellers' refund claims in the event of insolvencies of package travel organisers.

(2) Germany exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("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

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

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

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sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(4) Germany submits that, since the outbreak of COVID-19, the German Federal Foreign Office has issued a number of travel warnings as well as restrictions of travel between Germany and other Member States or non-EU countries. The Federal Government is continuously re-assessing and rating countries into different risk categories according to, primarily, their infection rate. On the date of notification of the measure to the Commission, around 150 countries/regions worldwide are rated as risk or high incidence areas for COVID-19, and another 11 countries are declared as areas of COVID-19 variants of concern. As regards travel from/to those areas, travel warnings automatically apply as well as further travel restrictions, such as testing, strict quarantine requirements for travellers, and/or travel bans. In the case of travel warnings, travellers are entitled to cancel free of charge travel packages they previously booked and, in the event of cancellation of a travel package, travel organisers are required to refund any pre-payments received within 14 days of such a cancellation, pursuant to the requirements of Directive (EU) 2015/2302 (the "Package Travel Directive").[2] Germany submits that, since the COVID-19 outbreak, a great number of travel packages have been cancelled (99% cancelled for April/May 2020; 75% for June 2020; 50% between July and October 2020; 75% for November/December 2020; 90% between January and March 2021).

(5) Germany further submits that the COVID-19 outbreak and the resulting travel restrictions and cancellations of travel packages have had a significant impact on the turnover of operators in the travel industry in 2020 and 2021. According to reports from the Federal Statistical Office ('*Destatis*'), sales of travel agencies, tour operators and other travel reservation services declined by around 13.9 % in Q1, 91.3 % in Q2, 74.9 % in Q3 and 83.8 % in Q4 of 2020 compared to the same period in 2019. In addition, according to reports by the German Travel Association ('*Deutscher Reiseverband e.V.*') the turnover of tour operators dropped from EUR 35.4 billion in 2019 to EUR 12.5 billion in 2020. Turnover of travel agencies dropped from EUR 24.6 billion in 2019 to EUR 10.2 billion in 2020. In 2021, the economic situation for those operators remains difficult: the data[3] for the summer of 2021 shows a similar decline in travel bookings of about 76% compared to the previous year. In addition, due to the ongoing travel warnings and restrictions, the number of new travel bookings, which has dropped significantly since 2019, is expected to remain low in the near future. This leads to an (ongoing) decrease in turnover and an increased risk of insolvencies in the travel sector.

[2] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326, 11.12.2015, p. 1.

[3] Data provided by 'Travel Data + Analytics GmbH', specialising in market research in the travel industry.

(6) Germany submits its intention to establish the Fund by federal law, and explains that the Fund will be financed by contributions from package travel organisers and deal with situations of their insolvency. Aside from the payment of fees into the Fund (corresponding to at least 1% of the annual turnover of each participating package travel organiser), the participating package travel organisers will also have to provide individual collaterals (e.g., insurance policies, bank guarantees) to enter the Fund. These collaterals will be available for priority liquidation in the event of an insolvency. Germany submits that the Fund will be operational as of 1 November 2021. Germany also confirms that the level of contributions (fees and collateral) payable into the Fund will be at least equal to contributions based on the normal insolvency rate in the sector which is estimated at a maximum of 2% annually.

(7) Germany states that the establishment of the Fund aims to deliver its obligation, under the Package Travel Directive[4], to ensure that package travel organisers established in Germany provide security for the refund of all payments made by travellers where the relevant package travel services are not performed because of the organiser's insolvency and to cover the costs of necessary repatriations of travellers stranded at the travel destination. As regards the package travel organisers who have their seat in another Member State, they are considered to have met their insolvency protection obligation insofar as they provide such security to travellers in accordance with the laws of that other Member State.

(8) Currently, in Germany, in order to comply with the obligation to put in place such insolvency protection, package travel organisers have the option to either take out insurance or to obtain a bank guarantee. As of the creation of the Fund, all package travel organisers with annual revenues above EUR 10 million will be obliged to enter the Fund. For all other package travel organisers (annual revenue below EUR 10 million, currently representing 7% of market share in revenue in Germany) the membership will be optional as those organisers may decide to seek insolvency protection in the insurance market.

(9) With the measure, Germany intends to provide a State guarantee of a limited duration (up to six years) for future loans that the Fund may have to take out in case of insolvency of participating package travel organisers. Due to the turnover losses of package travel organisers caused by the COVID-19 outbreak and the foreseen difficulties for the Fund to accumulate capital during its build-up phase (i.e., the phase until it reaches its target capital of EUR 750 million) State support for the Fund by way of a guarantee is considered essential, as package travel organisers cannot manage these high risks on their own by injecting sufficient funds in the take-up phase of the Fund.

(10) Germany confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the

4 Article 17 (1) of the Package Travel Directive stipulates that "*Member States shall ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency. If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation. Continuation of the package may be offered*."

aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(11) The measure is notified directly under Article 107(3)(b) TFEU whilst taking into account, by analogy, the relevant provisions of sections 2, 3.2 and 4 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").[5]

2.1. The nature and form of aid

(12) The measure provides aid in the form of a State guarantee for loans that the Fund may have to take out until 31 October 2027, in the event of insolvency of participating package travel organisers.

2.2. Legal basis

(13) The legal basis for the measure is the draft bill on insolvency protection through a travel insolvency fund and on the amendment of travel law provisions.[6]

2.3. Administration of the measure

(14) The procedure of administering the measure has not yet been determined. It will be regulated by a statutory order issued by the Federal Ministry of Justice and Consumer Protection in agreement with the Federal Ministry of Finance and the Federal Ministry for Economic Affairs and Energy.

2.4. Budget and duration of the measure

(15) The German authorities confirm that the State guarantee is capped at the amount of the target capital of EUR 750 million minus the assets of the Fund and the collateral provided by the package travel organisers participating in the Fund, available at the time the loan is taken out.

(16) The State guarantee will be granted under the measure as of the notification of the Commission's approval until no later than 31 December 2021. The State guarantee will apply automatically to loans that the Fund may have to conclude due to potential insolvencies of package travel organisers as of 1 November 2021, on the basis of the law introducing the measure (recital (13)). The support provided by the State guarantee to the Fund will lapse at the latest on 31 October 2027.

2.5. Beneficiaries

(17) The beneficiary of the measure is the Fund. The main objective of the Fund is to provide security for the refund of travellers' claims in the event of insolvency of

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5 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), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

6 Original title of the draft bill: "*Entwurf eines Gesetzes über die Insolvenzsicherung durch Reisesicherungsfonds und zur Änderung reiserechtlicher Vorschriften*".

the participating package travel organisers. Financial institutions are excluded as eligible final beneficiaries.

(18) The Fund will be organised under private law as a limited liability company ("GmbH"), therefore, the general provisions with regard to organisation, management and structure that apply to all companies of this legal form also will apply to the Fund.[7] As a private company, the Fund will be independent from the State and will not act as a public authority. It will be concluding contracts with other companies (in particular, package travel organisers) and will be subject to State supervision. In addition, State agencies will be supporting and advising the management of the Fund.

(19) As a newly established undertaking which will come into effect as of 1 November 2021, the Fund cannot be considered as an undertaking that was already in difficulty on 31 December 2019, within the meaning of the General Block Exemption Regulation ("GBER").[8]

(20) Aid is granted under the measure through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

(21) The measure is designed to support the Fund, which is open to undertakings providing package travel and which are established in Germany. The measure is not designed to support the financial sector. It applies to the whole territory of Germany.

2.7. Basic elements of the measure

(22) Package travel organisers of all sizes (SMEs and large enterprises[9]) established in Germany may participate in the Fund. Organisers with revenue above EUR 10 million will be obliged to become members of the Fund (representing 93% of the market by revenue) while for all other package travel organisers participation in the Fund will be optional. The estimated number of participants in the Fund is above 1 000.

(23) In case of insolvency of package travel organisers participating in the Fund, the Fund may take out loans by any commercial credit institution by comparing and choosing the most advantageous offer. The decision on whether to take out a loan will depend on its necessity to meet the Fund's obligations. A loan will be necessary in cases where the available assets/collateral in the Fund are insufficient to cover the capital required for refunds of travellers after an

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7 Special requirements for the management of the fund will be regulated by a (not yet issued) statutory order. The draft of the statutory order provides in particular for the following requirements: (i) the management of the Fund must consist of at least two managing directors; (ii) the Fund must have a risk management system and an internal control system; (iii) independent key functions on compliance, internal audit and risk controlling must be established (iv) guidelines must be developed and implemented for the most important tasks.

8 As defined in Article 2(18) 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, 26.6.2014, p. 1).

9 As defined in Annex I to the GBER.

insolvency event of package travel organisers participating in the Fund. A separate decision by the State to allow the Fund to take out a loan will not be required as it will be automatically, on the basis of the law introducing the measure (recital (13)), guaranteed by the State once taken out. Based on the measure, 100% of the amount of each loan will be guaranteed by the State on condition that the overall amount guaranteed by the State does not go beyond the cap (recital (15)). As regards the maturity of the loans taken out by the Fund, the State guarantee will expire no later than 31 October 2027.

(24) In case of an insolvency event, the collateral (e.g., insurance policies, bank guarantees) provided by the package travel organisers participating in the Fund will be available for priority liquidation. The amount of the State guarantee per loan will be calculated as follows: it will be equal to the difference between the capital required due to the insolvency event minus the collateral provided by the insolvent package travel organiser(s) and the accumulated assets existing within the Fund at the point in time when the loan is taken out.[10] However, the amount of the State guarantee provided for all loans that may have to be taken up cannot exceed the cap (recital (15)).

(25) As of 1 November 2021, the Fund will pay a guarantee premium to the State according to the table set out in point 25(a) of the Temporary Framework, namely:

Type of recipient	*For 1st year*	*For 2nd-3rd year*	*For 4th -6th years*
SMEs	*25bps*	*50bps*	*100bps*
Large enterprises	*50bps*	*100bps*	*200bps*

(26) The premium to be used is calculated as a weighted average of the premiums indicated above based on the total turnover of SMEs and large enterprises in the Fund.

(27) Given that it is not possible to know before the date when the Fund comes into effect (i.e., 1 November 2021) the precise annual turnover of the package travel organisers that will be participating in the Fund[11], the premium to be paid for the first year will be determined on the basis of the assumption that all package travel organisers in Germany participate in the Fund. As of the second year and for each subsequent year until 2027, the premium will be adjusted annually by taking into account the characteristics (i.e. SMEs or large enterprises) and turnovers of the package travel organisers that have effectively joined the Fund.

(28) The State guarantee will be capped at the amount of the target capital of EUR 750 million minus the available assets within the Fund and the collateral provided by the participating package travel organisers. The target capital of EUR 750 million results from the potential losses that the fund must be able to cover. The German authorities submit that, in order to comply with the requirements of the Package

[10] The German authorities provide the following indicative example: "*Capital requirement = EUR 250 million. This would be covered by the collateral provided by the insolvent package travel organisers in the amount of EUR 50 million and by available and liquidatable Fund assets of EUR 100 million. The Fund will take out a [loan] from a bank for the balance of the capital requirement, i.e. EUR 100 million, whereby the government guarantees [that loan]*".

[11] This is because, as explained in recital (8), participation to the Fund is optional for package travel organisers whose annual turnover is less than EUR 10 million.

Travel Directive, the Fund must be prepared for the simultaneous insolvency of the largest and a medium-sized package travel organiser. They explain that, based on the available data from 2019 and taking into account the impact of the COVID 19 pandemic on the package travel market, the combined turnover for the largest and one medium-sized tour operator is estimated at EUR 3.4 billion. The amount of damage in the event of insolvency is assumed to be 22% of turnover based on previous insolvency cases. This corresponds to around 750 million euros.

(29) The yearly premium will be calculated on that basis each year due to the fact that the further the assets of the Fund build up through the contributions and collateral of its participants, the smaller the difference between the Fund's assets and the target capital would be, which would entail a smaller scope for the State guarantee over time, provided that the number of loans to be guaranteed remains low. This is not dependent on the amount of the loans covered by the guarantee.

(30) The State guarantee will be provided if the following conditions are fulfilled:

(i) The fees paid into the Fund by the package travel organisers during the build-up phase of the Fund must amount to at least 1% of the organisers' package travel annual turnover;

(ii) The value of the collateral provided must cover at least 5% of the tour organisers' package travel annual turnover;

(iii) The total amount of fees paid into the Fund must be sufficient to reach a target capital threshold The State guarantee provided under the measure will not exceed 25% of the total turnover of the sector[12] in 2019 or double the annual wage bill of the sector in 2019. [13]

(31) The mobilisation of the State guarantee is linked to specific conditions which will be known when the guarantee is initially granted.[14]

2.8. Cumulation

(32) The German authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[15] or the GBER provided the provisions and cumulation rules of those Regulations are respected.

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[12] According to the German Travel Association ("DRV"), tour operator sales in 2019 amounted to EUR 35.4 billion out of which 80% of sales are estimated to be generated by package travel tours. Consequently, package tour sales in 2019 can be quantified at approx. EUR 28.3 billion.

[13] Sector reference is made to Class 79.12 (tour operators) and Class 79.11 (Travel agency activities), based on the Classification of economic activities, 2008 edition (WZ 2008) of the German Federal Statistical Office, which takes into account the specifications of NACE Rev. 2, published with the Regulation (EC) No 1893/2006.

[14] All relevant terms of the State guarantee will be determined by law beforehand.

[15] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

(33) The German authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under the Temporary Framework provided the provisions in those specific sections are respected.

(34) The German authorities confirm that aid granted under the measure (applying section 3.2 of the Temporary Framework by analogy) will not be cumulated with aid granted for the same underlying loan principal under section 3.3 of the Temporary Framework and *vice versa*. Aid granted under the measure and section 3.3 of the Temporary Framework may be cumulated for different loans provided the overall amount of loans does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.

(35) The beneficiary may benefit in parallel from the measure and from schemes under section 3.2 of the Temporary Framework provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) of the Temporary Framework.

2.9. Monitoring and reporting

(36) 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 related to aid granted under the measure on the comprehensive national State aid website or Commission's IT tool[16] within 12 months from the moment of granting of the aid under the measure[17]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(37) By notifying the measure before putting it into effect (recital (13)), the German authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(38) 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.

(39) The measure is imputable to the State, since it is administered by the Federal Republic of Germany (recital (14)) and it is based on the draft bill on insolvency protection through a travel insolvency fund and on the amendment of travel law

16 The Transparency Award Module ("TAM") is available, for Member State authorities, at https://webgate.ec.europa.eu/competition/transparency/ while the data can be consulted at: https://webgate.ec.europa.eu/competition/transparency/public?lang=en.

17 Referring to information required in Annex III to the GBER.

provisions (recital (13)). It is financed through State resources, since it is financed by public funds.

(40) The measure confers an advantage on its beneficiary in the form of a non-market conform State guarantee for loans taken out by the Fund in order to cover, for a limited amount of time, the insolvency risk of package travel organisers participating in the Fund (recital (12)). That risk would otherwise be covered by the Fund. The measure thus relieves the beneficiary of costs which they would have had to bear under normal market conditions (recital (17)).

(41) The advantage granted by the measure is selective, since it is awarded only to the Fund (recital (17)).

(42) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiary. It also affects trade between Member States, since the beneficiary is active in sectors in which intra-Union trade exists.

(43) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility

(44) 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.

(45) 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*".

(46) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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*".

(47) The consequences of the COVID-19 outbreak have had a significant impact on the German economy and notably on the package travel sector (see recitals (4)-(5)). The measure is one of a series of measures conceived at national level by the German authorities to remedy a serious disturbance in their economy. The measure facilitates the access of the Fund to loans at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(48) In its assessment, the Commission takes into account the Member States' obligation to comply with the requirements of the Package Travel Directive (recital (7)).

(49) The Commission assesses the measure directly on the basis of Article 107(3)(b) TFEU, since it does not fall within the scope of any of its guidelines or communications. In particular as regards the Temporary Framework, the measure does not fall within the scope of its section 3.2, as it concerns a State guarantee on future loans that may be taken by the Fund until 31 October 2027 in the event of insolvency of the participating package travel organisers. Nevertheless, due to the similarities of the State guarantee under section 3.2 of the Temporary Framework and the State guarantee at issue in the present case, the Commission applies by analogy certain requirements of section 3.2.

(50) By analogy with points 25(a), 25(c), 25(f), 25(h) and 25(h)bis of Section 3.2 of the Temporary Framework, the Commission considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State on the basis of the following considerations:

(a) For the determination of the level of guarantee premiums to be paid by the Fund and the calculation method, Germany applied the minimum premiums set out in point 25(a) of the Temporary Framework (recital (25)). The amount of the premium is independent of the loans really granted to the fund, but is calculated on the basis of the cap set out by the law (recitals (15) and (26)). Therefore, the Commission considers justified the levels of the premiums set by Germany;

(b) The guarantee is granted under the measure by 31 December 2021 at the latest (recital (16)) by analogy with point 25(c) of the Temporary Framework;

(c) The support provided by the State guarantee for any loan that may be taken out will lapse at the latest on 31 October 2027, thus it will have a duration of maximum six years in line with point 25(f) of the Temporary Framework (recital (16));

(d) The Fund is not an undertaking that was already in difficulty on 31 December 2019 since it will come into effect as of 1 November 2021 (recital (19)). The measure therefore complies with point 25(h) of the Temporary Framework.

(e) The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. In the event that the Fund takes out loans from credit institutions or other financial intermediaries the latter will, to the largest extent possible, pass on the advantage of the State guarantee to the final beneficiary. The measure relates to new loans and all commercial credit institutions have access to the measure, thus enabling competition among them. This allows the final beneficiary to compare offers of different commercial credit institutions and choose the financial intermediary that will offer lower guarantee premiums, lower interest rates and generally preferential loan conditions to the Fund, thus ensuring that, to the largest extent possible, the advantage of the measure is passed on (recital (23)). The measure therefore complies with points 28 to 31 of the Temporary Framework by analogy.

(51) As regards point 25 (d) of the Temporary Framework and the part of point 25(f) that concern the coverage limits of the State guarantee, the Commission considers that they are not applicable by analogy because the idea behind them is to place a maximum limit on the leverage possibilities of beneficiaries when contracting loans at better than market terms. However, that consideration (avoidance of excessive borrowing) does not concern the State guarantee at hand as the borrowing will be linked to potential future insolvencies of package travel organisers participating in the Fund. The loan amount will be dictated by the capital required to cover each insolvency event minus the assets/collateral available to the Fund, at the point in time when the loan is taken out. Nevertheless, there is still a need to have a maximum limit in the State guarantee at stake and a maximum limit of the loan amount, in order to avoid excessive distortions of competition through high amounts of aid. The Commission considers the following limits and safeguards appropriate in that regard:

(a) The guarantee amount will only cover loans up to a maximum amount of EUR 750 million minus the assets of the Fund and the collateral provided by the tour organisers participating in it, available at the time the loan is taken out (recital (15));

(b) The risk exposure will be initially covered by the Fund's available assets and the collaterals provided by the participating package travel organisers and only to the extend that such assets/collaterals are insufficient the Fund will take out loans triggering the State guarantee (recital (23)).

(c) Germany has indicated that the guarantee will not exceed 100% of the loan amounts needed to cover the insolvency risk of package travel organisers participating in the Fund (recital (23));

(d) The guarantee will not exceed 25% of the total turnover of the sector in 2019 or double the annual wage bill of the sector in 2019 (recital (30)(iii));

(e) The loan amount covered by the guarantee will be limited by the Fund's available assets and the collateral provided by the Fund's participating package travel organisers (recital (24)).

(f) The mobilisation of the State guarantee is linked to specific conditions laid down in legislation in advance and will therefore be known to the parties when the guarantee is initially granted (recital (31)).

(52) As regards point 25(g) of the Temporary Framework, the Commission considers that this is not applicable by analogy in this case as the purpose of the measure is not to guarantee investment and/or working capital loans but rather loans which, following a package travel organiser's insolvency, cover the refund of all payments made by or on behalf of travellers and the costs for necessary repatriations.

(53) The German authorities also confirm that the level of contributions (fees and collateral) payable into the Fund will be at least equal to contributions based on

the normal insolvency rate in the sector which is estimated at a maximum of 2% annually (recital (6)).

(54) The German authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (10)).

(55) The German authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (36)). The German authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (32)-(33)). The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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

(56) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[18] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[19] in the event that an institution benefiting from the measure meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the measure does not appear to violate intrinsically linked provisions of the BRRD and the SRMR.

(57) In particular, aid granted by Member States to non-financial undertakings as final beneficiary under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[20] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to ensure, via the establishment of the Fund, that package travel organisers established in Germany provide security for the refund of all payments made by travellers where the relevant package travel services are not performed because of the organiser's insolvency and to cover the costs of necessary repatriations of travellers stranded at the travel destination (recital (7)). As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and Article 3(1)(29) SRMR.

(58) Moreover, as indicated in recital (50) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards

[18] OJ L 173, 12.6.2014, p. 190.

[19] OJ L 225, 30.7.2014, p. 1.

[20] Points 6 and 29 of the Temporary Framework.

ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiary.

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

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION