



EUROPEAN COMMISSION

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**Subject: State Aid SA. 61744 (2021/N) – Germany
COVID-19 – Modification and amendment to SA.56790, SA.59289,
SA. 56814, SA.58504, SA.56787, SA.56863, SA.57100. SA.57447**

Excellency,

1. PROCEDURE

(1) By electronic notification of 2 February 2021, Germany notified amendments and modifications concerning the following existing aid schemes (“the existing aid schemes”):

(a) SA.56790 (2020/N): COVID-19: Federal Framework "Small amounts of aid 2020", (“Bundesregelung Kleinbeihilfen 2020”), which the Commission approved by Decision of 24 March 2020;

amended by SA.56974: Amendment to the approved schemes SA.56790 (2020/N) – Federal Framework “Small amounts of aid 2020” (“Bundesregelung Kleinbeihilfen 2020”) and SA.56863 (2020/N) Federal Framework for subsidised loans 2020 “Bundesregelung Darlehen 2020”, which the Commission approved by Decision of 11 April 2020; and amended by SA.58021: COVID-19: Second amendment of federal frameworks for (a) small amounts of aid and (b) subsidised loans, which the Commission approved by Decision of 27 July 2020, amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;

(b) SA.59289 (2020/N): COVID-19: Bundesregelung Fixkostenhilfe 2020 which the Commission approved by decision of 20 November 2021;

Seiner Exzellenz Herrn Heiko Maas
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- (c) SA.56814 (2020/N): COVID-19: Wirtschaftsstabilisierungsfonds which the Commission approved by Decision of 8 July 2020;
- amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;
- (d) SA.58504 (2020/N): COVID-19: Bundesregelung Rekapitalisierungsmaßnahmen und nachrangiges Fremdkapital 2020 approved by decision of 1 December 2020;
- (e) SA.56787 (2020/N): COVID-19: Bundesregelung Bürgschaften 2020 approved by decision of 24 March 2020;
- amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;
- (f) SA.56863 (2020/N): COVID-19: Bundesregelung Beihilfen für niedrigverzinsliche Darlehen approved by decision of 2 April 2020;
- amended by SA.56974: Amendment to the approved schemes SA.56790 (2020/N) – Federal Framework “Small amounts of aid 2020” (“Bundesregelung Kleinbeihilfen 2020”) and SA.56863 (2020/N) Federal Framework for subsidised loans 2020 “Bundesregelung Darlehen 2020”, which the Commission approved by Decision of 11 April 2020; and amended by SA.58021: COVID-19: Second amendment of federal frameworks for (a) small amounts of aid and (b) subsidised loans, which the Commission approved by Decision of 27 July 2020, amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;
- (g) SA.57100 (2020/N): COVID-19: Federal Framework Scheme “Aid for Covid-19 related R&D, investments in testing infrastructures and production facilities” (“Bundesregelung Forschungs-, Entwicklungs- und Investitionsbeihilfen”), which the Commission approved by Decision of 28 April 2020;
- amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;
- (h) SA.57447 (2020/N): COVID-19: BayernFonds which the Commission approved by Decision of 20 August 2020;
- amended by SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework;
- (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 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE AMENDMENTS

- (3) By Communication of 28 January 2021, the Commission amended the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)². Among other things, the Commission extended the validity of the Temporary Framework until 31 December 2021 and increased the aid ceilings of various measures set out in that framework.
- (4) Following the latest amendment of the Temporary Framework, the German authorities notify the following amendments to the existing aid schemes listed in recital (1):
 - (a) to extend the duration of the State aid measures approved under Sections 3.1, 3.2, 3.3, 3.6, 3.7, 3.8, 3.11 and 3.12 of the Temporary Framework until 31 December 2021;
 - (b) to increase the maximum amount of aid approved under Section 3.1 of the Temporary Framework to EUR 1.8 million per undertaking, to increase the maximum aid amount to undertakings in the agriculture sector to EUR 225 000 per undertaking and to undertakings in the fishery and aquaculture sectors to EUR 270 000 per undertaking;
 - (c) to increase the maximum amount of aid approved under Section 3.12 to EUR 10 million.
- (5) In addition, the German authorities notify the following amendments to the existing aid scheme in recital (1)(a):
 - (a) to amend the national legal basis to clarify that no indirect price subsidy and, thus, interference with the agricultural markets takes place. Therefore, the German authorities wish to amend the existing scheme to bring it in line with the amended point 22(e) of the Temporary Framework to the extent that aid to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertaking concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned;

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

² 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).

- (b) to amend the existing aid scheme in recital (1)(a) in line with point 22(a) of the amended Temporary Framework and to allow not only the granting of direct grants, repayable advances and tax or payment advantages but also the granting of aid in form of counter guarantees;
 - (c) to amend the national legal basis in line with the the amended point 23(a) of the Temporary Framework in order to clarify that undertakings active in the primary production of agriculture products are undertakings active in the production of products of the soil and of stock farming, listed in Annex I of the TFEU, without performing any further operation changing the nature of such products;
 - (d) to modify the existing aid scheme in recital (1)(a) in line with point 23ter of the amended Temporary Framework that aid under this measure in form of repayable advances, guarantees, loans or counter guarantees may be converted into other forms of aid such as grants, provided the conversion takes place by 31 December 2022 at the latest and the conditions in section 3.1 are complied with.
 - (e) to amend the national legal basis in respect of footnote 23 of the amended Temporary Framework. That clarifies that if the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2021. That does not change the fact that the aid needs to be granted no later than 31 December 2021.
- (6) In addition, the German authorities notify the following amendments to the existing aid scheme in recital (1)(b):
- (a) to amend the existing aid scheme in recital (1)(b) in line with the amended point 87(d) of the Temporary Framework and to allow not only the granting of direct grants but also the granting of aid in form of tax or payment advantages, repayable advances and equity.
 - (b) to amend the existing aid scheme in recital (1)(b) and Article 2(3) Bundesregelung Fixkostenhilfe 2020 about the calculation of the turnover decline in such a way that the exception that applies to micro or small businesses is applicable also to medium-sized enterprises if the following requirements are met:
 - i. the undertaking is recognized for tax purposes as charitable and tax-privileged;³ and
 - ii. the way in which the undertaking provides services causes considerable fluctuations in turnover, which is typical for the sector. Without this exception, the undertaking would not be able to make full or partial use of the decision in recital (1)(b), because

³ As set out in § 51 Abgabenordnung

only minor net losses appear in the financial statements for the periods where the turnover is usually high.⁴

(7) In addition, the German authorities notify the following amendments to the existing aid scheme in recital (1)(c):

(a) to amend in the existing aid scheme in recital (1)(c) in line with point 25bis of the Temporary Framework and allow guarantees on newly issued debt instruments which are subordinated to ordinary senior creditors in the case of insolvency proceedings, if they are granted with guarantee premiums which are at least equal to the guarantee premiums referred to in the table of point 25(a) of the Temporary Framework plus 200 bps for large enterprises and 150 bps for SMEs. The alternative possibility of point 25(b) Temporary Framework shall apply also to such guarantees on debt instruments, while points 25c, 25f, (i) and (iii), 25g, 25h and 25hbis of the Temporary Framework shall also be complied with.⁵ The amount of the guaranteed subordinated debt shall not exceed both of the following ceilings:⁶

- i. two thirds of the annual wage bill of the beneficiary for large enterprises and the annual wage bill of the beneficiary for SMEs, as defined in point 25d(i), and
- ii. 8.4% of the beneficiary's total turnover in 2019 for large enterprise and 12.5% of the beneficiary's total turnover in 2019 for SMEs.

(8) In addition, the German authorities notify the following amendments to the existing aid scheme in recital (1)(e):

(a) to clarify that the term “public guarantees on loans” mentioned in recital (12)(f) of the decision in recital (1)(e) refers in line with the amended point 24 and footnote 29 of the Temporary Framework also to guarantees on certain factoring products, namely guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree. Eligible reverse factoring products shall be limited to products that are used only after the seller has already provided its part of the transaction, i.e. the product or service have been delivered.⁷

⁴ This could concern for example undertakings active in student exchange programmes, which usually receives the income/turnover only once a year.

⁵ For the avoidance of doubt, the omission of point 25(f)(ii) means that first-loss guarantees on debt instruments, which are subordinated to ordinary senior creditors in the case of insolvency proceedings, are not covered by this point.

⁶ If coupon payments are capitalised this must be taken into account when determining these ceilings, provided that such capitalisation was planned or foreseeable at the time of notification of the measure. Also any other State aid measure in the form of subordinated debt granted in the context of the COVID-19 outbreak, even outside this Communication, must be included in such calculation. However, subordinated debt granted in compliance with section 3.1 of this Communication does not count for these ceilings.

⁷ Footnote 29 of the Temporary Framework.

- (b) to modify the existing aid scheme in (1)(e) in line with point 25bis of the amended Temporary Framework to allow guarantees on newly issued debt instruments which are subordinated to ordinary senior creditors in the case of insolvency proceedings, if they are granted with guarantee premiums which are at least equal to the guarantee premiums referred to in the table of point 25(a) of the Temporary Framework plus 200 bps for large enterprises and 150 bps for SMEs. The alternative possibility of point 25(b) Temporary Framework shall apply also to such guarantees on debt instruments, while points 25(c), 25(f), (i) and (iii), 25(g), 25(h) and 25(h)bis of the Temporary Framework shall also be complied with. The amount of the guaranteed subordinated debt shall not exceed both of the following ceilings:
- i. two thirds of the annual wage bill of the beneficiary for large enterprises and the annual wage bill of the beneficiary for SMEs, as defined in point 25d(i), and
 - ii. 8.4% of the beneficiary's total turnover in 2019 for large enterprise and 12.5% of the beneficiary's total turnover in 2019 for SMEs.
- (c) to amend the description of companies in difficulties of the existing scheme in recital (1)(e) in line with the amended point 25(h) and 25(h)(a) of the amended Temporary Framework. The description shall include that aid can be granted to micro or small enterprises (within the meaning of Annex I of the General Block Exemption Regulation) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid⁸ or restructuring aid⁹.
- (d) to amend the existing aid scheme in recital (1)(e) in line with point 20bis of the amended Temporary Framework as follows: Aid granted under section 3.2 shall not be cumulated with aid granted for the same underlying loan principal under section 3.3 and vice versa. Aid granted under section 3.2 and section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) Temporary Framework or in point 27(d) Temporary Framework. A beneficiary may benefit in parallel from multiple measures under section 3.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) and (e) Temporary Framework.
- (e) to confirm that they will respect the monitoring and reporting obligations laid down in section 4 point 88 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the agricultural and fisheries sector on the comprehensive national State aid

⁸ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under this Communication.

⁹ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under this Communication.

website or Commission's IT tool within 12 months from the moment of granting¹⁰).

- (9) In addition, the German authorities notify for the existing aid scheme in recital (1)(g):
 - (a) to amend the national legal basis in respect of footnote 23 of the amended Temporary Framework. That clarifies that if the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2021. That does not change the fact that the aid needs to be granted no later than 31 December 2021.
- (10) To determine whether the relevant ceiling of aid approved under Section 3.1 of the Temporary Framework is exceeded, Germany will not take into account aid which has been reimbursed before 31 December 2021 in line with footnotes 19 and 27 of the Temporary Framework.
- (11) Furthermore, Germany will provide the Commission with a list of measures put in place on the basis of approved schemes based on the Temporary Framework by 31 December 2021. In addition, Germany has committed to comply with the monitoring and reporting rules laid down in Section 4 of the Temporary Framework.
- (12) Germany confirms that no further amendments, including the budgets, are proposed to the existing aid schemes listed in recital (1).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (13) By notifying the amendments to the existing aid schemes before putting them into effect, the German authorities have respected their obligation under Article 108(3) TFEU.

3.2. Existence of State aid

- (14) 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.
- (15) The measures concerned constitute State aid in the meaning of Article 107(1) TFEU for the reasons set out in the decisions authorising the existing aid schemes

¹⁰ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. *For guarantees and loans and other forms of aid, the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.*

referred to in recital (1)¹¹. The proposed amendments to those schemes do not affect that conclusion. The Commission therefore refers to the respective assessment of the aforementioned decisions and concludes that the schemes as modified constitute State aid in the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (16) The Commission assessed the existing aid schemes on the basis of Article 107(3)(b) TFEU in light of the Temporary Framework and concluded that the existing aid schemes fulfilled the compatibility conditions set out in the Temporary Framework.
- (17) The Commission refers to its analysis of compatibility as set out in the decisions approving the existing aid schemes referred to in recital (1)¹².
- (18) In view of the above, the Commission considers that the extension of the duration of the State aid measures approved under Sections 3.1, 3.2, 3.3, 3.6, 3.7, 3.8, 3.11 and 3.12 of the Temporary Framework for the existing aid schemes listed in recital (1) until 31 December 2021 as well as the increase of the aid ceilings approved under Sections 3.1 and 3.12 of the Temporary Framework for the existing aid schemes listed in recital (1) meet the conditions of the Temporary Framework and do not alter the Commission's conclusions on the compatibility of those aid schemes as set out in the decisions mentioned in recital (1). Also, the fact that aid granted on the basis of measures approved under Section 3.1 of the Temporary Framework and reimbursed before 31 December 2021 shall not be taken into account in determining whether the relevant ceiling is exceeded, will in view of footnote 19 and 27 of the Temporary Framework not alter the Commission's conclusions on the compatibility of the respective schemes in the decisions mentioned in recital (1).
- (19) The Commission considers that the approved decision with the additional amendments and modifications set out in recital (5) are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework. The amendment as mentioned in recital (5)(a) aims at ensuring that no indirect price subsidy takes place so that there is no interference with the agricultural markets. All additional amendments and modifications

¹¹ See recitals (18) to (23) of Commission Decision C(2020) 1936 final, SA.56787, of 24.03.2020; recitals (96) to (101) of Commission Decision C(2020) 4747 final, SA.56814, of 02.04.2020; recitals (50) to (56) of Commission Decision C(2020) 2871 final, SA.57100, of 28.04.2020; recitals (104) to (109) of Commission Decision C(2020) 5818 final, SA.57447, of 11.04.2020; recitals (12) and (13) of Commission Decision C(2020) 5267 final, SA.58021, of 27.07.2020; recitals (29) to (34) of Commission Decision C(2020) 8313 final, SA.59289, of 20.11.2020; recital (26) to (32) of Commission Decision C(2020) 1953 final, SA.56790, of 24.03.2020; recitals (107) to (112) of Commission Decision C(2020) 8653 final, SA.58505, of 01.12.2020.

¹² See recitals (24) to (29) of Commission Decision C(2020) 1936 final, SA.56787, of 24.03.2020; recitals (102) to (109) of Commission Decision C(2020) 4747 final, SA.56814, of 08.07.2020; recitals (58) to (68) of Commission Decision C(2020) 2871 final, SA.57100, of 28.04.2020; recitals (15) to (25) of Commission Decision C(2020) 5267 final, SA.58021, of 27.07.2020; recitals (35) to (41) of Commission Decision C(2020) 8313 final, SA.59289, of 20.11.2020; recital (33) to (41) of Commission Decision C(2020) 1953 final, SA.56790, of 24.03.2020; recitals (113) to (120) of Commission Decision C(2020) 8653 final, SA.58505, of 01.12.2020.

mentioned in recital (5) are in line with the amendments of point 22a, 23a, 22 d and footnote 19, 23 and 27, point 22e, 23a with footnote 23 and point 23ter of the Temporary Framework and do not alter the Commission's conclusions on the compatibility of the respective scheme in the decisions mentioned in recital (1)(a).

- (20) The Commission considers that the additional amendments and modifications set out in recital (6) are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework. In particular, the amendmend in recital (6)(a) extends the possibility of the form of aid as it is set out in the amended Temporary Framework. The modification complements the simplification rule for micro and small businesses stipulated in the national legal basis for specific medium-sized companies that meet the requirements set out in recital (6)(b) so as to be eligible as an undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the preceding year. These modifications are in line with point 87b of the Temporary Framework and do not alter the Commission's conclusions on the compatibility of the respective scheme in the decisions mentioned in recital (1)(b).
- (21) The Commission considers that the additional modification set out in recital (5) 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 meet all the relevant conditions of the Temporary Framework. The possibility of granting guarantees on newly issued subordinated debt instruments is in line with point 25bis of the Temporary Framework and does not alter the Commission's conclusions on the compatibility of the respective scheme in the decisions mentioned in recital (1)(c).
- (22) The Commission considers that the additional amendments and modifications set out in recital (8) are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework. The extension of the scope of the measure to guarantees on certain factoring products, namely guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree, is in line with point 24, footnote 29 of the Temporary Framework and is necessary, appropriate and proportionate. All amendments and modifications are in line with the amendments of point 20, 24 with footnote 29, point 25(a), 25(c), 25(d), 25(e), 25(h) and 88 of the Temporary Framework and will not alter the Commission's conclusions on the compatibility of the respective scheme in the decisions mentioned in recital (1)(e)(1)(b).
- (23) The Commission considers that the additional modification set out in recital (9)(5) 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. The amendment is in line with the amendment of point 22(d) and footnote 23 of the Temporary Framework and will not alter the Commission's conclusions on the compatibility of the respective scheme in the decisions mentioned in recital (1)(g).
- (24) Furthermore, Germany will provide the Commission with a list of measures put in place on the basis of approved schemes based on the Temporary Framework by 31 December 2021. In addition, Germany has committed to comply with the

monitoring and reporting rules laid down in Section 4 of the Temporary Framework.

- (25) Germany confirms that no further amendments, including the budgets, are proposed to the existing aid schemes listed in recital (1).

CONCLUSION

The Commission has accordingly decided not to raise objections to the modifications of the existing aid schemes listed in recital (1) on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union as interpreted by the Temporary Framework.

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