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**Subject: State Aid SA.100743 (2021/N) – Germany
COVID-19: Modification to SA.56790, SA.59289, SA. 56814, SA.58504,
SA.56787, SA. 56863, SA.57100, and SA.57447**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 22 November 2021, Germany notified a prolongation and modification (the “notified amendment”) to the following existing aid schemes (collectively, the “existing aid schemes”), which the Commission had already approved (“the initial decisions”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak¹ (the “Temporary Framework”):
 - (a) SA.56790 (2020/N): COVID-19: Federal Framework "Small amounts of aid 2020", (“Bundesregelung Kleinbeihilfen 2020”), which the Commission approved by Decision C(2020) 1953 final of 24 March 2020;

¹ 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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- (b) SA.59289 (2020/N): COVID-19: Bundesregelung Fixkostenhilfe 2020, which the Commission approved by Decision C(2020) 8318 final of 20 November 2021;
 - (c) SA.56814 (2020/N): COVID-19: Wirtschaftsstabilisierungsfonds, which the Commission approved by Decision C(2020) 4747 final of 8 July 2020;
 - (d) SA.58504 (2020/N): COVID-19: Bundesregelung Rekapitalisierungsmaßnahmen und nachrangiges Fremdkapital 2020, which the Commission approved by Decision C(2020) 8653 final of 1 December 2020;
 - (e) SA.56787 (2020/N): COVID-19: Bundesregelung Bürgschaften 2020, which the Commission approved by Decision C(2020) 1936 final of 24 March 2020;
 - (f) SA.56863 (2020/N): COVID-19: Bundesregelung Beihilfen für niedrigverzinsliche Darlehen, which the Commission approved by Decision C(2020) 2151 final of 2 April 2020;
 - (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 C(2020) 2871 final of 28 April 2020;
 - (h) SA.57447 (2020/N): COVID-19: BayernFonds, which the Commission approved by Decision C(2020) 5818 final of 20 August 2020;
- (2) The existing aid schemes have already been amended in cases 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 C(2020) 2365 final of 11 April 2020², in case 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 C(2020) 5267 final of 27 July 2020³, in case SA.59433(2020/N): COVID-19 - Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework, which the Commission approved by Decision C(2020) 8218 final of 19 November 2020⁴, and in case SA.61744: COVID-19 – Modification and amendment to SA.56790, SA.59289, SA. 56814, SA.58504, SA.56787, SA.56863, SA.57100. SA.57447, which the Commission approved by Decision C(2021) 1066 final of 12 February 2021.

² Applicable solely to approved schemes in cases SA.56790, and SA.56863.

³ Applicable solely to approved schemes in cases SA.56790, and SA.56863.

⁴ Applicable solely to approved schemes in cases SA.56790, SA.56814, SA.56787, SA.56863, SA.57100, and SA.57447.

- (3) 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 1/1958,⁵ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENT

- (4) The objective of the existing aid schemes is to preserve the continuity of economic activity during and after the COVID-19 pandemic. They are designed to ensure that undertakings continue to have access to the necessary liquidity to overcome the current economic difficulties.
- (5) The notified amendment prolongs the existing aid schemes until 30 June 2022. In addition, it introduces the follow changes:
- (a) For the existing aid scheme in recital (1)(a):
- i. maximum aid amounts per beneficiary are increased to EUR 2.3 million per undertaking, respectively EUR 345 000 per undertaking active in the fishery and aquaculture sector, and EUR 290 000 per undertaking active in the primary production of agricultural products, and
 - ii. the possibility to convert measures granted under the scheme in the form of repayable advances, guarantees, loans or other repayable instruments converted into other forms of aid such as grants, is prolonged to 30 June 2023.
- (b) For the existing aid scheme in recital (1)(b):
- i. maximum aid amounts per beneficiary are increased to EUR 12 million⁶, and
 - ii. the possibility to convert measures granted under the scheme in the form of repayable advances, guarantees, loans or other repayable instruments into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in the scheme are complied with, is introduced.
- (c) For the existing aid scheme in recital (1)(f), repayable instruments granted under this scheme, or the scheme Bundesregelung Kleinbeihilfen 2020 (see recital (1)(a)), or the scheme Bundesregelung Fixkostenhilfe (see recital (1)(b)), may be restructured, provided that (i) this restructuring is based on a sound economic analysis of the specific situation of the individual case as part of ordinary prudential practices⁷; (ii) it respects the

⁵ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁶ Aid granted based on schemes approved under section 3.12 of the Temporary Framework that has been reimbursed before granting new aid under the scheme will not be taken into account in determining whether the relevant ceiling is exceeded.

⁷ Any restructuring decision must be in accordance with banking regulation, banking practice, and may therefore only occur as part of ordinary prudential practices as laid down in the German Banking Act

conditions of the applicable section especially in terms of minimum credit risk margins and maximum duration, as well as the requirements of section 3.4 of the Temporary Framework⁸ (where applicable); (iii) it does not lead to an increase in the initially granted loan amount; and (iv) such restructuring takes place at the latest by 30 June 2023.

- (6) Furthermore, Germany will provide the Commission with a list of measures put in place on the basis of the existing aid schemes by 30 June 2022.
- (7) Apart from the notified amendment, the German authorities confirm that no further amendments are proposed to the existing aid schemes and that all other conditions of these schemes remain unaltered.
- (8) The legal basis for the notified amendment are amended versions of the legal basis⁹ described in the decisions mentioned in recital (1)(a) to (1)(h).
- (9) The German authorities committed to respect all the applicable conditions of the Temporary Framework.
- (10) Aid may be granted under the existing aid schemes, as amended, as from the notification of the Commission's decision approving the notified amendment.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (12) 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.
- (13) The existing aid schemes constitute State aid within the meaning of Article 107(1) TFEU for the reasons set out in the initial decisions. The amendments referred to in recital (2) did not affect this conclusion. The notified amendment equally does not affect that conclusion. The Commission therefore refers to the assessment of the initial decisions and concludes that the existing aid schemes, as amended, constitute State aid within the meaning of Article 107(1) TFEU.

(*Kreditwesengesetz*) and the Minimum Requirements for Risk Management (MaRisk; *Mindestanforderungen an das Risikomanagement*), the latter being published by the Federal Financial Supervisory Authority (BaFin, *Bundesanstalt für Finanzdienstleistungsaufsicht*) by circular letter. In addition to banking regulation, KfW (*Kreditanstalt für Wiederaufbau*) must also adhere to the Federal Budget Code and ensure that the use of state funds is limited to the absolute minimum necessary

⁸ As implemented by Article 4 of the *Bundesregelung Beihilfen für niedrigverzinsliche Darlehen*.

⁹ Currently in draft form.

3.3. Compatibility

- (14) The existing aid schemes are compatible with the internal market pursuant to Article 107(3)(b) TFEU, since they meet the conditions of sections 2, 3.1, 3.2, 3.3, 3.6, 3.7, 3.8, 3.11 and 3.12 of the Temporary Framework for the reasons set out in the initial decisions. The amendments referred to in recital (2) above did not affect that assessment as confirmed in the respective Commission decisions thereon. The Commission therefore refers to the respective assessment of the initial decisions.
- (15) The Commission considers that a limited prolongation of the existing aid schemes is appropriate to ensure that national support measures effectively help affected undertakings during the COVID-19 pandemic. The notified amendment does not affect the compatibility assessment made under the initial decisions and confirmed under the amendments specified in recital (2). In particular, the Commission notes that aid under the schemes can only be granted until 30 June 2022, as described in recital (5). The schemes as amended thus comply with point 22(d), 25(c), 27(c), 35(a), 37(b), 39(b), 48, and 87(a) of the Temporary Framework.
- (16) Furthermore, concerning the existing aid scheme in recital (1)(a), the Commission notes maximum aid amounts per beneficiary under section 3.1 of the Temporary Framework are increased to EUR 2.3 million per undertaking, respectively EUR 345 000 per undertaking active in the fishery and aquaculture sector, and EUR 290 000 per undertaking active in the primary production of agricultural products (see recital (5)(a)i). The measure thus continues to comply with points 22(a) and 23(a) of the Temporary Framework.
- (17) Moreover, the Commission notes that the conversion possibility to convert repayable advances, guarantees, loans or other repayable instruments into other forms of aid such as grants, is prolonged to 30 June 2023. The measure thus continues to comply with point 23ter of the Temporary Framework.
- (18) In addition, concerning the existing aid scheme in recital (1)(b), the Commission notes maximum aid amounts per beneficiary under section 3.12 of the Temporary Framework are increased to EUR 12 million per undertaking. Thus the measure continues to comply with point 87 of the Temporary Framework. Also, the fact that aid granted on the basis of measures approved under Section 3.12 of the Temporary Framework and reimbursed before granting of new aid shall not be taken into account in determining whether the relevant ceiling is exceeded (see footnote 6) will, in view of footnote 84 of the Temporary Framework, not alter the Commission's conclusions on the compatibility of the existing aid scheme in recital (1)(b).
- (19) Furthermore, the Commission notes measures granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in section 3.12 of the Temporary Framework are complied with. The existing aid scheme in recital (1)(b), therefore, complies with point 87bis of the Temporary Framework.
- (20) Moreover, concerning the existing aid scheme in recital (1)(f), the Commission notes that repayable instruments, granted under sections 3.3, 3.1, or 3.12 of the

Temporary Framework, may be restructured, provided that (i) it is based on sound economic analysis of the specific situation of the individual case as part of the ordinary prudential practices; (ii) it respects the conditions of the applicable section especially in terms of minimum credit risk margins and maximum duration, as well as the requirements of section 3.4 of the Temporary Framework (where applicable); (iii) it does not lead to an increase in the initially granted loan amount; and (iv) such restructuring takes place at the latest by 30 June 2023. The measure thus complies with point 27ter of the Temporary Framework.

- (21) The Commission further notes that the existing aid schemes continue to comply with points 25(d) and (e), and 27(d) and (e), where applicable, of the Temporary Framework.¹⁰
- (22) Furthermore, the Commission notes that Germany will provide the Commission with a list of measures put in place on the basis of the existing aid schemes by 30 June 2022. Thus, the schemes as amended continue to comply with point 105 of the Temporary Framework.
- (23) The Commission therefore considers that the notified amendment 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 notified amendment does not alter the Commission's conclusion on the compatibility of the existing aid schemes in the initial decisions and in the amendments referred to in recital (2).

4. CONCLUSION

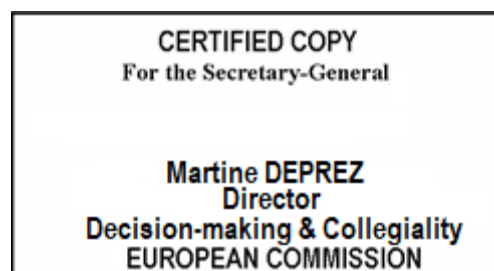
The Commission has accordingly decided not to raise objections to the schemes, as amended, on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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



¹⁰ The prolongation to 30 June 2022 affects also conditions based on points 25(d) and (e), and 27(d) and (e) of the Temporary Framework.