EUROPEAN COMMISSION

Brussels, 4.5.2022
C(2022) 3049 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: **State Aid SA.102631 (2022/N) – Germany**
TCF: Umbrella schemes for guarantees on loans and subsidised loans

Excellency,

1. PROCEDURE

(1) By electronic notification of 11 April 2022, Germany notified liquidity support in the form of guarantees (*BKR-Bundesregelung Bürgschaften 2022*, the "guarantee scheme") and in the form of subsidised loans (*BKR-Bundesregelung Beihilfen für niedrigverzinsliche Darlehen 2022*, the "subsidised loan scheme"), together the "measures", under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis Framework")[1].

(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

[1] Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131 I, 24.3.2022, p. 1).

Ihrer Exzellenz Frau Annalena BAERBOCK
Bundesministerin des Auswärtigen
Werderscher Markt 1
10117 Berlin
DEUTSCHLAND

Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Germany considers that the Russian aggression against Ukraine, the sanctions imposed by the Union and its international partners and the counter-measures taken, for example by Russia so far ("the current crisis") affect the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Thus, the measures aim to remedy the liquidity shortages faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the Union or by its international partners, as well as by the economic counter-measures taken, for example by Russia.

(4) The German authorities state that the adverse impact of the current crisis on German economic activity is significant. Since the outset of the war, GDP growth forecasts for 2022 have been revised downward by 1.5%-points and Germany expects them to be lowered further if the hostilities continue. The resulting escalation in energy prices is the strongest burden on the economy. This is primarily impacting manufacturing, but numerous service sectors are also being affected. As elevated energy prices persist over time the resulting negative economic impact is expected to spread to almost all sectors. Business confidence measures within the German economy experienced a historic slump in March 2022 due to the Russian war of aggression against Ukraine. The effects of the crisis are expected to undermine economic performance indicators in the coming months. According to the German authorities, the German economy's competitiveness and strong innovative performance stem from its global networking and high export orientation. In the key sectors of automotive engineering, mechanical and plant engineering, chemicals and medical technology, exports account for well over half of total sales. These characteristics make the German economy particularly vulnerable to geopolitical shocks that disrupt supply chains and production capacities of globally networked sectors. Initial measures of the impact on the Germany economy of the sanctions are being reported to the German authorities by business associations. While detailed quantitative analyses are not yet available due to the relatively short lapse of time since the beginning of the current crisis, business associations' surveys are providing initial indications of the severity of the impact. For example, a survey conducted by the German Chamber of Industry and Commerce ("DIHK") has indicated that almost 80 percent of companies in Germany are adversely affected by the consequences of the current crisis. Of the 3 700 companies surveyed across all sectors, 60 percent report that rising input prices or disrupted supply chains have impacted them. A further 18 percent cite suffering from the loss of customers or suppliers. These findings reinforce the German authorities' view

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

that the measures are needed for the entire breadth of the economy. The objective of the measures is to facilitate undertakings' access to external finance thereby addressing their liquidity needs caused directly or indirectly by the current crisis.

(5) Germany confirms that the aid under the measures 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.

(6) The compatibility assessment of the measures is based on Article 107(3)(b) TFEU, in light of sections 1, 2.2 and 2.3 of the Temporary Crisis Framework.

2.1. The nature and form of aid

(7) The measures provide liquidity support in the form of guarantees on loans and in the form of subsidised loans.

2.2. Legal bases

(8) The legal basis for the guarantee scheme will be the federal framework for guarantees 2022 (*BKR-Bundesregelung Bürgschaften 2022*)[3]. For the subsidised loan scheme the legal basis will be the federal framework for aid for subsidised loans (*BKR-Bundesregelung Beihilfen für niedrigverzinsliche Darlehen 2022*)[4]. Both legal bases were notified as drafts and will be adopted and enter into force after the approval by the Commission.

2.3. Administration of the measures

(9) All aid granting authorities in Germany at federal, state or local level may administer the measure. In particular, as regards the guarantee scheme, the granting authorities will be the federal government, state governments and authorities, and the guarantee banks[5]; as regards the subsidised loan scheme, the granting authorities will be the national promotional bank, KfW, as well as promotional institutions at the state level.

---

[3] Full title in German: *Bekanntmachung zur vorübergehenden Gewährung von Bürgschaften, Rückbürgschaften und Garantien im Geltungsbereich der Bundesrepublik Deutschland auf der Grundlage des Befristeten Krisenrahmens (BKR) der Europäischen Kommission für staatliche Beihilfen zur Stützung der Wirtschaft infolge der Aggression Russlands gegen die Ukraine*.

[4] Full title in German: *Regelung zur vorübergehenden Gewährung von Beihilfen für niedrigverzinsliche Darlehen und Direktbeteiligungen im Rahmen von Konsortialkrediten im Geltungsbereich der Bundesrepublik Deutschland auf der Grundlage des Befristeten Krisenrahmens (BKR) der Europäischen Kommission für staatliche Beihilfen zur Stützung der Wirtschaft infolge der Aggression Russlands gegen die Ukraine*.

[5] The guarantee banks are self-help organisations of the business community, tasked to implement a public mandate.

2.4. Budget and duration of the measures

(10) The German authorities are currently estimating that no more than EUR 1 billion in nominal amounts will be guaranteed under the guarantee scheme. The maximum nominal amount of loans granted under the subsidised loan scheme is currently estimated to not exceed EUR 10 billion. The German authorities note that a precise indication of the budget at this point is not possible as the measures may be used by various granting authorities at different levels of government.

(11) Aid may be granted under the measures as from the notification of the Commission’s decision approving the measures until no later than 31 December 2022.

2.5. Beneficiaries

(12) The final beneficiaries of the measure are micro, small and medium enterprises (“SMEs”) as well as large enterprises active in Germany.[6] However, credit institutions or other financial institutions are excluded as eligible final beneficiaries. The German authorities state that both the guarantee scheme as well as the subsidised loan scheme will include negative incentives to ensure the measures are only used by undertakings that strictly require liquidity and to encourage an early repayment of the liquidity support. For example, this includes prohibition of profit distribution and prohibition of bonus payments.

(13) Aid is granted under the measure either directly or through credit institutions and other financial institutions as financial intermediaries.

(14) Germany confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

(15) Germany confirms that the measures will not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations[7]. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from any such measures.

---

6 As defined in Annex I to 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), (“GBER”).

7 For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.6. Sectoral and regional scope of the measure

(16) The measure is open to all sectors except credit institutions and financial institutions. It applies to the whole territory of Germany.

2.7. Basic elements of the guarantee scheme

(17) The guarantee scheme will provide liquidity support in the form of guarantees granted in line with all the conditions under section 2.2 of the Temporary Crisis Framework. More specifically:

(a) The guarantee will be granted on new individual loans to undertakings active in Germany;

(b) For guarantees with a duration of up to six years, the guarantee premiums will be set per individual loan at a minimum level, which increases progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**
SMEs	0.25%	0.50%	1.00%
Large enterprises	0.50%	1.00%	2.00%

(c) By way of derogation from recital (17)(b), for guarantees with a duration of more than six years and up to eight years, the guarantee premiums will be set per individual loan at a minimum level, which increases progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**	**For 7th – 8th year**
SMEs	0.75%	1.00%	1.50%	2.50%
Large enterprises	1.00%	1.50%	2.50%	3.50%

(d) Guarantees under the guarantee scheme will be granted by 31 December 2022 at the latest;

(e) The duration of the guarantee will be limited to maximum eight years;

(f) The guarantee will not exceed:

(i) 90% of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State[8]; or

(ii) 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee);

[8] The German authorities state that, as a rule, the guarantee will not exceed 80% of the loan principal; only in individual cases the guarantee will cover up to 90% of the loan principal and that under the guarantee banks' program the guarantee will not exceed 80%.

(g) In both of the above cases set out in recital (17)(f), when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount will decrease proportionally;

(h) The overall amount of loans per beneficiary guaranteed by the guarantee scheme will not exceed:

   (i) 15% of the beneficiary's average total annual turnover over the last three closed accounting periods; or

   (ii) 50% of energy costs over the 12 months preceding the month when the application for aid is submitted;

   (iii) the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 12 months for SMEs and for the coming 6 months for large enterprises. The liquidity needs, which may include both working capital and investment needs, will be established through self-certification by the beneficiary.

(i) The possibility included in recital (17)(h)(iii) will only be used as an exception. In particular, this concerns beneficiaries that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. Those effects may in addition include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis. By way of example this concerns especially beneficiaries that have particularly strong trade relations with Russia or Ukraine, that are particularly energy-intensive or that trade energy products on derivatives exchanges. As regards the latter beneficiaries, they have to post collateral (so-called margin) for the fulfilment of futures contracts. In line with the recent unprecedented rise in energy prices companies had to serve substantial margin calls by posting cash collateral which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The volume of margin calls depends on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover;

(j) The guarantee will cover loans relating to investment needs as well as working capital needs;

(k) The guarantee scheme will introduce safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions acting as financial intermediaries to limit undue distortions to competition. The financial intermediaries will have to demonstrate that they operate a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees. In particular, the measure is open to all credit institutions and financial institutions active in Germany and as part of the application procedure for the granting of a federal guarantee and on the basis of the bilateral guarantee agreements between the public guarantor and the financial intermediary, it is ensured that the criteria set out in the guarantee scheme, according to which the granting of aid to the financial intermediary is excluded, are met. Accordingly, the granting authorities examine whether the assumption of the guarantee would lead to a relief of the financial intermediary, e.g. by subsequently securing a commitment already entered into. If this is the case, no guarantee is granted. In addition, the financial intermediary is obliged under the guarantee agreement to pass on all benefits to the beneficiary. The guarantee banks will apply the same procedures when using the federal regulation as under the otherwise used *de minimis* Regulation[9] or GBER. Under the risk-based interest rate system designed by KfW, the use of a guarantee automatically leads to a reduction of the beneficiary's interest rate. These cases usually account for about 50% of the guarantees. In the remaining cases, the guarantee banks check on a case-by-case basis whether the loan interest rate is already appropriate taking the guarantee into account and if not bring about an adjustment by the financial intermediary to the interest rate.

(l) The mobilisation of the guarantees will be contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted.

2.8. Basic elements of the subsidised loan scheme

(18) The subsidised loan scheme will provide liquidity support in the form of subsidised loans granted in line with all the conditions under section 2.3 of the Temporary Crisis Framework. More specifically*:*

(a) The loans will not be granted to credit institutions or other financial institutions;

(b) The loans may be granted at reduced interest rates, which are at least equal to the base rate (one-year IBOR or equivalent as published by the Commission[10]) available on 1 February 2022, plus the credit risk margins as set-out in the table below:

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**
SMEs	0.25%[11]	0.50%[12]	1.00%

[9] 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).

[10] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

[11] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 0.10% per year.

[12] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 0.10% per year.

Large enterprises	0.50%	1.00%	2.00%

Furthermore, the minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 basis points ("bps") per year.

(c) The loan contracts are signed by 31 December 2022 at the latest;

(d) The loan contracts are limited to maximum six years unless modulated according to recital (18)(e) below;

(e) By way of derogation from recitals (18)(b) and (18)(d), the duration of the loans may go up to 8 years provided that such loans are granted at a reduced interest rate which is at least equal to the base rate available on 1 February 2022 (one-year IBOR or equivalent rate published by the Commission[13]) plus the credit risk margins set out in the following table:

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**	**For 7th – 8th year**
SMEs	0.75%	1.00%	1.50%	2.50%
Large enterprises	1.00%	1.50%	2.50%	3.50%

Furthermore, the minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 bps per year.

(f) The overall amount of the loans per beneficiary shall not exceed:

(i) 15% of the beneficiary's average total annual turnover over the last three closed accounting periods; or

(ii) 50% of energy costs over the 12 months preceding the month when the application for aid is submitted;

(iii) the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 12 months for SMEs and for the coming 6 months for large enterprises. The liquidity needs, which may include both working capital and investment needs, will be established through self-certification by the beneficiary.

(g) The possibility included in recital (18)(f)(iii) will only be used as an exception and for beneficiaries for which the caps under recitals (18)(f)(i) and (18)(f)(ii) are not a good proxy to forecast their liquidity needs in the next months. In particular, this concerns beneficiaries that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. Those effects may in addition include disruptions of supply chains or outstanding

13 Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis. By way of example this concerns especially beneficiaries that have particularly strong trade relations with Russia or Ukraine, that are particularly energy-intensive or that trade energy products on derivatives exchanges. As regards the latter beneficiaries, they have to post collateral (so-called margin) for the fulfilment of futures contracts. In line with the recent unprecedented rise in energy prices companies had to serve substantial margin calls by posting cash collateral which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The volume of margin calls depends on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover;

(h) Loans shall relate to investment and/or working capital needs;

(i) Loans under the subsidised loan scheme may be granted directly or through credit institutions or other financial institutions acting as financial intermediaries. In this case, credit institutions or other financial institutions must pass on the benefits of the interest rate subsidies on loans to the final recipients as far as possible. In order to do so, the interest rate to be paid by the final recipient should be as low as possible and calculated on the basis of the minimum interest rates referred to in recitals (18)(b) or (18)(e), whereby financial intermediaries are granted a market-conform margin to cover the administrative costs associated with the transfer of the loans. The financial intermediary shall be able to demonstrate that it has a mechanism in place to ensure that the benefits are passed on to the final recipients as far as possible without linking the granting of subsidised loans to the refinancing of existing loans.

(j) Where a loan is granted by credit institutions or other financial intermediaries, the granting body may assume the risk of the loan vis-à-vis those institutions under the conditions set out in recital (18)(i)[14].

(19) Pursuant to footnote 30 of the Temporary Crisis Framework, the German authorities decided not to exclude undertakings that are deemed "in difficulty"[15] from benefitting from the measures.

[14] In the case of a 100% coverage of the risk by the German State, the financial intermediaries would only receive a compensation for their costs of administering the measure. In case the German State only covers a lower portion of the risk, e.g. 70 to 90%, the financial intermediaries also assume a share of the risk, i.e. 10-30%. In these cases, the financial intermediaries will also be allowed to retain a predetermined risk margin.

[15] Within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

2.9. Cumulation

(20) The German authorities confirm that aid granted under the measures may be cumulated with aid under the *de minimis* Regulations[16] or the GBER, the Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union ("ABER")[17] and the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union ("FIBER")[18] provided the provisions and cumulation rules of those Regulations are respected.

(21) The German authorities confirm that aid under the measures may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(22) The German authorities confirm that aid under the measures may be cumulated with aid under measures approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[19] (the "COVID-19 Temporary Framework") provided the respective cumulation rules are respected. In particular, this concerns State aid measures

[16] 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), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

[17] Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

[18] Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

[19] 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).

originally approved in cases SA.56714[20], SA.56863[21] and SA.56787[22], as amended.

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

(24) The German authorities confirm that aid granted under the guarantee scheme (or another measure under section 2.2 of the Temporary Crisis Framework) will not be cumulated with aid granted for the same underlying loan principal under the subsidised loan scheme (or another measure under section 2.3 of that framework) and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. Aid granted under section 2.2 and section 2.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 47(e) (as reflected in recital (17)(h)) and in point 50(e) (as reflected in recital (18)(f)), respectively, of the Temporary Crisis Framework.

(25) The German authorities confirm that when the overall amount of the loan is calculated on the basis of liquidity needs of the beneficiary (point 47(e)(iii) (as reflected in recital (17)(h)(iii)) or point 50(e)(iii) (as reflected in recital (18)(f)(iii)), respectively, of the Temporary Crisis Framework), the same beneficiary cannot cover with a guarantee or a subsidised loan under the measures

---

20 Commission decision of 22 March 2020 C(2020) 1886 final in case SA.56714 (2020/N) – Germany – COVID-19 measures (OJ C 112, 3.4.2020, p.1).

21 Commission decision of 2 April 2020 C(2020) 2151 final in case SA.56863(2020/N) – Germany – COVID-19: Federal framework for subsidised loans 2020, as amended by Commission decision of 11 April 2020 C(2020) 2365 final in case SA.56974 (2020/N) – Germany - 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*" (OJ C 144, 30.4.2020, p.1), Commission decision of 27 July 2020 C(2020) 5267 final in case SA.58021 (2020/N) – Germany - COVID-19: Second amendment of federal frameworks for (a) small amounts of aid and (b) subsidised loans (OJ C 269, 14.8.2020, p.1), Commission decision of 19 November 2020 C(2020) 8218 final in case SA.59433 (2020/N) – Germany – COVID-19 – Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework (OJ C 421, 4.12.2020, p.1), Commission decision of 12 February 2021 C(2021) 1066 final in case 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 (not yet published), Commission decision of 21 December 2021 C(2021) 9879 final in case 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 (OJ C 82, 18.2.2022, p.1).

22 Commission decision of 24 March 2020 C(2020) 1936 final in case SA.56787 – Germany - COVID-19: *Bundesregelung Bürgschaften 2020* (OJ C 158, 8.5.2020, p.1), as amended by Commission decision of 19 November 2020 C(2020) 8218 final in case SA.59433 (2020/N) – Germany – COVID-19 – Amendment of various aid schemes in accordance with the fourth amendment of the Temporary Framework (OJ C 421, 4.12.2020, p.1), Commission decision of 12 February 2021 C(2021) 1066 final in case 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 (not yet published), Commission decision of 21 December 2021 C(2021) 9879 final in case 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 (OJ C 82, 18.2.2022, p.1).

the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework.

(26) A beneficiary may benefit in parallel from multiple schemes under section 2.2 and section 2.3 of the Temporary Crisis Framework provided the overall amount of loans per beneficiary does not exceed the ceilings set out in points 47(e) and 50(e), respectively, of the Temporary Crisis Framework.

2.10. Monitoring and reporting

(27) The German authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis 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 primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[23]).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(29) 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.

(30) The measures are imputable to the State, since they are administered by aid granting authorities in Germany and they are based on the *BKR-Bundesregelung Bürgschaften 2022* as regards the guarantee scheme and on the *BKR-Bundesregelung Beihilfen für niedrigverzinsliche Darlehen 2022* as regards the subsidised loan scheme (recital (8)). They are financed through State resources, since they are financed by public funds (recital (10)).

(31) The measures confer an advantage on the beneficiaries in the form of guarantees on loans not in line with market conditions and loans with subsidised interest rates (recitals (17)(b), (17)(c), (18)(b) and (18)(e)). The measures thus relieve those beneficiaries of costs which they would have had to bear under normal market conditions.

---

[23] 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 subsidised loans the nominal value of the underlying instrument shall be inserted per beneficiary.

(32) The advantage granted by the measures is selective, since they are awarded only to certain undertakings, specifically undertakings affected by the current crisis, which are applying for the support through the measures and which accept the negative incentives attached to the measures (recital (12)), excluding the credit institutions and financial institutions (recital (16)).

(33) The measures are liable to distort competition, since they strengthen the competitive position of the beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

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

3.3. Compatibility

(35) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measures are compatible with the internal market.

(36) 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*".

(37) By adopting the Temporary Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed by the EU or its international partners and the counter-measures taken, for example by Russia, have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other inputs, raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Germany as also further described by the German authorities (see recital (4)). 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 if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken so far, for example by Russia.

(38) The measures aim at facilitating the access of undertakings to external finance at a time when a wide range of economic sectors are affected and the normal functioning of markets is severely disturbed, leading to severe disturbances of the real economy of Member States, including in Germany.

(39) The guarantee scheme and the subsidised loan scheme are part of a series of measures conceived at national level by the German authorities to remedy a serious disturbance in their economy. The importance of the measures to stimulate lending by private credit institutions to enterprises during the current crisis and enable promotional institutions to facilitate financing to enterprises is

widely accepted by economic commentators and the measures are of a scale which can be reasonably anticipated to produce effects across the entire German economy. Furthermore, the measures have been designed to meet the requirements of a specific category of aid ("*Liquidity support in the form of guarantees*" as regards the guarantee scheme and "*Liquidity support in the form of subsidised loans*" as regards the subsidised loan scheme) described in sections 2.2 and 2.3 of the Temporary Crisis Framework and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in point 47(h) and point 50(g) of the Temporary Crisis Framework, respectively.

(40) In particular, as regards the guarantee scheme:

(a) Guarantees may be granted on new individual loans made to undertakings (recital (17)(a)). The guarantee scheme therefore complies with point 47(a) of the Temporary Crisis Framework.

(b) The guarantee scheme sets minimum levels for guarantee premiums for SMEs and for large enterprises per individual loan for guarantees with a maturity of up to six years according to the following table (recital (17)(b)):

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**
SMEs	0.25%	0.50%	1.00%
Large enterprises	0.50%	1.00%	2.00%

For these guarantees, the guarantee scheme therefore complies with the guidance provided in point 47(b) of the Temporary Crisis Framework.

(c) For guarantees with a maturity of more than six years and up to eight years, the minimum levels for guarantee premiums per individual loans are increased from the beginning to offset the longer maturity according to the following table (recital (17)(c)):

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**	**For 7th – 8th year**
SMEs	0.75%	1.00%	1.50%	2.50%
Large enterprises	1.00%	1.50%	2.50%	3.50%

For these guarantees, the Commission considers that the increased guarantee premiums are adequately reflecting the longer maturity and that the guarantee scheme therefore complies with point 47(c) of the Temporary Crisis Framework.

(d) Guarantees may be granted under the measure by 31 December 2022 at the latest (recital (17)(c)). The guarantee scheme therefore complies with point 47(d) of the Temporary Crisis Framework.

(e) The guarantee scheme limits the duration of the guarantees to a maximum of eight years (recital (17)(e)) by modulating the duration according to point 47(c) of the Temporary Crisis Framework. Those guarantees cover 90% of the loan principal when losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State and 35% of the loan principal when losses stemming from the loans are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee) (recital (17)(f)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (17)(g)). The guarantee scheme therefore complies with point 47(f) of the Temporary Crisis Framework, in conjunction with point 47(c) of the Temporary Crisis Framework.

(f) The maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 47(e)(i) and (ii) of the Temporary Crisis Framework (recital (17)(h)(i) and (ii)). The German authorities explained that the option included in recital (17)(h)(iii) will only be used as an exception. In particular, this concerns beneficiaries that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. Those effects may in addition include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis. By way of example this concerns especially beneficiaries that have particularly strong trade relations with Russia or Ukraine, that are particularly energy-intensive or that trade energy products on derivatives exchanges. As regards the latter beneficiaries, they have to post collateral (so-called margin) for the fulfilment of futures contracts. In line with the recent unprecedented rise in energy prices companies had to serve substantial margin calls which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The volume of margin calls depends on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover. The Commission considers that the use of the option under recital (17)(h)(iii) is, therefore, appropriately justified. The German authorities confirm that the same beneficiary cannot cover with guarantees under the notified aid measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework (recital (25)). The guarantee scheme therefore complies with point 47(e) of the Temporary Crisis Framework.

(g) Guarantees granted under the measure relate to investment and working capital loans (recital (17)(j)). The guarantee scheme therefore complies with point 47(g) of the Temporary Crisis Framework.

(h) The guarantee scheme 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. The credit institutions or other financial institutions will have to demonstrate that they operate a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees. In particular, the measure is open to all financial institutions active in Germany and as part of the application procedure for the granting of a federal guarantee and on the basis of the bilateral guarantee agreements between the public guarantor and the financial intermediary, it is ensured that the criteria set out in the guarantee scheme, according to which the granting of aid to the financial intermediary is excluded, are met. Accordingly, the granting authorities examine whether the assumption of the guarantee would lead to a relief of the financial intermediary, e.g. by subsequently securing a commitment already entered into. If this is the case, no guarantee is granted. In addition, the financial intermediary is obliged under the guarantee agreement to pass on all benefits to the beneficiary. The guarantee banks will apply the same procedures when using the federal regulation as under the otherwise used *de minimis* Regulation or GBER. Under the risk-based interest rate system designed by KfW, the use of a guarantee automatically leads to a reduction of the beneficiary's interest rate. These cases usually account for about 50% of the guarantees. In the remaining cases, the guarantee banks check on a case-by-case basis whether the loan interest rate is already appropriate taking the guarantee into account and if not bring about an adjustment by the financial intermediary to the interest rate. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (17)(k)). The guarantee scheme therefore complies with point 47(h) of the Temporary Crisis Framework.

(i) The cumulation rules set out in point 46 of the Temporary Crisis Framework are respected (recital (24)).

(j) The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (17)(l)).

(41) In particular, as regards the subsidised loan scheme:

(a) Loans under the subsidised loan scheme will not be granted to credit institutions or other financial institutions (recital (18)(a)). The measure therefore complies with point 50(a) of the Temporary Crisis Framework.

(b) The applicable interest rates for loans granted under the subsidised loan scheme are equal to the base rate (1 year IBOR or equivalent as published by the Commission)[24] available on 1 February 2022, plus the credit risk margins as set-out in the table below (recital (18)(b)).

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**
SMEs	0.25%[25]	0.50%[26]	1.00%

[24] Base rates calculated in accordance with the Commission's Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

[25] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 bps per year.

[26] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 bps per year.

Large enterprises	0.50%	1.00%	2.00%

The subsidised loan scheme therefore complies with point 50(b) of the Temporary Crisis Framework.

(c) The loan contracts are signed by 31 December 2022 at the latest and are limited to a maximum of 6 years (recital (18)(d)), except for the derogation mentioned in recital (18)(e). The subsidised loan scheme therefore complies with point 50(d) of the Temporary Crisis Framework.

(d) The maturity of the loans may go up to 8 years provided that such loans are granted at a reduced interest rate which is at least equal to the base rate available on 1 February 2022 (one-year IBOR or equivalent rate published by the Commission[27]) plus the credit risk margins set out in the following table (recital (18)(e)):

Type of recipient	**For 1st year**	**For 2nd – 3rd year**	**For 4th – 6th year**	**For 7th – 8th year**
SMEs	0.75%[28]	1.00%[29]	1.50%	2.50%
Large enterprises	1.00%	1.50%	2.50%	3.50%

For these subsidised loans, the Commission considers that the increased credit risk margins are adequately reflecting the longer maturity and that the subsidised loan scheme therefore therefore complies with point 50(c) of the Temporary Crisis Framework.

(e) The maximum loan amount per beneficiary granted under the subsidised loan scheme is limited in line with point 50(e)(i) and (ii) of the Temporary Crisis Framework (recitals (18)(f)(i) and (18)(f)(ii)). The German authorities explained that the option included in recital (18)(f)(iii) (whereby the amount of the loan may exceed the maximum amounts of point 50(e) of the Temporary Crisis Framework), will only be used as an exception. In particular, this concerns beneficiaries that are active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter-measures taken, for example by Russia. Those effects may in addition include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis. By way of example this concerns especially beneficiaries that have particularly strong trade relations with Russia or Ukraine, that are particularly energy-intensive or that trade energy products on derivatives exchanges. As regards the latter beneficiaries, they have to post collateral (so-called margin) for the fulfilment of futures contracts. In line with the recent unprecedented rise in energy prices companies had to serve

[27] Base rates calculated in accordance with the Commission's Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

[28] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 bps per year.

[29] The minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10 bps per year.

substantial margin calls which strained their liquidity resources. Further price increases will result in further margin calls. Energy companies might not be able to generate enough liquidity to serve these margin calls and might need liquidity assistance. The volume of margin calls depends on the future price movements which cannot be fully anticipated and which bear no relation to historic energy costs or turnover. The Commission considers that the use of the option under recital (18)(f)(iii) is, therefore, appropriately justified. The German authorities confirm that the same beneficiary cannot cover with loans under the measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework (recital (25)). The subsidised loan scheme therefore complies with point 50(e) of the Temporary Crisis Framework.

(f) Loans granted under the subsidised loan scheme relate to investment and working capital needs (recital (18)(h)). The subsidised loan scheme therefore complies with point 50(f) of the Temporary Crisis Framework.

(g) The subsidised loan scheme 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. Credit institutions or other financial institutions must pass on the benefits of the interest rate subsidies on loans to the final recipients as far as possible. In order to do so, the interest rate to be paid by the final recipient should be as low as possible and calculated on the basis of the minimum interest rates referred to in recitals (18)(b) and (18)(e), whereby financial intermediaries are granted a market-conform margin to cover the administrative costs associated with the transfer of the loans. The financial intermediary shall be able to demonstrate that it has a mechanism in place to ensure that the benefits are passed on to the final recipients as far as possible without linking the granting of subsidised loans to the refinancing of existing loans. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries without conditioning the granting of subsidised loans to refinancing existing loans (recital (18)(i)). The subsidised loan scheme therefore complies with point 50(g) of the Temporary Crisis Framework.

(h) The cumulation rules set out in point 49 of the Temporary Crisis Framework are respected (recital (24)).

(42) The German authorities confirm that, pursuant to point 32 of the Temporary Crisis Framework, 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 (5)).

(43) The German authorities confirm that, pursuant to point 33 of the Temporary Crisis Framework, the aid under the measures will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by

sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (14)).

(44) The German authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (27)). The German authorities further confirm that the aid under the measures may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant regulations are respected (recitals (20) to (26)).

(45) The Commission therefore considers that the measures 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 Crisis Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(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