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**Subject: State Aid SA.104756 (2022/N) – Germany**  
**TCF: Modifications to SA.102542, SA.102631, SA.104019**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 4 November 2022, Germany notified amendments (the “notified amendments”) to the existing aid schemes (the “existing aid schemes”), which the Commission initially approved in cases SA.102542 (2022/N) “TCF: Federal Framework ‘Small amounts of aid 2022’” <sup>(1)</sup> (the “2.1 scheme”) and SA.102631 (2022/N) “TCF: Umbrella schemes for guarantees on loans and subsidised loans” <sup>(2)</sup> (the “2.2 scheme” and “2.3 scheme”) (together the “initial decisions”), and for which the Commission approved amendments in case SA.104019 “TCF: Modifications to SA.102542, SA.102631” (the “amendment decision”) <sup>(3)</sup> under the Temporary Crisis Framework for State aid measures to

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<sup>(1)</sup> Commission decision C(2022) 2546 final of 19 April 2022 (OJ C 204, 20.5.2022, p. 1).

<sup>(2)</sup> Commission decision C(2022) 3049 final of 4 May 2022 (OJ C 220, 3.6.2022, p. 1).

<sup>(3)</sup> Commission decision C(2022) 6050 final of 18 August 2022 (OJ C 337, 2.9.2022, p. 1).

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support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”) (4).

- (2) Germany exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 (5) and to have this decision adopted and notified in English.

## 2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) The objective of the existing aid schemes is 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 aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia. The initial decisions described these objectives in more detail in recital (3) for the 2.1 scheme and in recitals (3) and (4) for the 2.2 scheme and 2.3 scheme.
- (4) The German authorities wish to amend the 2.1 scheme as follows:
  - (a) The maximum aid amount, as referred to in recital (4)(a) of the amendment decision, is increased from EUR 500 000 per undertaking to EUR 2 000 000, as provided by points (55)(a) and (57) of the Temporary Crisis Framework. For undertakings active in the fishery and aquaculture sector (6) and in the primary production of agricultural products (7), the maximum amount of aid is increased from EUR 75 000 for the former and EUR 62 000 for the latter, respectively, to EUR 300 000 for the former and EUR 250 000 for the latter, respectively, as provided by point (56)(a) of the Temporary Crisis Framework. These ceilings will be respected, including in cases where the aid is channelled via an energy supplier.
  - (b) The maximum aid amount, as referred to in recital (4)(b) of the amendment decision, where an undertaking is exclusively active in the fishery and aquaculture sector and in the primary production of agricultural products is increased to EUR 300 000 from EUR 75 000, as provided by point (57) of the Temporary Crisis Framework.

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(4) Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia, C(2022) 7945 (OJ C 426, 9.11.2022, p. 1).

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

(6) As defined in Article 2(1) of 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).

(7) As defined in Article 2(5) of 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).

- (c) The aid may be granted no later than 31 December 2023, as provided by point (55)(c) of the Temporary Crisis Framework <sup>(8)</sup>.
  - (d) 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 2024 at the latest and the conditions of the 2.1 scheme are complied with, as provided by point (58) of the Temporary Crisis Framework.
  - (e) The option for aid to be channelled through an energy supplier is included, as provided by point (29) of the Temporary Crisis Framework. The German authorities confirm that competition between suppliers is preserved and that the aid is passed on to the final beneficiary. In particular, they submit that:
    - Those aid measures will be open to all energy suppliers and will not discriminate among those suppliers, who will remain free in their price-setting capacity and therefore keep competing among themselves for customers;
    - by way of example, this will be the case for aid measures where the final beneficiaries have an unconditional legal right to a reduction of their energy bills, pay a pre-determined “supported” price for a proportion of their consumption and will be able to choose among different suppliers offering the most advantageous “unsupported” price for the remaining part;
    - the competition intensity between suppliers will not be affected by these aid measures and the aid will be passed on to the final beneficiary.
  - (f) The budget of the 2.1 scheme, as referred to in recital (9) of the initial decision in case SA.102542, is increased from an estimated EUR 15-20 billion to EUR 60 billion.
- (5) The German authorities wish to amend the 2.2 scheme as follows:
- (a) As provided by the footnote 67 in point (59) of the Temporary Crisis Framework, it is clarified that public guarantees, as referred to in recital (7) of the decision in case SA.102631 and recital (5)(a) of the amendment decision, may exceptionally also cover bank guarantees where these public guarantees are aimed at addressing liquidity needs of undertakings that need to provide financial collaterals for trading activities on energy markets.
  - (b) The guarantees are granted by 31 December 2023 at the latest, as provided by point (61)(d) of the Temporary Crisis Framework.

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<sup>(8)</sup> If the aid is granted in the form of tax advantages, the tax liability in relation to which the aid is granted must have arisen no later than 31 December 2023.

- (c) The option is included also for large undertakings that need to provide financial collaterals for trading activities on energy markets, that the amount of the loan based on the possibility referred to in recital (17)(h)(iii) of the decision in case SA.102631 may be increased to cover the liquidity needs derived from these activities from the moment of granting for the next coming 12 months, as provided by point 61(e)(iii) second indent of the Temporary Crisis Framework.
  - (d) As provided by footnote 72 in point (61)(e)(iii) third indent of the Temporary Crisis Framework, it is clarified that while the 2.2 scheme is in force, granting authorities may grant under this section additional public guarantees to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of the 2.2 scheme and it needs to be ensured that the same liquidity needs are only covered once.
- (6) The German authorities wish to amend the 2.3 scheme as follows:
- (a) The loan contracts are signed by 31 December 2023 at the latest, as provided by point (64)(d) of the Temporary Crisis Framework.
  - (b) Aid granted under the 2.3 scheme may be converted into other forms of aid such as grants provided the conversion takes place by 30 June 2024 at the latest and the conditions of the 2.1 scheme are complied with, as provided by point (58) of the Temporary Crisis Framework.
  - (c) The reference date for the base rate to be used to calculate the reduced interest rates under the 2.3 scheme is changed from 1 February 2022 to 1 October 2022 and the option to use the earlier date of 1 February 2022 for loans granted until 31 December 2022 is included, as provided by point (64)(b) of the Temporary Crisis Framework and footnote 76 to that point.
  - (d) As provided by footnote 86 in point (64)(e)(iii) third indent of the Temporary Crisis Framework, it is clarified that while the 2.3 scheme is in force, granting authorities may grant under this section additional public guarantees to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of the 2.3 scheme and it needs to be ensured that the same liquidity needs are only covered once.
- (7) Apart from the notified amendments, Germany confirms that no further amendments are proposed to the existing aid schemes and that all other conditions of those schemes remain unaltered. Germany also confirms that aid granted under sections 2.1. to 2.3. of the previous Temporary Crisis Framework and aid granted under the same respective sections of the current Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the current Temporary Crisis Framework at any point in time.
- (8) The legal bases for the notified amendments are:

- (a) For the 2.1 scheme, the amended federal framework small amounts of aid 2022 (*Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen 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*, with the short title: *BKR-Bundesregelung Kleinbeihilfen 2022*);
  - (b) For the 2.2 scheme, the amended federal framework for guarantees 2022 (*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*, with the short title: *BKR-Bundesregelung Bürgschaften 2022*);
  - (c) For the 2.3 scheme, the amended federal framework for aid for subsidised loans (*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*, with the short title: *BKR-Bundesregelung Beihilfen für niedrigverzinsliche Darlehen 2022*)
- (9) The German authorities notified the legal bases as drafts, which will be adopted and enter into force after the approval by the Commission of the notified amendments. Aid may be granted under the existing aid schemes, as amended, as from the notification of the Commission’s approval of the notified amendments.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (10) By notifying the amendments before putting them into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (11) 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 be liable to affect trade between Member States.
- (12) The existing aid schemes constitute State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (33) to (37) of the decision in case SA.102542 and in recitals (30) to (34) of the decision in case SA.102631. The notified amendments do not affect that conclusion. The Commission therefore

refers to the respective 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.

### 3.3. Compatibility

- (13) The existing aid schemes are compatible with the internal market pursuant to Article 107(3)(b) TFEU, since they meet the conditions of section 1 and sections 2.1, 2.2 and 2.3 of the Temporary Crisis Framework for the reasons set out in recitals (39) to (48) of the decision in case SA.102542 and in recitals (36) to (45) of the decision in case SA.102631 and in recital (13) of the amendment decision. The Commission therefore refers to the respective assessment of the initial decisions and the assessment in the amendment decision. The Commission notes that that assessment remains valid although the Temporary Crisis Framework has in the meantime been replaced by the version referred to in recital (1) of this decision, inasmuch as the conditions of sections 1, 2.1, 2.2 and 2.3 of the Temporary Crisis Framework that are relevant for the initial decisions and the amendment decision have not been modified in the current version of that Framework <sup>(9)</sup>.
- (14) The notified amendments also do not affect the conclusion that the existing aid schemes are compatible with the internal market pursuant to Article 107(3)(b) TFEU. In particular:
- (a) The increase of the maximum aid amounts under the 2.1 scheme, as described in recitals (4)(a) and (4)(b) complies with points (55)(a), (56)(a), (57) and (84) of the Temporary Crisis Framework, including in cases where the aid is channelled via an energy supplier.
  - (b) The extension of the date until which aid may be granted under the 2.1 scheme, as described in recital (4)(c), complies with point (55)(c) of the Temporary Crisis Framework.
  - (c) The extension of the date until which measures granted in the form of repayable advances, guarantees, loans or other repayable instruments under the 2.1 scheme and loans under the 2.3 scheme may be converted into other forms of aid, such as grants, and provided that the conditions of the 2.1 scheme are complied with, as described in recitals (4)(d) and (6)(b), complies with point (58) of the Temporary Crisis Framework.
  - (d) The option for aid to be channelled through an energy supplier under the 2.1 scheme, as described in recital (4)(e), complies with point (29) of the Temporary Crisis Framework, since the German authorities confirmed that competition between suppliers is preserved and that aid is passed on to the final beneficiaries. In particular, they demonstrated that the 2.1 scheme will be open to all energy suppliers and will not discriminate among those suppliers, thus remaining free in their price-setting capacity and therefore keep competing among themselves for customers. This is further demonstrated by the example of aid measures where the customers have an unconditional right to a reduction in their energy bills and may choose

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<sup>(9)</sup> See in this regard Annex II (Correlation Table) to the Temporary Crisis Framework.

among different suppliers that offer the most advantageous price. The Commission considers that the competition intensity between suppliers will not be affected and the aid will be passed on to the final beneficiary.

- (e) The adjustment in the amount of the budget of the 2.1 scheme, as described in recital (4)(f), does not affect the outcome of the compatibility assessment carried out in the decision on case SA.104542.
  - (f) The clarification concerning the granting of public guarantees under the 2.2 scheme, as described in recital (5)(a), complies with the footnote 67 in point (59) of the Temporary Crisis Framework.
  - (g) The extension of the date until which aid may be granted under the 2.2 scheme, as described in recital (5)(b), complies with point (61)(d) of the Temporary Crisis Framework.
  - (h) The possibility for large undertakings to receive a loan, covered by a public guarantee under the 2.2 scheme, with an amount covering the next coming 12 months, as described in recital (5)(c), complies with point (61)(e)(iii) second indent of the Temporary Crisis Framework.
  - (i) The clarification on the granting of additional public guarantees under the 2.2 scheme and loans under the 2.3 scheme, as described in recitals (5)(d) and (6)(d), respectively, complies with footnote 72 in point (61)(e)(iii) third indent and footnote 86 in point (64)(e)(iii) third indent of the Temporary Crisis Framework, respectively.
  - (j) The extension of the date until which aid may be granted under the 2.3 scheme, as described in recital (6)(a), complies with point (61)(d) of the Temporary Crisis Framework.
  - (k) The change of the reference date for the base rate to 1 October 2022 and the option to use the 1 February base rate for loans granted until 31 December 2022 under the 2.3 scheme, as described in recital (6)(c), complies with point (64)(b) of the Temporary Crisis Framework and footnote 76 to that point.
- (15) Apart from the notified amendments as described in recitals (4) to (6), Germany confirms that no further amendments are proposed to the existing aid schemes and that all other conditions of them remain unaltered.
- (16) Germany confirms that, in accordance with point 84 of the Temporary Crisis Framework, overall, aid granted under section 2.1 to 2.3 of the previous Temporary Crisis Framework and aid granted under the same respective sections of the current Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the current Temporary Crisis Framework at any point in time (see recital (7)).
- (17) The Commission therefore considers that the notified amendments 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. The Commission

therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid schemes in the initial decisions.

#### **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

