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Subject: State Aid SA.105224 (2022/N) – Germany
INVEST Scheme – Direct grants for risk capital investments – Prolongation and Amendment of the INVEST Guidelines

Excellency,

1. PROCEDURE

(1) On 25 October 2022, Germany informed the Commission of its intention to amend and prolong the 'INVEST – Venture Capital Grant' scheme that provides direct grants in support of risk capital investments ([1]). That scheme was approved initially in 2013 ([2]) under the Risk Capital Guidelines of 2006 ([3]) and was subsequently prolonged and amended respectively in 2016 ([4]) until 31 December

([1]) Commission Decision C(2020) 9404 final of 21 December 2020 on State aid SA.59267 (2020/N) (OJ C 41, 5.2.2021, p. 13) (the '2020 Decision').

([2]) Commission Decision C(2013) 1911 final of 16 April 2013 on State aid SA.35455 (2012/N) (OJ C 183, 28.6.2013, p. 1).

([3]) Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2).

([4]) Commission Decision C(2016) 8228 final of 12 November 2016 on State aid SA.46308 (2016/N) (OJ C 68, 3.3.2017, p. 1).

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2020 (the ‘2016 Decision’) and in 2020 ([5]) (the ‘2020 Decision’) until 31 December 2022 under the Risk Finance Guidelines of 2014 ([6]) (hereinafter, as amended, the ‘existing aid scheme’).

(2) Germany notified officially an amendment and prolongation of the existing aid scheme on 9 December 2022, under the revised Risk Finance Guidelines that apply as from 1 January 2022 (‘Risk Finance Guidelines’) ([7]) (the ‘measure’).

(3) In view of the urgency of the adoption of this Decision given the expiry of the existing aid scheme on 31 December 2022, Germany exceptionally agreed 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 ([8]) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(4) The existing aid scheme supports investments by private investors (natural persons) in small, young and innovative companies with a tax-free acquisition grant. Since 2017, another type of support has been added in the form of a flat-rate compensation for taxes payable on capital gains resulting from a profitable sale of the shares for which an acquisition grant had been awarded (‘exit grant’). There is no entitlement to compensation for the total amount of taxes paid on the capital gains (flat-rate solution). No other fiscal incentives exist in Germany with the same objectives.

(5) The German authorities carried out in 2022 an ex ante assessment of the existing aid scheme covering the entire period of its implementation since its establishment in 2013 (see recital (32)). According to the German authorities, the ex ante assessment showed that the existing aid scheme could benefit from some improvements, which Germany addresses by amending that scheme.

(6) Germany has notified, through this measure, the prolongation of the existing aid scheme, as described in recital (11), and the following amendments, as explained in more detail under section 2.3:

(a) increase of the acquisition grant from the current 20% to 25% of the investment;

(b) adjustment of investment limits per investee companies and for exit grants;

(c) introduction of an ‘INVEST budget’;

([5]) See footnote 1.

([6]) Communication from the Commission - Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

([7]) Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

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

(d) inclusion of ‘registered cooperatives’ (‘Eingetragene Genossenschaften‘) as a possible legal form of establishment for eligible undertakings (‘investees’).

(7) The German authorities confirmed that the existing aid scheme and the measure are not explicitly aimed at promoting export-related activities in Member States or third countries, i.e. the aid under those measures does not relate directly to export-related activities by undertakings. Further, the INVEST Guidelines require that investors must take into consideration Germany’s Sustainable Development Strategy when choosing their investment target, notably sustainability goal 9 (infrastructure, investment, innovation) and 8 (inclusive and sustainable economic growth and employment) ([9]).

2.1. Objective of the measure

(8) As explained in recital 5 of the 2020 Decision for the existing aid scheme, the measure also aims at increasing the provision of private risk capital for small, young and innovative enterprises in Germany (see recitals (10)(a) and (28)). To that end, Germany intends to strengthen the activity of ‘business angels’ ([10]) who can have an important role in providing private capital as well as non-monetary contributions to eligible undertakings. More specifically, through the measure Germany intends to:

(a) improve access to venture capital for small, young and innovative enterprises on a permanent basis and thus improve the capital of these undertakings;

(b) incentivise existing business angels and especially ‘virgin business angels’ ([11]) to invest and increase their investments in the target enterprises, contributing thereby to strengthening the business angel community in Germany.

2.2. Granting authority, legal basis, duration, budget, transparency, cumulation

2.2.1. Granting authority

(9) The aid granting authority is the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* or ‘BAFA’), on behalf of the Federal Ministry of Economic Affairs and Climate Protection (*Bundesministerium Für Wirtschaft Und Klimaschutz*, or ‘BMWK’).

([9]) https://www.bundesregierung.de/breg-en/issues/sustainability/germany-s-sustainable-development-strategy-354566#:~:text=The%20guiding%20principles%20of%20sustainability,the%20German%20Sustainable%20Development%20Strategy.

([10]) Business angels are private investors (natural persons) who take an active role in supporting the investee company (as opposed to ‘passive’ investors). They tend to invest in companies at a very early stage (‘seed’ phase), as opposed to Venture Capital firms that tend to invest larger amounts in companies at a later stage of development.

([11]) Virgin (or inexperienced) business angels are investors who have not received previously any (or at least limited) support under the existing aid scheme or under the measure.

2.2.2. Legal basis

(10) The legal bases for the measure are:

(a) the draft amendments to the ‘Guidelines for support of risk capital of private investors for small, young and innovative companies’ ([12]), including the annexes, (the ‘INVEST Guidelines’) of the BMWK (as last submitted to the Commission on 25 October 2022) scheduled to be adopted and to enter into force after the adoption of this Decision;

(b) the General Administrative Regulations on Sections 23 and 44 of the Federal Budget Law ([13]).

2.2.3. Duration

(11) The measure will take effect after the date of notification of this Decision for applications submitted to BAFA under point 7.1 (acquisition grant) and under point 7.2 (exit grant) of the INVEST Guidelines. It will only cover aid awarded on the basis of applications that are submitted to BAFA until 31 December 2026 (for acquisition grants) and until 30 June 2037 (for exit grants).The beneficiaries of acquisition grants are eligible for an exit grant only if they sell their shares within ten years after the acquisition of the shares).

2.2.4. Budget

(12) The overall budget of the measure is EUR 183.72 million (EUR 45.93 million per year).

2.2.5. Transparency

(13) The German authorities have committed in their notification to publish all required information related to the measure according to the transparency rules of the Risk Finance Guidelines set out in points 180 to 183 and to publish the scope and the technical parameters of the measure set out in point 128 of the Risk Finance Guidelines.

2.2.6. Cumulation

(14) The measure contains the requirement to respect the Union cumulation rules (INVEST Guidelines section 1.2). The German authorities have confirmed that the cumulation rules specified in section 3.2.4.4. of the Risk Finance Guidelines will be respected.

([12]) *Förderrichtlinie zur Bezuschussung von Wagniskapital privater Investierender für junge innovative Unternehmen, as amended, to be published at the website of the Federal Office for Economic Affairs and Export Control (www.bafa.de) at https://www.bafa.de/DE/Wirtschaft/Beratung_Finanzierung/Invest/invest_node.html*

([13]) Bundeshaushaltsordnung vom 19. August 1969 (Gemeinsames Ministerialblatt I S. 1284), die zuletzt durch Artikel 2 des Gesetzes vom 1. Juli 2022 (BGBl. I S. 1030) geändert worden ist; Allgemeine Verwaltungsvorschriften zur Bundeshaushaltsordnung (VV-BHO) vom 14. März 2001 (Gemeinsames Ministerialblatt 2001 Nr. 16/17/18, S. 307) in der Fassung des BMF-Rundschreibens vom 18. Juli 2022 - II A 3 - H 1012-6/21/10003 :003 (2022/0730889) (GMBl. 2022 Nr. 33, S. 742).

2.3. Form of aid

2.3.1. Acquisition and exit grants

(15) Under the measure, direct grants will be provided to natural persons who acquire in their own name, on their own behalf and at their own expense, ordinary, fully risk-bearing equity shares, that are newly issued by investee undertakings through a capital increase, and who pursue a realistic exit strategy.

(16) The acquisition **grant** will amount to **25% of the acquisition costs** (issue price, including any premiums paid), which constitutes an **amendment** to the existing aid scheme ([14]). The minimum investment amount for which an investor can receive an acquisition grant is equal to EUR 10 000 (i.e. minimum EUR 2 500 acquisition grant per investor) ([15]). The maximum amount an investor can invest (either as a direct investor or as a partner in an investment company) under the measure is equal to EUR 400 000 (resulting in a maximum EUR 100 000 acquisition grant per investor). The acquisition grant is reimbursable if the shares are not held for a minimum period of three years ('minimum holding period') and is exempted from income tax. The acquisition must be commercially motivated, be based on a business plan established by the investee undertakings and must not be financed through loans. Acquisitions that took place before the introduction of an aid application are ineligible.

(17) The shares in investee undertakings, subject to the conditions indicated in recital (16), might also be acquired through the conversion of convertible loans. In that case, the acquisition grant will also amount to 25% of the acquisition costs (i.e. the converted loan amount) and will only be awarded if all the following conditions are met:

(a) the private investor applied for the grant before having concluded the loan contract with the investee company;

(b) that loan contract provides for the subsequent conversion of the loan into shares;

(c) the loan contract is otherwise based on standard market clauses.

Conversion must take place within 24 months from the date that the grant approval decision was issued. The acquisition grant (for the converted amount) is paid only after conversion. The minimum holding period starts upon conversion.

(18) Another **amendment** to the existing aid scheme is the introduction of a maximum investment amount per investee company, for which an investor can claim the acquisition grant. This limit is set at EUR 200 000 (corresponding to a maximum acquisition grant of EUR 50 000 per investment into an individual investee undertaking). As a result, an investor must invest in at least two different investee

([14]) Under the existing aid scheme, the acquisition grant amounts to 20% of the acquisition costs.

([15]) The minimum investment amount applies to individual investments in an undertaking (e.g. if linked to the achievement of milestones by the undertaking), even if the total investment into that undertaking amounts to more than EUR 10 000.

undertakings to benefit from the maximum acquisition grant amount of EUR 100 000 referred to in recital (16).

(19) In each investee undertaking, a maximum investment amount of EUR 3 million per calendar year can be taken into account as basis for acquisition grants to be provided to the investors in that undertaking. The total number of investors in one particular undertaking benefiting from the measure must not exceed 10 persons ([16]).

(20) In combination with earlier risk capital measures, an overall threshold of supported investments into a single investee undertaking of EUR 15 million must not be exceeded.

(21) The beneficiaries of acquisition grants are eligible for an exit grant if they sell their shares within ten years from the acquisition of the shares, provided the sales agreement contains exclusively normal market provisions. The exit grant amounts to 25% of the profit resulting from the sale of the shares for which an acquisition grant was awarded. By way of an **amendment** to the existing scheme ([17]), Germany notified that, in the future, the exit grant may only be as high as the acquisition grant, i.e. 25% of the total investment (down from currently 80% of the total investment), so that the combined acquisition and exit grant can only account for a maximum of 50% of the investment amount (under the existing aid scheme, the total amount of the acquisition and exit grants has been limited to the full amount of the investment).

2.3.2. Introduction of an INVEST budget per eligible investor

(22) By way of **amendment** to the existing aid scheme, each natural person can only receive the **maximum amount of EUR 100 000** in INVEST acquisition grants (the 'INVEST budget'). The INVEST budget applies retroactively, i.e. the acquisition grants that investors have received on investments before 2023 count towards the INVEST budget. Under the amended acquisition grant rate of 25%, this means that any natural person can invest in eligible enterprises for **a total amount of EUR 400 000**.

(23) As in the existing aid scheme, investors may also invest through investment companies with a maximum of 10 natural persons as shareholders ([18]). The 'INVEST budget' then applies not to the investment company, but to its shareholders (in proportion to their share in the investment company). However, the total amount of acquisition grants at the level of the investment company is

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([16]) That ceiling was a new feature of the existing aid scheme as amended by the 2020 Decision. Previously only six investors were allowed (see recital (4) point (a) and footnote 9 of the 2020 Decision). The cumulative amounts were not affected. In practice that meant that one undertaking would still be capable of raising the maximum amount of EUR 3 million, even if some investors would not be able or willing to invest the maximum amount of EUR 500 000. As the acquisition grant was fixed to 20% of the invested amounts, the total maximum of EUR 600 000 (20% of EUR 3 million) in acquisition grants also remained in place.

([17]) Under the existing aid scheme, the total amount of exit grants must not exceed 80% of the initial value of the acquired shares (see recital (18) of the 2020 Decision).

([18]) See recital (17) of the 2016 Decision and recital (4) of the 2020 Decision.

limited to EUR 200 000 over three years to ensure compliance with the *de minimis* regulation ([19]).

(24) In calculating the maximum eligible amounts as laid down in recitals (18) and (22), all INVEST-supported investments of a natural person must be aggregated, irrespective of whether the individual shareholdings were acquired directly or indirectly through one or more investment companies. If shares are held by a multi-member investment company, the calculation of the level of participation of the individual investor will normally be based on its percentage share in the investment company. If an acquisition grant is granted to an investment company, the limits of the individual shareholders are taken into account and the acquisition grant will only be granted if all limits are respected. In addition, for the purpose of capping the acquisition grants per person, all acquisition grants paid or approved since 2013 are taken into account.

2.3.3. Beneficiaries

2.3.3.1. Eligible investors

(25) As indicated in recital(s) (4) and (15), only natural persons are eligible under the measure. They must have their principal residence in the European Economic Area (‘EEA’), must not already hold, either directly or indirectly, shares in the investee undertaking, not be related ([20]) to the investee undertaking (for a five-year period starting two years preceding the investment), and not have concluded any forward agreements which would oblige a third party to re-purchase the investors' equity shares at a later stage. By way of amendment, follow-on investments, even if they have been provided for in the original business plan, are not covered by the measure.

(26) The design of the measure is suited to attract, as defined above, ‘business angels’ as investors. Business angels tend to invest in companies at a very early stage (‘seed’ phase), as opposed to Venture Capital firms that tend to invest larger

([19]) The INVEST scheme contains a parallel *de minimis* scheme in application of 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), which applies to investment companies (limited liability companies such as Business Angel GmbHs or UGs) or legally equivalent capital companies with a natural person as a sole shareholder established for the purpose of carrying out business angel investments, and where the only other permissible business purposes are asset management and consultancy, and any related activities. The thresholds defined in section 2.3.1 apply where an investee company benefits from investments from natural persons and one-person shareholder companies.

([20]) A private investor is considered related to the investee undertaking if she/he or her/his family members (wife, spouse, parents, grandparents, grandchildren, sisters/brothers, direct descendants or direct ancestors) (i) were/are employees of the investee undertaking; (ii) they receive/or received remuneration as managers from the investee undertaking, a subsidiary or a linked enterprise; (iii) provide administration, managerial or consulting services to the investee undertaking at an amount above EUR 10,000 p.a., or (iv) have concluded any reciprocal arrangements that would lead to a linked relationship with the investee undertaking after the expiration of the minimum holding period. In addition, a private investor is linked to the investee undertaking if he/she or her/his family members (v) have more than 25% of the voting rights in the investee undertaking or a subsidiary or (vi) own more than 25% of the equity shares in the investee undertaking or a subsidiary or (vii) have special rights to acquire more than 25% of assets of the investee undertaking in case of its liquidation or that of a subsidiary.

amount in companies at a later stage of development. Further, in order to keep the inexperienced, so-called 'virgin business angels' in the market on a lasting basis, the German authorities aim at encouraging them to make multiple investments and build up a small portfolio so that they can spread their risks.

(27) The acquisition and exit grants are exempted from income tax.

2.3.3.2. Eligible undertakings

(28) At the date of submission of the application, the investee undertaking: (1) must be a small enterprise ([21]); (2) must not be older than seven years ([22]); (3) must be established in the EEA, with at least one registered branch or production site in Germany; (4) must not be an undertaking in difficulty according to the definition provided in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([23]); (5) must not be listed on a stock exchange or a regulated market, or be preparing an initial public offering; (6) must not be subject to an agreement specifying that it is to become a subsidiary of another company which does not fulfil those conditions; (7) has to use the financial resources it obtains for a business activity in an innovative sector ([24]); and (8) must receive fresh funds via the new shares, e.g. the funding cannot be used to repay a loan by the investor to the undertaking. In addition, Germany committed that investors and investee undertaking that are subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by Germany illegal and incompatible with the internal market will be excluded from the measure.

(29) During the minimum holding period of three years after the acquisition of the shares by the investor, the investee undertaking has to: (1) maintain its head office in the EEA, and at least one branch or production site in Germany; and (2) has to be in continuous, profit-oriented operation ([25]).

(30) The measure **amends** the legal forms which an eligible undertaking may have (recital (6)(d)) and extends them to include registered cooperative societies. The aim of the German authorities is to strengthen public-interest-oriented start-ups.

([21]) Small enterprise as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

([22]) The undertaking must not be older than seven years, i.e. no more than seven years must have elapsed since the company was set up. The date of incorporation is defined as the date of entry in the commercial register or the register of cooperatives. If, as a result of the issue of shares, a partnership is converted into a capital company, the initial registration of the partnership in the commercial register is considered to be the date of incorporation.

([23]) Section 2.2 of the Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

([24]) The INVEST Guidelines provide specific criteria to define that 'innovativeness' requirement. These criteria include eligible sectors, but also company-level criteria such as owning a patent that is not older than 15 years, having received an attestation of eligibility for support by a public research or innovation programme, or having received an innovation prize which is displayed on the homepage of the aid granting authority in the two years before their application, or having received an innovativeness certificate by an external and independent party.

([25]) If it was not yet operating when the shares were acquired, it must become operational within one year.

However, the other eligibility conditions laid down in recitals (28) and (29) of this decision remain applicable also to registered cooperative societies.

2.4. New ex ante assessment of the INVEST scheme

(31) The existing aid scheme and its approval under State aid rules expire on 31 December 2022. The Risk Finance Guidelines require that the Member State, if it proposes to extend a measure to a total duration of more than ten years, must carry out a new ex ante assessment, together with an evaluation of the effectiveness of the scheme during the entire period of its implementation ([26]).

(32) For this reason, in September 2021, the BMWK, together with the consultancy Technopolis Deutschland GmbH, commissioned the Research Institute ZEW – Leibniz Centre for European Economic Research to carry out an ex ante assessment, including an evaluation of the effectiveness of the existing aid scheme during the entire period of its implementation, which was accepted and published by the BMWK in August 2022 ([27]). The ex ante assessment's main focus was the generation of a database of INVEST funding data and other data on general market activity, and producing research results using this database. It also relied on a review of the relevant academic literature and other studies, a meta-analysis of the INVEST evaluations performed in 2016 ([28]) and 2019 ([29]), on surveys among participants to the existing aid scheme, as well as guided interviews with investors, companies and other stakeholders.

(33) In assessing the effectiveness of the existing aid scheme during the entire period of its implementation, Germany has evaluated that scheme against the two objectives of improving access to venture capital for small, young and innovative enterprises and of incentivising existing business angels and especially virgin business angels to invest and increase their investments in the target enterprises.

(34) The achievement of those objectives of the existing aid scheme has been assessed on the basis of four performance indicators:

(a) performance indicator 1: 1000 companies per year and 1200 investors per year will make use of aid under the existing aid scheme;

(b) performance indicator 2: at least 25% of participating companies should see an improvement in their financing situation. At least 10% should indicate that, without aid under the existing aid scheme, they would not otherwise have received private financing;

(c) performance indicator 3: at least 100 beneficiaries (eligible investors) per year should be virgin business angels;

([26]) Paragraph 126 of the Risk Finance Guidelines.

([27]) https://ftp.zew.de/pub/zew-docs/gutachten/ZEW_INVEST-Studie2022.pdf

([28]) ”Evaluation des Förderprogramms „INVEST – Zuschuss für Wagniskapital“, Zentrum für Europäische Wirtschaftsforschung (ZEW) Mannheim, VDI Technologiezentrum Düsseldorf, Verband Vereine Creditreform e.V. Neuss, 16 June 2016.

([29]) “Abschlussbericht Evaluierung des Förderprogrammes „INVEST - Zuschuss für Wagniskapital“, ExperConsult Unternehmensberatung GmbH & Co. KG, 15 November 2019.

(d) performance indicator 4: already active investors are expected to increase their investment by at least 25% on average by participating in the existing aid scheme.

(35) As regards performance indicator 1, the ex ante assessment states that the number of investors and companies supported under the existing aid scheme has steadily risen over the duration of the existing aid scheme. However, performance indicator 1 has only been partially reached in that the target of 1 200 supported investors per year has been reached only since 2019, while the target of 1000 supported companies per year has not yet been reached. Performance indicator 1 is thus partially fulfilled.

(36) As regards performance indicator 2, the ex ante assessment states that more than 25% of the participating companies have seen an improvement in their financing situation. However, only 7% of companies supported under the existing aid scheme reported that they would not have received financing without that support. Performance indicator 2 is thus partially fulfilled.

(37) As regards performance indicator 3, the ex ante assessment states that on average, more than 160 investors supported under the existing aid scheme per year were inexperienced investors. Performance indicator 3 is thus fulfilled.

(38) As regards performance indicator 4, the ex ante assessment states that already active investors have increased their investments by more than 27% when they received aid under the existing aid scheme. Performance indicator 4 is thus fulfilled.

(39) The ex ante assessment recommends a partial amendment of the performance indicators for future evaluations of the measure. This amendment is meant to focus on ensuring a sustainable impact and efficient use of funding, rather than on the demand for support under the measure. Performance indicator 1 will therefore be abandoned. Performance indicators 2 and 3 will remain unchanged. Performance indicator 4 will be changed to require an increase of investment by more than 50%, which is in line with the current estimated mobilisation effect (see recital (49))

2.4.1. Access-to-finance problem

(40) The ex ante assessment reviews the academic literature and other studies on market failure in the form of asymmetric information afflicting the eligible companies ([30]). The academic literature and studies cited in the ex ante assessment ([31]) show that access-to-finance problems are particularly acute for small, young and innovative companies. The ex ante assessment has also conducted an econometric analysis to assess whether the eligibility criteria under the existing aid scheme have been effective in identifying companies that have a large funding gap and that are particularly afflicted by a market failure. This analysis confirmed that those eligibility criteria are effective in channelling aid to

([30]) Market failures related to asymmetric information are matching problems, adverse selection, moral hazard, and hold-up problems.

([31]) See sections 2.4.1 and 3.1 of the ex ante assessment.

companies that are particularly afflicted by a market failure and that demonstrate a large funding gap. While some anecdotal evidence points to specific sub-sectors of companies that may be particularly afflicted by a market failure, the ex ante assessment states that the current approach of defining eligible sectors and company-specific innovation criteria (see footnote 24 of recital (28)) is the most appropriate approach. The ex ante assessment furthermore notes the difficulty to estimate a funding gap.

(41) The ex ante assessment explains the importance of start-ups for economic growth, noting that in the last years the number of start-ups has been declining, especially in the high-technology sector. Starts-up are reliant on external financing, mainly in the form of venture capital (VC). The ex ante assessment has evaluated a series of studies showing that VC financing is of great importance for the economic growth, but that VC financing only accounts for a small share of external financing of start-ups ([32]).

(42) The ex ante assessment states that the risk capital market in Germany has grown in terms of invested amounts, but that the number of deals has decreased. Compared to other Member States, Germany occupies a middle position in terms of VC investment as percentage of gross domestic products ('GDP') ([33]). The relatively modest level of VC investment in Germany should be seen also in the global context, considering that overall, the Union VC market is much less developed than the VC market in the United States of America. Also, comparing the number of investments in the seed or start-up phase of companies, the German authorities note that the German markets lags significantly behind the market of the United Kingdom of Great Britain and Northern Ireland ('UK') (in 2019, there were 919 VC investments into start-ups in the UK compared to 407 investments in Germany).

(43) As regards the development of the business angel market, the ex ante assessment has shown that the number of private investors has increased since 2013. In addition, there is a significant increase in the average amount invested per private investor (from EUR 101 000 in 2013 to EUR 358 000 in 2019), which is mainly related to the overall increase in the valuation of companies. The total financing volume has increased significantly as well (from EUR 663 million in 2013 to EUR 2.5 billion in 2019). However, the German authorities note that the business angel investment as percentage of GDP in Germany is significantly below the Union average. A different study ([34]) has found positive evidence of a positive development of the business angel market in terms of professionalisation and higher degree of collaboration among business angels, but also that the number of business angels has stagnated. Business angels are taking a central role in seed financing. Evidence also shows that companies benefitting from business angel investment exhibit a better economic performance (they grow faster, fail less often, have better access to finance, create more employment).

([32]) See section 2.4.1 of the ex ante assessment.

([33]) See section 2.4.1 of the ex ante assessment.

([34]) See section 2.4.1 of the ex ante assessment.

(44) The ex ante assessment has also compared the German and UK business angel market, on the grounds that the economies are of similar size and that their high-technology sectors are of similar importance in the global market. The ex ante assessment notes that the German market is still significantly underdeveloped in comparison to the UK. For instance, the publicly known investment volume by business angels reached EUR 153 million in the UK (with estimates of up to EUR 1.18 billion accounting for all business angels), while business angel investment in Germany reached only EUR 82 million.

2.4.2. Incentive effect

(45) The ex ante assessment estimated the effect of the grants under the existing aid measure on the investment decision of the business angel. It identified two potential effects associated with the grants:

(a) a crowding-out (dead-weight) effect, which occurs if an investor pockets the acquisition grant as its own profits and does not increase his/her investment;

(b) a leverage (multiplier) effect, which occurs if the grant leads to an investment in companies that is increased by more than the grant amount.

(46) The ex ante assessment has shown that ca. 20% of investors supported under the existing aid scheme would not have invested without the support. Such investment is fully counted as leveraging the grants and thus constitutes the most significant driver of the leverage effect of the existing aid scheme.

(47) The ex ante assessment has shown further that ca. 27% of investors supported under the existing aid scheme have increased their investment by the amount of the grant (i.e. zero crowding out effect and leverage effect of zero) and that almost 20% of investors have increased their investment by an amount that is 7% higher than the acquisition grant (i.e. zero crowding out effect and a positive leverage effect for these investors).

(48) The ex ante assessment reveals that there are crowding out effects for investors who would have invested also in the absence of the measure. The evidence is rather heterogeneous in that survey respondents have both reported low and high crowding effects. The INVEST 2019 evaluation (see footnote 29 of recital (32)) has found that 44% of investors did not change their investment amount as a result of support under the existing aid scheme, which means a full deadweight effect for these investors (on the other hand, 56% of investors indicated that the existing aid scheme had a positive impact on their investment decision).

(49) As an aggregate effect, the ex ante assessment estimates a net positive mobilisation effect of 50%, i.e. each EUR of grants under the existing aid scheme has led to EUR 1.5 investments in investee companies. Therefore, on average, investors have changed their behaviour, by either increasing financing amounts to a given investee company or by making investments in companies in which they would have not have invested otherwise.

(50) Additional evidence on a positive mobilisation effect stems from a ZEW study (Berger and Gottschalk, 2021) ([35]), which finds that for small, young and innovative enterprises, (i.e. eligible undertakings under the existing aid scheme) both the likelihood of business angel funding and the average volume of funding, has increased after the launch of the existing aid scheme, compared to small, young and innovative companies which are not supported by that scheme and which received equity capital from external investors. Concretely, the study shows that the probability of receiving equity capital has increased by an average of 37% for companies in eligible sectors through the existing aid scheme and that, on average, beneficiaries of aid under that scheme received a 55% to 61% higher financing amounts than comparable small, young and innovative companies that did not benefit from such support.

(51) The ex ante assessment has also shown that deadweight effects are more likely for investors investing larger amounts (i.e. that the mobilisation effects of the existing aid scheme arise in particular from smaller investment amounts).

(52) According to a behavioural analysis conducted for the ex ante assessment, exit grants have, on average, the same incentive effect as the acquisition grants. The ex ante assessment has also shown that virgin business angels are more strongly incentivised by a higher acquisition grant than experienced business angels. The German authorities explain that there is not yet sufficient data on exit grants available to assess the effect of the exit grants empirically ([36]).

2.4.3. Mobilisation of business angels

(53) The ex ante assessment has revealed that ca. 41% of investors supported under the existing aid scheme were inexperienced business angels, and that 30% of those inexperienced business angels stayed in the market and made investments in at least one further company. Furthermore, the number of inexperienced business angels supported under the existing aid scheme has increased continuously in recent years. However, in terms of invested amounts, the share of inexperienced business angels has decreased (due to also a bigger increase of other business angel investments).

(54) Further, the ex ante assessment has shown that, overall, there are still much fewer private investors in Germany than in the UK. It is also demonstrated that the mobilisation effect is higher for inexperienced business angels than for experienced business angels. As a result, the German authorities introduced the INVEST budget (see recitals (22) to (24)) and a maximum investment amount per investee company (see recital (18)) so that the measure focuses more on providing aid to inexperienced rather than experienced business angels. The evaluators suggest that the financial willingness of experienced investors is increasingly squeezed and that the measure can no longer increase investment levels among experienced business angels.

([35]) See section 3.1.2 of the ex ante assessment.

([36]) By October 2021, the exit grant had been granted only to 9 investors, which means that a robust empirical assessment is not yet possible.

2.4.4. *Long-term impact*

(55) The ex ante assessment has also assessed a number of indicators with the objective to identify the long-term impact on the investee companies supported under the existing aid scheme. Those parameters include survival rates, employment growth, rating, follow-on investment. The ex ante assessment has shown that investee companies supported under the existing aid scheme achieve, on average, good scores on all these parameters.

2.4.5. *Evidence on innovation activities*

(56) The ex ante assessment has also evaluated whether the indicators of the INVEST guidelines are suited to identify innovative companies. The assessment shows that the share of innovative companies is much higher in sectors eligible for support under the existing aid scheme than in other sectors (53% vs 32%). Out of the total number of companies receiving VC investments, the share of innovative companies in those eligible sectors is significantly higher when compared to other sectors (90% vs 65%). Further, within those eligible sectors, investee companies supported under the existing aid scheme are much more likely to be innovative (96%) than non- supported companies. It is also shown, once more, that the share of companies with difficulties in accessing finance is higher in the sectors eligible for support under the existing aid scheme than in other sectors.

(57) Overall, the German authorities conclude that the selection criteria as regards innovative companies are effective in channelling aid under the existing aid scheme to innovative companies afflicted by an access-to-finance problem. ([37])

(58) As regards the use of convertible debt as an eligible risk finance instrument, the ex ante assessment has shown that such debt has been increasingly used, accounting for 15% of investments supported under the existing aid scheme in 2017 and 41% in 2021. It has also shown that convertible debt is predominately used for riskier and younger companies. The ex ante assessment refers also to the literature and interviews pointing to the fact that investors appreciate the flexibility of convertible bonds (interest rates adapted to risk, evaluation of company at time of conversion), implying that very young and high-risk companies face lower costs and obtain higher financing amounts when issuing convertible debt as opposed to ordinary shares. The German authorities thus consider that convertible debt should be treated in the same way as ordinary shares to ensure that especially young and high-risk companies are not disadvantaged.

(59) Finally, the ex ante assessment has shown that companies supported under the existing aid scheme tend to exhibit higher growth rates than comparable companies, in terms of sector and innovation activities, that have not received such support.

([37]) The German authorities have contemplated to introduce more company-specific selection criteria for innovative companies (e.g. patents, support by research programmes, individual innovation awards). However, the higher administrative costs of such a targeted approach and the satisfactory performance of the current criteria convinced the German authorities to leave the sectoral criteria unchanged.

(60) The German authorities deem that the acquisition and exit grants under the scheme are the most efficient instrument to improve access to finance for the eligible undertakings. Specifically, the acquisition and exit grants are the optimal policy instrument to stimulate additional investment by business angels, who are independent investors who tend to invest smaller amounts and bear the risk of their investment.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

(61) For a measure to constitute State 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, the measure must be liable to affect trade between Member States. Third, it must confer a selective advantage on its recipient. Fourth, it must distort or threaten to distort competition.

(62) The measure has its legal basis in various provisions of German laws and guidelines (recital (10)). It will be granted by BAFA, on behalf of the BMWK (recital (9)). It is thus imputable to the State.

(63) By providing for grants and fiscal incentives, described in section 2.3, the State provides financing from the State budget and foregoes capital gains tax revenues, to which it would otherwise be entitled in the absence of the measure. The measure is thus financed from State resources.

(64) According to the Risk Finance Guidelines, the Commission has to verify the existence of aid at both the level of the investors and at the level of the eligible undertakings (investees).

(65) As regards aid to investors and aid to the eligible undertakings, the Commission notes that the assessment in recitals (22) to (29) of the 2016 Decision is still valid.

(66) In conclusion, the Commission considers the measure to constitute State aid within the meaning of Article 107(1) TFEU to investors who are natural persons, in so far as they are undertakings, as well as to the undertakings benefitting from the measure.

3.2. Lawfulness of the aid

(67) By notifying the measure before putting it into effect (recital (11)), the German authorities have respected the notification and standstill obligations laid down in Article 108(3) TFEU and the conditions mentioned in point 31 of the Risk Finance Guidelines.

3.3. Compatibility assessment of the aid

(68) Since the measure constitutes State aid, the Commission must examine whether that aid is compatible with the internal market. The Commission notes that the

measure does not fall entirely within the scope of Article 21(3) of Commission Regulation (EU) No 651/2014 ([38]) (the 'GBER'), since that provision only covers the granting of risk finance aid in the form of fiscal incentives to private investors that are exclusively natural persons ([39]). The Commission will therefore examine whether the measure, given that it falls outside the scope of the GBER due to its design parameters (see paragraph 33(d) of the Risk Finance Guidelines), may be deemed compatible with the internal market.

(69) Article 107(3)(c) TFEU provides that State aid that facilitates the development of certain economic activities may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(70) The Risk Finance Guidelines outline how the Commission will apply Article 107(3)(c) TFEU with regard to aid measures that qualify as risk finance measures.

(71) The measure aims at providing acquisition and exit grants to private investors for leveraging more private capital into the risk capital market. The measure thus constitutes a risk finance measure, and has to be assessed in accordance with the Risk Finance Guidelines.

(72) Paragraph 23 of the Risk Finance Guidelines provides that aid to large enterprises is, as a rule, not covered by those Guidelines. That requirement is met, as the measure provides that eligible undertakings are only small enterprises (see recital (28)). In addition, measure is in line with paragraph 24 of the Risk Finance Guidelines, which excludes companies listed on the official list of a regulated market from their scope. That requirement is met (see recital (28)).

(73) Further, paragraph 25 of the Risk Finance Guidelines states that any risk finance aid measure that does not involve private investors will not be considered compatible with the internal market under those Guidelines, while paragraph 26 excludes from the scope of those Guidelines risk finance aid where private investors do not undertake any appreciable risk, and/or where the benefits flow entirely to the private investors. Under the measure, private investors will have to finance the investment from their own resources and are exposed to the risk of poor performance or capital loss on their investment. Although the acquisition and exit grants improve performance of the investment, investors remain – in a meaningful manner - exposed to the future performance of their investments both on the upside and on the downside. Therefore, the measure meets the requirements of paragraphs 25 and 26 of the Risk Finance Guidelines.

(74) In addition, paragraph 27 of the Risk Finance Guidelines provides that risk finance aid covered by those Guidelines may not be used to support buy-outs (within the meaning of paragraph 35(2) of those Guidelines). That requirement is met, since the eligible shares must be newly issued (see recital (15)).

([38]) 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).

([39]) Article 2(73) of the GBER defines a 'natural person', for the purposes of Articles 21 and 23 thereof, as 'a person other than a legal entity who is not an undertaking for the purposes of Article 107(1) of the Treaty'.

(75) Further, paragraph 28 of the Risk Finance Guidelines states that risk finance aid will not be considered compatible with the internal market under those Guidelines if awarded to: (a) undertakings in difficulty, or (b) undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market. Those requirements are met (see recital (28)).

(76) Paragraph 29 of the Risk Finance Guidelines excludes from the scope of application of the Guidelines, aid to export-related activities towards third countries or Member States. That requirement is met (see recital (7)).

(77) Under the Risk Finance Guidelines, a series of conditions laid down in their section 3 has to be verified by the Commission and if it can be ascertained that the aid is in line with all of them, the Commission can declare it compatible with the internal market, as analysed in recitals (78) to (136).

3.3.1. The aid facilitates the development of an economic activity

3.3.1.1. Identification of the supported activity (section 3.1.1 of the Risk Finance Guidelines)

(78) As indicated in paragraph 42 of the Risk Finance Guidelines, in most cases risk finance aid measures cover companies from a wide range of economic sectors, ensuring that certain SMEs and mid-caps have access to the necessary amount and form of finance to perform or further develop their respective economic activities.

(79) Investee undertakings eligible for aid under the measure are small enterprises, are young, i.e. not older than seven years and are active in an innovative sector or can demonstrate their innovativeness by other means (see recital (28) and footnote 24). The Commission notes that the broadening of the legal forms of eligible investee undertakings (see recital (30)) has no impact on the assessment. The Commission considers that the activity supported by the measure is identified.

(80) The Commission notes that the scope of eligible undertakings is narrower than the one laid down in Article 21 of the GBER.

3.3.1.2. Incentive effect (section 3.1.2 of the Risk Finance Guidelines)

(81) Paragraphs 43 and 44 of the Risk Finance Guidelines specify that '*aid can only be found compatible with the internal market if it has an incentive effect ... [that] induces the aid beneficiary to change its behaviour by undertaking activities which it would not carry out without the aid or would carry out in a more restrictive manner due to the existence of a market failure.'* Furthermore, paragraph 45 of the Risk Finance Guidelines specifies that *'A risk finance measure is considered to have an incentive effect if it mobilises investments from market sources so that the total financing provided to the eligible undertakings exceeds the budget of the measure'.*

(82) The Commission notes that by improving the investment returns for the investors via the acquisition and exit grants, the measure encourages investors to make risk finance investments which they would not have made without the incentives. In

this respect, acquisitions of shares and signing of convertible loans contracts that took place before the introduction of an aid application are ineligible (recitals (16) and (17)). At the same time, the measure still ensures that investors are sufficiently exposed to the future performance of their investments, thereby encouraging them to make efforts to find the investments with the best risk/return characteristics.

(83) In the ex ante assessment, the German authorities have estimated that the existing aid scheme has had a net positive mobilisation effect of 50%, i.e. each EUR of grants under that scheme has led to EUR 1.5 investments in investee companies (see recital (49)), meaning that the total financing provided to the eligible undertakings has exceeded the budget of the existing aid scheme by 50%. The Commission thus considers that the evidence demonstrates an incentive effect on an overall basis.

(84) While a dead-weight effect has occurred for, according to one study ([40]), ca. 40% of the investors (see recital (48)), a share of investors (20%) would not have invested without the aid under the existing aid scheme (see recital (46)), and a share of companies have received higher financing amounts (27%) (see recital (47)). Estimates also show that the measure increases the probability of the target undertakings receiving risk capital by 37% (see recital (50)). It has been also found that companies supported under the existing aid scheme have received on average 55% to 61% higher financing amounts than comparable small, young and innovative companies that did not benefit from such support (see recital (50)).

(85) The ex ante assessment has also shown that the incentive effect of grants under the existing aid scheme has been larger for smaller investment amounts and decreases as the amount of financing increases (see recital (51)).

(86) The ex ante assessment has shown the highest mobilisation effects are expected to stem from inexperienced business angels (see recital (54)).

(87) The Commission notes that the ex ante assessment has also addressed the effect of acquisition and exit grants, showing that exit grants have a positive incentive effect especially on inexperienced business angels (see recital (52)). The Commission takes note of the explanation that there is not yet sufficient quantitative data available to assess the empirical effect of the exit grant.

(88) The German authorities amended several parameters of the existing aid scheme (see recital (6)). The Commission notes that these amendments have the potential to strengthen the incentive effect (see section 3.3.2.3). In particular, the Commission notes that the introduction of the INVEST budget (see recital (22)) and the maximum investment amount (see recital (18)) have the potential to reduce dead-weight effects, by channelling aid to inexperienced business angels, who tend to invest smaller amounts and for whom the mobilisation effect tends to be higher.

([40]) See section 2.3.2 of the ex ante assessment.

(89) Given the evidence of an incentive effect on an overall basis and the amendments of the measure to reduce dead-weight effects at the level of individual investors, the Commission concludes that the requirement that the measure has an incentive effect is respected, in line with section 3.1.2 of the Risk Finance Guidelines.

3.3.2. The aid does not adversely affect trading conditions to an extent contrary to the common interest

(90) In accordance with paragraphs 50 to 52 of the Risk Finance Guidelines, the Commission will assess whether the positive effects of the aid outweigh its negative effects on competition and trading conditions. The Risk Finance Guidelines clarify that '*in order to establish if the distortive effects of the aid are limited to the minimum, the Commission will verify whether the aid is necessary* (see section 3.2.2), *appropriate* (see section 3.2.3), *and proportionate* (see section 3.2.4). *To enable it to carry out that verification, the Commission requires that Member States submit evidence in the form of an ex ante assessment as described in Section 3.2.1'*. The Risk Finance Guidelines further clarify, in paragraph 126 that '*If the Member State proposes to extend a measure to a total duration of more than ten years [...], it must carry out a new ex ante assessment, together with an evaluation of the effectiveness of the scheme during the entire period of its implementation*'.

3.3.2.1. Need for State intervention (section 3.2.2 of the Risk Finance Guidelines)

(91) Paragraph 68 of the Risk Finance Guidelines acknowledges that State intervention to compensate for the effects of market failure is justified, and recognises the presence of a market failure, particularly, with regard to access to finance for '*SMEs in their early stages which, despite their growth prospects, are unable to demonstrate their credit worthiness or the soundness of their business plans to investors*'. In paragraph 89, the Risk Finance Guidelines state that '*[W]hile the GBER covers fiscal incentives granted to independent private investors who are natural persons providing risk finance directly or indirectly to eligible SMEs, Member States may find it appropriate to put in place measures applying similar incentives to corporate investors. The difference lies in the fact that corporate investors are undertakings within the meaning of Article 107 of the Treaty.*'

(92) The Commission notes that the measure explicitly targets small, young, innovative companies (see recital (28)), i.e. situations where the demonstrated market failure, in the form of a funding gap, resulting from asymmetry of information, is more severe. The ex ante assessment has also shown that the existing aid scheme has been effective in channelling funds towards small, young and innovative companies, thus channelling aid to companies particularly afflicted by market failures (see recitals (56) and (57)). In this regard, the Commission considers that the inclusion of convertible debt under the measure is justified as it steers investment towards riskier and younger companies (see recital (58)).

(93) The Commission notes that the evidence provided by the ex ante assessment's review of the academic literature and an econometric analysis of the existing measure demonstrate that small, young and innovative companies are afflicted by a market failure (see recital (40)).

(94) The Commission notes that VC financing has the potential to address external financing needs of these companies and contribute to their economic growth, as set out in the ex ante assessment (see recital (41)). While noting positive developments in the VC and, more narrowly, in the business angel market, the ex ante assessment provides evidence that the VC market lags behind the US and UK markets (see recital (42)). It also notes that the German business angel market is, as percentage of GDP, much smaller than the average Union business angel market (see recital (43)) and, in nominal terms, much smaller than the UK business angel market (see recital (44)).

(95) The Commission concludes that the existence of a specific market failure, which the measure aims to address, is sufficiently demonstrated.

3.3.2.2. Appropriateness of the aid (section 3.2.3 of the Risk Finance Guidelines)

(96) Fiscal incentives must fulfil certain conditions in order for the Commission to determine that they are the appropriate measures to achieve the intended objective of the aid, in accordance with paragraphs 91 to 95 and 123 to 128 of the Risk Finance Guidelines. The ex ante assessment must demonstrate such appropriateness, in accordance with paragraph 58 of the Risk Finance Guidelines.

(97) The Commission holds that the assessment provided in recitals (54) to (58) of the 2016 Decision as regards the nature of the measure is still valid. For the assessment of the measure under the Risk Finance Guidelines, the acquisition grant can be considered as an equivalent to an income tax relief, and the exit grant as an equivalent to a capital gains tax relief (see recital (55) of the 2016 Decision). Thus, the relevant provisions of the Risk Finance Guidelines for the assessment of appropriateness, as listed in section 3.2.3.3 of those Guidelines have to be applied *mutatis mutandis*. The Commission thus considers that acquisition grants and exit grants are appropriate instruments (see recitals (57) and (58) of the 2016 Decision).

(98) The German authorities have indicated that the measure aims at increasing the number and activities of business angels and the volume of their investments in small, young and innovative companies, in order to compensate for the insufficient provision of risk finance offered by the market (see recital (8)). The ex ante assessment provided by Germany shows that: (1) that State intervention is particularly necessary in the early stages of company development, (2) that the negative effects of the market failure in that risk capital market segment can be primarily alleviated by increasing the number of business angels (see recital (43)), (3) that their number can only be increased by measures reducing the level of risks they have to bear (see recital (60)), and (4) that a large number of risk capital investments in rather small volumes constitutes, thanks to its overall broad effect and lower dead-weight effects, the optimal form of public intervention (see recital (51)).

(99) With regard to the acquisition grant, the Commission considers that it can be considered equivalent to income tax relief for the purposes of the Risk Finance Guidelines, and that the measure contains specific limits as to the percentage of the invested amount that the investor can claim, in terms of limits per investee undertakings (see recital (16)) and over the duration of the scheme (see recital

(22)). With regard to the exit grant (see recital (21)), the Commission considers that it can be considered equivalent to tax relief on capital gains. The Risk Finance Guidelines set no limits on tax relief on capital gains, but the Commission notes that the exit grant is limited as a share of the profits and as regards the invested amount (see recital (21)). In conclusion, the Commission finds that both the acquisition and the exit grant can be considered appropriate and that the measure thus meets the criteria laid down in paragraph 124 of the Risk Finance Guidelines.

(100) The German authorities explain that the acquisition and exit grant are the optimal policy instrument to stimulate investment by business angels into the eligible companies (see recital (60)). Given that the investors have to choose independently their investee undertaking and that they bear the risk of their equity investment, the Commission accepts that State aid in the form of acquisition and exit grants is an appropriate instrument, compared to alternative State aid instruments and policy instruments other than State aid. Paragraphs 93 and 94 of the Risk Finance Guidelines are therefore met.

(101) The German authorities have demonstrated that the selection of the eligible undertakings is based on a well-structured set of investment requirements (see recital (28) and footnote 24) and have committed to making the details of the measure public through adequate publicity (see recital (13)), in accordance with paragraph 125 of the Risk Finance Guidelines.

(102) The measure – in as far as the acquisition grants are concerned - will be in effect for applications introduced until 31 December 2026. The Commission notes that the measure constitutes a prolongation (by another four years) and amendment of the existing aid scheme (see recital (6)), leading that the scheme, as amended, to be in place for more than 10 years. The German authorities have provided a new ex ante assessment for the measure, together with an evaluation of the effectiveness of the existing aid scheme (recital (5)). Therefore, the measure meets the criteria laid down in paragraph 126 of the Risk Finance Guidelines.

(103) The Commission takes into account the submission of the German authorities that there are no other relevant fiscal incentives with the same objectives that currently exist in Germany (see recital (4)), in accordance with paragraph 127 of the Risk Finance Guidelines.

(104) The grants under the measure are open to all investors fulfilling the required criteria, without discrimination as to their place of establishment (see recital (25)). The German authorities will ensure that the publication of the measure includes, as relevant information, the scope and technical parameters of the measure (see recital (13)). The Commission considers that the criteria of paragraph 128 of the Risk Finance Guidelines are met.

(105) The Commission furthermore notes that under the measure the State plays no role in the selection of the target undertakings.

(106) Based on the above, the Commission concludes that the measure is an appropriate instrument compared to other policy instruments that may or may not involve aid.

3.3.2.3. Proportionality of the aid (section 3.2.4 of the Risk Finance Guidelines)

(107) In accordance with paragraph 132 of the Risk Finance Guidelines, '*State aid must be proportionate to the market failure which it is intended to address in order to achieve the relevant policy objectives … [and] the aid must be limited to the strict minimum necessary to attract funding from the market to overcome the market failure […] without generating undue advantages*'.

(108) Further, in accordance with paragraphs 151 to 153 of the Risk Finance Guidelines, applicable to the Commission's analysis of proportionality of fiscal incentives, the Commission notes that the measure has the following features:

(a) the total financing amount per investee undertaking is subject to a limit of EUR 15 million (see recital (20)), which is in line with paragraph 151 of the Risk Finance Guidelines;

(b) the acquisition and exit grants are to be provided to eligible investors who make only equity investments through the purchase of full-risk, ordinary shares, which are newly issued by an eligible undertaking and are held for at least three years (see recitals (15) and (16)). If an investor invests in convertible debt, the acquisition grant is only granted, and the minimum holding period starts, at the moment of conversion of the debt into such shares (see recital (17)). The Commission further considers that the inclusion of convertible debt under the measure is justified as it steers investment towards riskier and younger companies (see recital (58)). The measure thus complies with paragraph 152 of the Risk Finance Guidelines;

(c) these grants can only be available to investors who are independent from the company invested in (see recital (25)), which is also in line with paragraph 152 of the Risk Finance Guidelines;

(d) the measure limits the acquisition grant to 25% of the invested amount (see recital (16)) and the exit grant to 25% of the profits realised in the sale of the shares (see recital (21)). A limit on the combined amount of acquisition and exit grant of 50% of the investment amount applies as well (recital (21)). Those limits are in line with paragraphs 153 and 155 of the Risk Finance Guidelines. The limits to the acquisition and exit grants imply that the investors bear sufficient risk and are therefore expected to screen the investee undertakings and only invest in those undertakings which offer the most promising projects, thus instilling a commercial logic into the measure.

(109) The measure, apart from prolonging the existing aid scheme, includes amendments to that scheme, notably: (i) increasing the acquisition grants (see recital (16)), (ii) the introduction of a maximum amount per investee company (see recital (18)), (iii) the lowering of the cap on the exit grant to 25% of the investment amount (see recital (21)), and (iv) the introduction of an INVEST budget (see recital (22)).

(110) The Commission considers that the increase of the acquisition grant increases the amount of aid per investment. However, the Commission notes the objective of the German authorities to channel the support under the measure to inexperienced business angels, for which mobilisation effects are likely to be higher than for experienced angels (see recital (54)), given the still underdeveloped German business angel market (see recitals (43) and (44)). The Commission notes that the increase is justified against the objectives of the measure.

(111) The Commission notes that, at the same time, the introduction of a maximum amount per investee, the lowering of the cap on the exit grant to 25% of the investment amount and the introduction of an INVEST budget have the effect of reducing the overall aid that a single investor can receive under the measure and to incentivise investors to diversify their investment, increasing the likelihood that the business angels stay in the market. The Commission thus considers that these amendments mitigate any potential increase of aid stemming from the increase of the acquisition grant. Overall, the Commission considers that the amendments are justified by the objectives of the measure and the evidence collected in the ex ante assessment.

(112) The Commission notes that investments made under the measure are made by private investors without any direct participation of public investors (except for the fiscal benefit).

(113) In light of the foregoing, the Commission considers that the measure is proportionate.

3.3.2.4. Cumulation (section 3.2.4.4 of the Risk Finance Guidelines)

(114) As indicated in recital (14), the German authorities committed to respect the provisions on cumulation, specified in section 3.2.4.4 of the Risk Finance Guidelines.

3.3.3. Avoiding undue negative effects of risk finance aid on competition and trade (section 3.2.5 of the Risk Finance Guidelines)

(115) In accordance with paragraph 161 of the Risk Finance Guidelines, *'[F]or the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and must not outweigh the positive effects of the aid to an extent that would be contrary to the common interest*'.

3.3.3.1. Positive effects to be taken into account

(116) As explained in paragraph 162 of the Risk Finance Guidelines, '*the main positive effect that risk finance aid aims to bring about is to improve access to finance for the undertakings concerned*'.

(117) The Commission, in accordance with paragraphs 163 to 166 of the Risk Finance Guidelines, notes that the measure, by providing increased access to risk finance for small, young and innovative companies, supports undertakings that are active in innovative activities (see footnote 24 of recital (28)).

(118) The Commission also takes positive note of the fact that the investors must take into consideration Germany's Sustainable Development Strategy when choosing their investment target (see recital (7)).

(119) Germany has defined relevant performance indicators (see recital (34)) to assess whether the objectives (as set out in recital (8)) of the existing aid scheme have been met. The Commission notes that the performance indicators defined by the German authorities allowed the Commission to measure the effects of the aid with regard to the objectives pursued. The ex ante assessment also recommends amended performance indicators for a future evaluation (see recital (39)). Considering that the objective set by the German authorities is to increase access to risk finance for small, young and innovative enterprises and to mobilise investment by inexperienced business angels, the amended performance indicators are appropriately designed to demonstrate whether such small, young and innovative enterprises will have received better access to risk finance by virtue of the measure.

(120) The performance indicators have shown that the existing aid scheme has partly achieved the objectives in the period where it has been in force. The Commission notes the positive evolution since the introduction of that scheme, showing that the existing aid scheme has been effective.

(121) The indicators will also provide the Commission with sufficient data to assess, in the future, whether the measure, including the amendments referred to in recital (6), will have provided an incentive to inexperienced business angels to enter the market and increase investments to the eligible companies.

(122) The Commission considers that the prolongation of the measure until 31 December 2026 with a budget of EUR 183.72 million is adequate to meet the objective of the measure.

(123) The Commission concludes that the measure meets the criteria laid down in paragraphs 164 and 165 of the Risk Finance Guidelines.

3.3.3.2. Negative effects to be taken into account

(124) In accordance with paragraph 167 of the Risk Finance Guidelines, '*[T]he State aid measure must be designed in such a way that it limits distortions of competition and trade within the internal market. In the case of risk finance measures, the potential negative effects have to be assessed at each level where aid may be present*'.

(125) The Commission notes that the acquisition and exit grants do not reduce any other incentives for private investors to provide funding to eligible undertakings as they act in a complementary way to other potential financing incentives, nor do the grants eliminate the normal business risk of investments that investors would have undertaken even in its absence.

(126) Taking account of the demonstrated market failure, the Commission considers that it is unlikely that the acquisition and exit grants will result in the crowding out of private investors.

(a) It is not likely that private investors have less incentives to provide financing and that they prefer to wait for the State to provide aid to them, considering that the measure provides only limited incentives, both as regards its budget and the limits per investee undertaking.

(b) The eligible undertakings are small, young and innovative enterprises, for which the access to finance difficulty has been shown to be particularly acute (see recital (40)).

(c) Finally, venture capital investments (including business angel investment) accounts for only a small share of the external financing of start-ups (see recital (41)), i.e. there remain ample investment opportunities.

(127) The ex ante assessment has shown that the measure was, overall, effective in mobilising additional investment (see recital (49)), even though crowding out effects have occurred (see recital (48)). The Commission also notes that the measure introduces amendments to the existing aid scheme, which have the potential to reduce crowding out effects (see recitals (109) to (111)). Therefore, the measure meets the criteria laid down in paragraph 169 of the Risk Finance Guidelines.

(128) The Commission notes that the measure targets small, young and innovative undertakings that have a larger growth potential and for which the access-to-finance problem is more acute (see recitals (28) and (40)). The Commission takes note of the evidence that support under the existing aid scheme has been channelled to companies yielding higher growth rates along several economic parameters (see recital (59)). The measure is also open to undertakings in different sectors by accepting company-specific evidence of innovativeness, in addition to sector-based eligibly criteria (see recital (28)). The Commission thus considers that the risk of distortion of competition in product markets is minimal and that the provisions of paragraph 174 of the Risk Finance Guidelines are met.

(129) Therefore, the measure meets the criteria laid down section 3.2.5.2. on the ‘Negative effects to be taken into account’ of the Risk Finance Guidelines.

3.3.3.3. Balancing of the positive effects against the negative effects of the aid

(130) Paragraph 177 of the Risk Finance Guidelines requires the Commission to balance ‘*the identified negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the positive effects of the aid*’.

(131) The Commission notes that, as regards competition distortions at the level of the investors, the measure targets a well-defined market failure, which substantially reduces the risk of crowding out. Private investors are still incentivised to focus on the performance of their investments, the risk investment amounts per undertaking are not excessive, as there is a maximum percentage of the grants to be provided in relation to the invested amount, and the measure targets a specific sub-category of SMEs, namely small, young and innovative enterprises (as opposed to mid-caps and large undertakings).

(132) In addition, as regards competition distortions at the level of the target undertakings, the measure explicitly excludes undertakings in difficulty and focuses on young and innovative SMEs (recital (28)). The measure is thus reaching out to growth-oriented undertakings that are unable to attract an adequate level of financing from private resources but may become viable with risk finance aid. The nature and conditions of the acquisition and exit grants incentivises private investors to make a selection of the eligible undertaking they will invest in, based on a commercial logic, as they bear the biggest part of the risk of such investment.

(133) In light of the foregoing, the measure can be considered to be designed in such a way so as to limit the distortion to competition and minimise undue advantages and its positive effects may be considered to outweigh any potential negative effects on competition in the internal market.

3.3.4. Transparency (section 3.2.6 of the Risk Finance Guidelines)

(134) Paragraphs 179 to 184 of the Risk Finance Guidelines require for the Commission to ensure that the aid complies with its transparency requirement.

(135) As indicated in recital (13), Germany has committed to fulfil the transparency requirement specified in section 3.2.6 of the Risk Finance Guidelines.

(136) In light of all the foregoing, the Commission concludes that the measure fulfils the conditions set out in the Risk Finance Guidelines for a risk finance aid to be deemed compatible with the internal market.

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)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION