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Subject: State Aid SA.108068 (2023/N) – Germany
TCTF: Aid to support the transition to a net-zero economy

Excellency,

1. PROCEDURE

- (1) By electronic notification of 19 June 2023, Germany notified aid to support private investments in specific strategic goods needed for a transition to a net-zero economy (“*BKR-Bundesregelung Transformationstechnologien*”, the “measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”)¹. Germany submitted additional information on 23 and 27 June, and on 3, 10, 14 and 17 July 2023.
- (2) Germany exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), (“Temporary Crisis Framework”), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

Ihrer Exzellenz Frau Annalena BAERBOCK
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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Germany considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia, have economic repercussions on the entire internal market (“the current crisis”). The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. The current crisis, which caused serious disruptions in the supply of natural gas and electricity and significantly impacted electricity and gas prices, highlighted the EU’s and Germany’s dependence on fossil fuels. Additional investments in strategic goods for the transition towards a net-zero economy are required, particularly in the current global context where such investments are at risk of being diverted away from the European Economic Area (“EEA”).
- (4) The German authorities have thus decided to strongly promote the development of renewable energies to accelerate phasing out of fossil fuel use and reduce dependence towards third countries. However, the Union does not have sufficient industrial production capacity to meet the rapidly growing demand for technologies necessary for the transition towards a net-zero economy (“transformation technologies”), especially from domestic production. For example, there are major dependencies in the photovoltaic (“PV”) industry, where almost 90 % of PV cells are produced in Asia. The battery and wind power value chains are also highly dependent on and economically vulnerable to third countries. The necessary expansion of production capacity depends to a large extent on the international competitiveness of the sites, on which the Russian aggression against Ukraine has direct and indirect effects. Germany reminds that, as acknowledged by the Commission in points 30 and 84 of the Temporary Crisis and Transition Framework, there is a need to address the fossil fuel dependency as a major element exacerbating the current crisis and to accelerate the green transition. To that end, as acknowledged by the Commission ⁽³⁾, “*batteries, windmills, heatpumps, solar, electrolyzers, carbon capture and storage technologies*” are products that are “*key to meet the Commission’s climate neutrality goals*”. Thus, with the measure Germany intends to create the necessary ecosystem for accelerated investments into the value chain for the production of such products.
- (5) Germany confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

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

⁽³⁾ Communication from the Commission of 1.2.2023, A green deal industrial plan for the net-zero age, COM(2023) 62 final.

- (6) The compatibility assessment of the measure is based on Article 107(3), point (c), TFEU, in light of sections 1 and 2.8 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (7) The measure provides aid based on a scheme in the form of (i) direct grants; (ii) tax advantages; (iii) subsidised interest rates on new loans or (iv) guarantees on new loans. When the aid is granted in the form of guarantees, Germany confirms that the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted.

2.2. Legal basis

- (8) The legal basis for the measure is the draft act of the Federal Ministry for Economic Affairs and Climate Action “*Regelung zur vorübergehenden Gewährung von Beihilfen im Geltungsbereich der Bundesrepublik Deutschland auf der Grundlage des Befristeten Rahmens für staatliche Beihilfen zur Stützung der Wirtschaft infolge des Angriffs Russlands auf die Ukraine – Krisenbewältigung und Gestaltung des Wandels*” (the “draft legal basis”) ⁽⁴⁾. Pursuant to Article 5(1) of the draft legal basis, aid under the measure may be granted only following the notification of the Commission’s decision approving the measure.

2.3. Administration of the measure

- (9) The federal government of Germany and the *Länder* may administer the measure.

2.4. Budget and duration of the measure

- (10) The German authorities estimate the budget of the measure to be around EUR 3 billion. The measure is financed by the federal government and the *Länder*. In addition, the measure may be co-financed by the European Structural and Investment Funds (“ESIF”).
- (11) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2025 (see recital (8)).

2.5. Beneficiaries

- (12) Pursuant to Article 1(2) of the draft legal basis, aid can be granted to small and medium-sized enterprises (“SMEs”) ⁽⁵⁾ and large enterprises ⁽⁶⁾ in the following economic sectors and for the following investment projects:

⁽⁴⁾ “*Scheme for the temporary granting of aid within the territory of the Federal Republic of Germany under the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia*”.

⁽⁵⁾ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

- (i) the production of equipment needed for the transition to a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage (CCUS); or
 - (ii) the production of key components ⁽⁷⁾ designed and primarily used as direct input for the production of the equipment defined under (i); or
 - (iii) the production or recovery of related critical raw materials ⁽⁸⁾ necessary for the production of the equipment and key components defined in (i) and (ii) above.
- (13) However, undertakings in difficulty ⁽⁹⁾, credit institutions or other financial institutions are excluded as eligible final beneficiaries. Credit institutions or other financial institutions may however channel aid in form of loans and guarantees, as financial intermediaries, to the final beneficiaries.
- (14) Germany confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (15) Germany confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations ⁽¹⁰⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

⁽⁶⁾ As defined in Article 2, point 24, of Commission Regulation (EU) No 651/2014.

⁽⁷⁾ Key components for the production of batteries are anodes, cathodes (precursor cathode active material (pCAM)/cathode active material (CAM), separators, battery-grade (raw) materials, hydrofluoric acid, sulphuric acid, phosphoric acid, battery machinery and equipment, binders, coatings and additives. Key components for the production of solar panels are polysilicon, silicon crystals, wafers, crystal puller, dicing saws and diamond wires, (silver and aluminium) metallisation pastes for the manufacture of photovoltaic cells, solar cells, solar glass, laminar films, inverters. Key components for the production of wind turbines are monopiles (and other foundation structures), rotor hubs, rotor blades, rotor shafts, generators (including permanent magnets for wind power stations), transformers/converters. Key components for the production of heat pumps are heat exchangers (including fans), compressors, valve technology, refrigerants, inverters, electric motors (including permanent magnets). Key components for the production of electrolysers are anodes, cathodes, diaphragms, bipolar plates, heat exchangers, circulation pumps, hydrogen cooling, hydrogen purification. Key components for the production of equipment for carbon capture, usage and storage are air separation plants and compressors, liquefaction plants, sorption agents, membranes, porous materials for Pressure Swing Adsorption, fluidised bed reactors.

⁽⁸⁾ The draft legal basis refers to the EU list of critical raw materials - <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52020DC0474>.

⁽⁹⁾ As defined in Article 2, point 18, of Commission Regulation (EU) No 651/2014.

⁽¹⁰⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.6. Sectoral and regional scope of the measure

- (16) Pursuant to Article 1(2)(b) of the draft legal basis, the eligible types of investments are those mentioned in recital (12).
- (17) Pursuant to Article 1(2)(a) of the draft legal basis, the measure applies to the whole territory of Germany.

2.7. Basic elements of the measure

- (18) The purpose of the measure is to grant aid to build and develop productive capacity in strategic transformation technologies for specific types of private investments ⁽¹¹⁾ mentioned in recital (12).
- (19) Pursuant to Article 2(1) of the draft legal basis, only tangible and intangible assets required for the production or recovery of the goods listed in recital (12) may be eligible under the measure. Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).
- (20) Pursuant to Article 2(6) of the draft legal basis, works on the investment must start ⁽¹²⁾ only after the beneficiary has submitted the aid application, which will include the information required in Annex II of the Temporary Crisis and Transition Framework.
- (21) Pursuant to Article 2(3) of the draft legal basis, the aid intensity may not exceed 15 % of the eligible costs and the total aid amount cannot exceed EUR 150 million, in nominal value, per undertaking in Germany. However:
 - (a) pursuant to Article 2(4) of the draft legal basis, for investments in assisted areas designed in the regional aid map 2022-2027 for Germany ⁽¹³⁾ in accordance with Article 107(3), point (c), TFEU (“c” areas), the aid intensity may be increased to 20 % of the eligible costs and the total aid amount may not exceed EUR 200 million, in nominal value, per undertaking in Germany;
 - (b) pursuant to Article 2(5) of the draft legal basis, where the aid is granted in the form of tax advantages, loans or guarantees, the aid intensities may be increased by 5 percentage points. In addition, for investments made by small enterprises, the aid intensities may be increased by further

⁽¹¹⁾ Pursuant to footnote 7 of the draft legal basis, “private investments’ also include investments made by private law companies that are controlled by the State.”

⁽¹²⁾ “Start of works” means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

⁽¹³⁾ See Commission Decision C(2021) 9080 final of 15 December 2021 in case SA.64020 – Regional aid map for Germany (1 January 2022 – 31 December 2027) (OJ C 253, 1.07.2022, p. 1).

20 percentage points and, for investments made by medium-sized enterprises ⁽¹⁴⁾, by 10 percentage points.

- (22) Pursuant to Article 2(2) of the draft legal basis, where the guarantees or loans are channelled through credit institutions and other financial institutions acting as financial intermediaries, the conditions included in points 67(i) and 70(g) of the Temporary Crisis and Transition Framework are respected to ensure that the aid granted under this measure is passed on directly, to the largest extent possible, to the final beneficiaries. In addition, the nominal amount of the tax advantage or underlying new loan must not exceed the maximum aid intensity and the aid ceiling set out in recital (21).
- (23) Pursuant to Article 2(7) of the draft legal basis, the beneficiary must commit to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.
- (24) Pursuant to Article 2(8) of the draft legal basis, aid may not be granted to facilitate the relocation of the production activities ⁽¹⁵⁾ to another contracting state of the EEA Agreement. For this purpose, the beneficiary must confirm that, in the two years preceding the aid application, no relocation has taken place to the establishment in which the aided investment will be carried out and commit not to carry out such relocation for a period of two years after completion of the investment.
- (25) Pursuant to Article 2(8) of the draft legal basis, the German authorities confirm that the granting authority must verify the concrete risks that the investment will not be carried out in the EEA and that there is no risk of relocation within the EEA, as defined in recital (24).
- (26) Pursuant to Article 4(3) of the draft legal basis, the German authorities confirm that they must inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the nature and location of the investment supported on the basis of the information provided by the beneficiary in Annex II of the Temporary Crisis and Transition Framework.

2.8. Compliance with relevant provisions of Union law

- (27) The German authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

⁽¹⁴⁾ Within the meaning of Annex I to Commission Regulation (EU) No 651/2014.

⁽¹⁵⁾ Within the meaning of footnote 147 to the Temporary Crisis and Transition Framework.

2.9. Cumulation

- (28) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the ESIF. In any event, the German authorities confirm that the rules applicable under the ESIF will be respected.
- (29) The German authorities confirm that aid under the measure may be cumulated with aid under the COVID-19 Temporary Framework ⁽¹⁶⁾ or the Temporary Crisis Framework, for the same eligible costs. In such a case, Germany confirms that the respective cumulation rules of the above-mentioned frameworks are respected.
- (30) The German authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework provided the provisions in those specific sections are respected.
- (31) Pursuant to Article 3(2) of the draft legal basis, the German authorities confirm that aid granted under the measure can be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. In addition, pursuant to Article 3(4) of the draft legal basis, under no circumstances will the total aid amount exceed 100 % of the eligible costs.

2.10. Monitoring and reporting

- (32) The German authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 6 months from the moment of granting ⁽¹⁷⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (33) By notifying the measure before putting it into effect (recital (8)), the German authorities have respected their obligations under Article 108(3) TFEU.

⁽¹⁶⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

⁽¹⁷⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.

3.2. Existence of State aid

- (34) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (35) The measure is imputable to the State, since it is administered by public authorities in Germany (recital (9)) and it is based on the draft “*Scheme for the temporary granting of aid within the territory of the Federal Republic of Germany under the Temporary Framework for State aid measures to support the economy in response to Russia’s attack on Ukraine – Crisis management and management of change*” of the Federal Ministry for Economic Affairs and Climate Action (recital (8)). It is financed through State resources, since it is financed by the budget of the federal government or of the *Länder* (recital (10)).
- (36) The measure confers an advantage on its beneficiaries in the form of (i) direct grants; (ii) tax advantages; (iii) subsidised interest rates on new loans or (iv) guarantees on new loans, that would not be awarded on market terms (recital (7)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions and, to the extent the aid is provided in the form of tax advantages, the measure relieves those beneficiaries of costs which they would have had to bear under normal tax rules.
- (37) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely undertakings that engage in investments described in recital (16) and who also meet the criteria listed in recitals (12) to (15).
- (38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The German authorities do not contest that conclusion.

3.3. Compatibility

- (40) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (41) Pursuant to Article 107(3), point (c), TFEU, the Commission may declare compatible with the internal market “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.
- (42) The current crisis has demonstrated the urgent need to reduce dependency on imports of fossil fuels and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures to address the productive investment gap in sectors strategic for the transition

towards a net-zero economy in order to achieve the Union's climate targets. The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission's view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for a limited period of time if it contributes to accelerating the economic transition and addressing the productive investment gap in sectors strategic for the transition towards a net-zero economy by providing incentives for their fast deployment, also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA.

(43) The Commission considers that the measure is necessary, appropriate and proportionate to address the productive investment gap in strategic goods for the transition towards a net-zero economy in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU. In particular:

- The measure is aimed at investment projects with strategic importance for the transition towards a net-zero economy. The measure will support the following activities (recital (12)): production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage (CCUS) (recital (12)(i)); the production of key components designed and primarily used as direct input for the production of batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for CCUS (recital (ii)); the production or recovery of related critical raw materials necessary for the production of batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for CCUS and key components (recital (iii))). The measure therefore complies with point 85(a) of the Temporary Crisis and Transition Framework.
- The aid is granted under the measure on the basis of a scheme with an estimated budget (recital (10)). The measure therefore complies with point 85(b) of the Temporary Crisis and Transition Framework.
- Aid under the measure can be granted until 31 December 2025 (recital (11)). The measure therefore complies with point 85(c) of the Temporary Crisis and Transition Framework.
- The measure provides that beneficiaries must apply for the aid before the start of works and must provide the information required in Annex II of the Temporary Crisis and Transition Framework (recital (20)). The measure therefore complies with point 85(d) of the Temporary Crisis and Transition Framework.
- Aid under the measure will be granted in the form of (i) direct grants; (ii) tax advantages; (iii) interest rate subsidies on new loans or (iv) guarantees on new loans (recital (7)). The measure therefore complies with point 85(e) of the Temporary Crisis and Transition Framework.
- The measure introduces safeguards in relation to possible indirect aid in favour of credit institutions or other financial institutions to limit undue distortions to competition. Germany has confirmed that credit and financial institutions are excluded from the scope of the notified aid measure and cannot benefit from the aid. Where those institutions channel aid in form of loans and guarantees, the draft legal basis provides that

those institutions must, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (22)). The measure therefore complies with points 85(e), 67(i), and 70(g) of the Temporary Crisis and Transition Framework.

- The calculation of eligible costs as set out in recital (19) fulfils the requirements of point 85(f) of the Temporary Crisis and Transition Framework.
- The aid intensities and the overall aid amounts under the measure (recital (21)) correspond to the thresholds in point 85(g) of the Temporary Crisis and Transition Framework. In addition, the nominal amount of the tax advantage or the nominal amount of the underlying new loan (for either subsidised interest rates or guarantees) under the measure do not exceed the applicable aid intensity and overall aid amounts, in line with points 85(e), 85(g) and 85(h) of the Temporary Crisis and Transition Framework (recital (7)).
- Germany commits that beneficiaries under the measure will maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment, and to respect the additional conditions set in line with point 85(i) of the Temporary Crisis and Transition Framework (recital (23)). The measure therefore complies with point 85(i) of the Temporary Crisis and Transition Framework.
- Germany commits that before each individual grant of aid under the scheme, the granting authority will verify, on the basis of the information provided by the beneficiary, the concrete risks of the productive investment to be supported under the measure not taking place within the EEA and that there is no risk of relocation within the EEA (recital (25)). The measure therefore complies with point 85(j) of the Temporary Crisis and Transition Framework.
- Germany commits that beneficiaries under the measure will have to (i) confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place; and (ii) commit not to carry out such relocation up to a period of two years after completion of the investment (recital (24)). The measure therefore complies with point 85(k) of the Temporary Crisis and Transition Framework.
- Aid under the measure will not be granted to undertakings in difficulty (recital (13)). The measure therefore complies with point 85(l) of the Temporary Crisis and Transition Framework.
- Germany confirmed that aid under the measure may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules (recital (31)). Under no circumstances may the total aid amount exceed 100 % of the eligible costs (recital (31)). The measure therefore complies with point 85(m) of the Temporary Crisis and Transition Framework.
- Germany committed to inform the Commission, within 60 days from the moment of granting individual aid under the measure, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type

and location of the investment supported on the basis of the information provided by the beneficiary (recital (26)). The measure therefore complies with point 85(o) of the Temporary Crisis and Transition Framework.

- Germany committed that the mobilisation of guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (7)).
- (44) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ⁽¹⁸⁾.
- (45) The German authorities have confirmed that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law (recital (27)). In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.
- (46) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (47) The German authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (5)).
- (48) The German authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
- (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
 - (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
 - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (14)).
- (49) The German authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (32)). The German authorities further confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework (recital (30)), the Temporary Crisis Framework and the COVID-19 Temporary Framework and the cumulation rules in the relevant Regulations and applicable Communications are respected (recital (29)).

⁽¹⁸⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

- (50) The German authorities also confirm that the rules under the ESIF will be respected (recital (28)).
- (51) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure, which accelerates the economic transition and overcomes the current crisis, when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to Article 107(3), point (c), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

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