State aid: Commission approves German "umbrella" scheme to enable capital support to enterprises affected by coronavirus outbreak

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The European Commission has approved German plans to set up a scheme under which the German federal and regional authorities can invest through debt and equity instruments in enterprises affected by the coronavirus outbreak. The scheme was approved under the State aid Temporary Framework.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: "*This scheme will allow the mobilisation of capital support by the German Länder and the Federal Government to help companies weather this crisis. It ensures that the State is sufficiently remunerated for the risk taxpayers assume, that there are incentives for the State to exit again, and that the support comes with adequate conditions to limit distortions of competition. We continue to work closely with Member States to ensure that national support measures can be provided as quickly and effectively as possible to mitigate the economic impact of the coronavirus outbreak, in line with EU rules.*"

The German support measures

Germany notified to the Commission under the Temporary Framework an "umbrella" scheme allowing the German federal and regional authorities to provide capital support to enterprises that have been affected by the coronavirus outbreak.

Under the scheme, the support will take the form of (i) subordinated loans, and (ii) recapitalisation instruments, in particular equity instruments (i.e. acquisition of newly issued ordinary and preferred shares, or other forms of shareholding) and hybrid capital instruments (namely convertible bonds and silent participations). Individual measures will be limited to €250 million per beneficiary and according to German authorities the total provisional budget of the scheme is around €3.5 billion.

The scheme complements the support that companies can receive under the German Federal Economic Stabilisation Fund that the Commission approved on 8 July 2020, which is mostly targeted at large companies. Companies that receive aid under the Federal Economic Stabilisation Fund will not be eligible to receive aid under the scheme approved today. However, aid under this measure can be co-financed by the Federal Economic Stabilisation Fund.

The scheme includes several funds set up by various Länder, but does not include the Bavarian fund (*BayernFonds*) that the Commission approved separately on 20 August 2020.

The Commission found that the scheme notified by Germany is in line with the conditions set out in the Temporary Framework. In particular:

1. Aid in the form of **subordinated loans** will comply with the conditions applicable to recapitalisation measures, as only subordinated loans with a volume that exceeds the relevant limits in the Temporary Framework will be provided under the scheme.
2. With respect to **recapitalisation measures**, (i) support is available to companies if it is needed to maintain operations, no other appropriate solution is available, and it is in the common interest to intervene; (ii) support is limited to the amount necessary to ensure the viability of beneficiaries and does not go beyond restoring their capital structure before the coronavirus outbreak; (iii) the scheme provides an adequate remuneration for the State; (iv) the conditions of the measures incentivise beneficiaries and/or their owners to repay the support as early as possible (inter alia through progressive increases in remuneration, a dividend ban as well as a cap on the remuneration of management and a ban of bonus payments to management); (v) safeguards are in place to ensure that beneficiaries do not unduly benefit from the recapitalisation aid by the State to the detriment of fair competition in the Single Market, such as an acquisition ban to avoid aggressive commercial expansion; and (vi) aid to a company above the threshold of €250 million has to be notified separately to the Commission for an individual assessment.

Support can be granted until 30 September 2021. Finally, only companies that were not considered to be in difficulty already on 31 December 2019 are eligible for aid under this scheme, with a possible exception for micro or small enterprises that were already in difficulty on 31 December 2019.

The Commission concluded that the German scheme will contribute to managing the economic impact of the coronavirus outbreak in Germany. Furthermore, it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of Germany, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework.

On this basis, the Commission approved the scheme under EU State aid rules.

Background

The scheme, which was approved under the State aid Temporary Framework, complements the German Federal Economic Stabilisation Fund that was approved by the Commission on 8 July 2020 under case number SA.56814.

The Commission has adopted a Temporary Framework to enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the coronavirus outbreak. The Temporary Framework, as amended on 3 April, 8 May, 29 June 2020, and 13 October 2020 provides for the following types of aid, which can be granted by Member States:

(i) **Direct grants, equity injections, selective tax advantages and advance payments** of up to €100,000 to a company active in the primary agricultural sector, €120,000 to a company active in the fishery and aquaculture sector and €800,000 to a company active in all other sectors to address its urgent liquidity needs. Member States can also give, up to the nominal value of €800,000 per company zero-interest loans or guarantees on loans covering 100% of the risk, except in the primary agriculture sector and in the fishery and aquaculture sector, where the limits of €100,000 and €120,000 per company respectively, apply.

(ii) **State guarantees for loans taken by companies** to ensure banks keep providing loans to the customers who need them. These state guarantees can cover up to 90% of risk on loans to help businesses cover immediate working capital and investment needs.

(iii) **Subsidised public loans to companies (senior and subordinated debt)** with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.

(iv) **Safeguards for banks that channel State aid to the real economy** that such aid is considered as direct aid to the banks' customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.

(v) **Public short-term export credit insurance** for all countries, without the need for the Member State in question to demonstrate that the respective country is temporarily "non-marketable".

(vi) **Support for coronavirus related research and development (R&D)** to address the current health crisis in the form of direct grants, repayable advances or tax advantages. A bonus may be granted for cross-border cooperation projects between Member States.

(vii) **Support for the construction and upscaling of testing facilities** to develop and test products (including vaccines, ventilators and protective clothing) useful to tackle the coronavirus outbreak, up to first industrial deployment. This can take the form of direct grants, tax advantages, repayable advances and no-loss guarantees. Companies may benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid.

(viii) **Support for the production of products relevant to tackle the coronavirus outbreak** in the form of direct grants, tax advantages, repayable advances and no-loss guarantees. Companies may benefit from a bonus when their investment is supported by more than one Member State and when the investment is concluded within two months after the granting of the aid.

(ix) **Targeted support in the form of deferral of tax payments and/or suspensions of social security contributions** for those sectors, regions or for types of companies that are hit the hardest by the outbreak.

(x) **Targeted support in the form of wage subsidies for employees** for those companies in sectors or regions that have suffered most from the coronavirus outbreak, and would otherwise have had to lay off personnel.

(xi) **Targeted recapitalisation aid** to non-financial companies, if no other appropriate solution is available. Safeguards are in place to avoid undue distortions of competition in the Single Market: conditions on the necessity, appropriateness and size of intervention; conditions on the State's entry in the capital of companies and remuneration; conditions regarding the exit of the State from the capital of the companies concerned; conditions regarding governance including dividend ban and remuneration caps for senior management; prohibition of cross-subsidisation and acquisition ban and additional measures to limit competition distortions; transparency and reporting requirements.

(xii) **Support for uncovered fixed costs** for companies facing a decline in turnover during the eligible period of at least 30% compared to the same period of 2019 in the context of the coronavirus outbreak. The support will contribute to a part of the beneficiaries' fixed costs that are not covered by their revenues, up to a maximum amount of €3 million per undertaking.

The Temporary Framework enables Member States to combine all support measures with each other, except for loans and guarantees for the same loan and exceeding the thresholds foreseen by the Temporary Framework. It also enables Member States to combine all support measures granted under the Temporary Framework with existing possibilities to grant de minimis to a company of up to €25,000 over three fiscal years for companies active in the primary agricultural sector, €30,000 over three fiscal years for companies active in the fishery and aquaculture sector and €200,000 over three fiscal years for companies active in all other sectors. At the same time, Member States have to commit to avoid undue cumulation of support measures for the same companies to limit support to meet their actual needs.

Furthermore, the Temporary Framework complements the many other possibilities already available to Member States to mitigate the socio-economic impact of the coronavirus outbreak, in line with EU State aid rules. On 13 March 2020, the Commission adopted a Communication on a Coordinated economic response to the COVID-19 outbreak setting out these possibilities. For example, Member States can make generally applicable changes in favour of businesses (e.g. deferring taxes, or subsidising short-time work across all sectors), which fall outside State Aid rules. They can also grant compensation to companies for damage suffered due to and directly caused by the coronavirus outbreak.

The Temporary Framework will be in place until the end of June 2021. As solvency issues may materialise only at a later stage as this crisis evolves, for recapitalisation measures only the Commission has extended this period until the end of September 2021. With a view to ensuring legal certainty, the Commission will assess before those dates if it needs to be extended.

The non-confidential version of the decision will be made available under the case number SA.58504 in the State aid register on the Commission's competition website once any confidentiality issues have been resolved. New publications of State aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

More information on the Temporary Framework and other action the Commission has taken to address the economic impact of the coronavirus pandemic can be found here.

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