



EUROPEAN COMMISSION

Brussels, 30.12.2008
C(2008)9026 endgültig

Subject: **State aid N 661/2008 – Germany**
 KfW-run Special Programme 2009

Sir,

1. PROCEDURE

- (1) By electronic notification of 19 December 2008, Germany notified the KfW-run Special Programme 2009 ("KfW-Sonderprogramm 2009"). Additional information was transmitted on 23 December 2008.

2. DESCRIPTION

2.1. Objective of the aid scheme

- (2) Germany considers that the financial crisis starts affecting the real economy. The notified measure forms part of the German Federal policy package called "Securing Jobs by Reinforcing Growth" ("Beschäftigungssicherung durch Wachstumsstärkung") and aims at improving the access of firms to loans, thus compensating for the insufficient loan activity by private banks which resulted from the financial crisis.
- (3) The scheme is expressly based on Article 87(3)(b) ECT, as interpreted by Paragraph 4.4.2 of the Commission communication "Temporary framework for

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State aid measures to support access to finance in the current financial and economic crisis." (hereinafter referred to as the Temporary Framework)¹.

2.2. The nature and form of the aid

- (4) The aid will be provided in the form of subsidized public loans.

2.3. Legal basis

- (5) The legal basis for the scheme is the German law on the Kreditanstalt für Wiederaufbau², and the resolution of the German Federal Government of 5 November 2008 on the policy package called "Securing Jobs by Reinforcing Growth" ("Beschäftigungssicherung durch Wachstumsstärkung").

2.4. Administration of the scheme

- (6) The scheme is administered by the Kreditanstalt für Wiederaufbau on behalf of the German Federal Government. The 100% publicly owned Kreditanstalt für Wiederaufbau is a public development bank and the main loan arm of the German Federal authorities.

2.5. Budget and duration of the measure

- (7) Under the Sonderprogramme, a loan volume of € 15 billion is authorised. This loan volume amounts to some € 750 million in aid.
- (8) Under the scheme, firms may benefit from subsidized loan contracts concluded between 1 January 2009 and 31 December 2010. The applications by the beneficiary firms for the loans have to be introduced before 1 January 2010.

2.6. Beneficiaries

- (9) Normally, the access of the scheme is limited to firms/groups of linked undertakings with a turnover not exceeding € 500 million. However, in exceptional cases, larger undertakings can be admitted. Therefore, the beneficiaries of the scheme are SMEs and large firms of all sizes alike.
- (10) The German authorities confirmed that no loans will be granted to large firms which were, on 1 July 2008, firms in difficulty in the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty³, nor to SMEs which were on that date firms in difficulty within the

¹ Communication from the Commission, not yet published in the OJ. The temporary framework was adopted on 17 December 2008.

² "Gesetz über die KfW vom 5.11.1948 (WiGBl S. 123) in der Fassung vom 23.6.1969 (BGBl. I S. 579) zuletzt geändert durch die Neunte Zuständigkeitsanpassungsverordnung vom 31.10.2006 (BGBl. I S. 2427)"

³ OJ C 244, 1 October 2004, pg. 2-17.

meaning of Art. 1 (7) of the General Block Exemption Regulation⁴. SMEs are defined in accordance with annex I to the General Block Exemption Regulation.

2.7. Sectoral scope

- (11) The scheme applies to firms belonging to the professions ("freiberuflich Tätige") and to the commercially active economy ("gewerbliche Wirtschaft") which includes manufacturing ("produzierendes Gewerbe"), handicraft ("Handwerk"), commerce ("Handel"), and other services, provided they are investing in Germany. In addition, the majority of shares have to be in private ownership. Germany expects that the number of beneficiaries will exceed 1000.

2.8. Basic elements of the scheme

- (12) The loans under the scheme can be granted to finance (initial and replacement) investments and/or working capital, up to 100% of the relevant expenditure.
- (13) Normally, the loan amount per project is limited to € 50 million. In exceptional cases, a higher loan amount can be authorised. The (part of a) loan to finance working capital is limited to 30% of the last balance sheet total of the loan applicant (30% of last turnover for professions).
- (14) The loans run for a period of up to 8 years for investments, and of up to 5 years for working capital. The loans do not benefit from a grace period. Reimbursement is linear, and takes place every three months.
- (15) The Kreditanstalt für Wiederaufbau has no regional/local agencies. It has therefore to rely on commercially active banks ("Hausbanken") which receive the loan applications, assess the applications, the rating of the beneficiaries and the quality of the offered collaterals, and conclude the loan contracts with the firms. The KfW gives a refinancing loan, at a refinancing loan interest rate, to the "Hausbank", which is channelled through to the beneficiary firm. For channelling the refinancing loan to the beneficiary firm, two different mechanisms exist which are normally combined in individual loans:
- In the first mechanism, the "Hausbank" concludes a loan contract with the beneficiary firm in its name and on its own risk. In case of default of the final loan contract, the "Hausbank" is nonetheless obliged to reimburse the refinancing loan. The refinancing loan is granted under the condition that the final loan contract has to respect certain conditions as to the type of project, eligible costs, type of beneficiary, etc. In addition, depending on the assessment by the "Hausbank" of the beneficiary's rating and the quality of the collaterals offered (which is subject to verification by the KfW), a maximum interest rate which the firm has to pay is fixed. The difference between the maximum interest rate the firm has to pay, and the interest rate the "Hausbank" has to pay for the refinancing loan, corresponds to the sum of the handling fee and risk premium. The "handling fee" amounts to 50 to 70 basis points, depending on the rating of the beneficiary (and the expected higher risk of additional handling cost in case

⁴ OJ L 214, 9 August 2008, pg. 3-47, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)

of default)⁵, which seems appropriate. The "risk premium" which is fixed in view of the collaterals offered and of the rating of the beneficiary, remains with the "Hausbank". The "Hausbank" may decide not to apply the maximum interest rate to an individual customer, by renouncing a part of the maximum risk premium to which it is entitled. The same rules regarding handling fees and (maximum) risk premiums apply to all "Hausbanken".

- In the second mechanism, the "Hausbank" concludes a loan contract in its name, but on the risk of the KfW. In case of default of the final loan contract, the "Hausbank" is not obliged to reimburse the refinancing loan. The final loan contract has to respect certain conditions as to the type of project, eligible costs, type of beneficiary, etc.. In addition, and taking into account the assessment by the "Hausbank" of the rating of the beneficiary and the collaterals offered, the KfW fixes the interest rate the beneficiary of the loan has to pay. The "Hausbank" receives a "handling fee" which amounts again to 50 to 70 basis points, depending on the rating of the beneficiary (and the expected higher risk of additional handling cost in case of default).). The "risk premium" is fixed in view of the collaterals offered and of the rating of the beneficiary. In this construction, the "risk premium" remains fully with the KfW. The same rules regarding handling fees and risk premiums apply to all "Hausbanken".

The "risk premiums" and "handlings fees" are identical under both mechanisms.

- (16) Under the Sonderprogramm, the two mechanisms can be combined in a system of consortium risk sharing between the "Hausbank" and KfW, and the following constructions are foreseen:

- For investment loans: the "Hausbank" either carries the full risk, or takes 50% of the risk, or takes 10% of the risk (i.e. the risk share of the KfW is either 0%, or 50%, or 90%).
- For working capital loans: the "Hausbank" either carries the full risk, or takes 50% of the risk (i.e. the risk share of the KfW is either 0%, or 50%).

In these constructions of consortium risk financing the overall risk premium is fixed in view of the collaterals offered and of the rating of the beneficiary by the "Hausbank", subject to verification by KfW, and is shared proportionally to the respective risk share, between "Hausbank" and KfW.

2.9. Subsidized interest rate

- (17) The Sonderprogramm is designed on the basis of section 4.4.2 of the Temporary Framework. Under this section, "the Commission accepts that public or private loans are granted at an interest rate which is at least equal to the central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period

⁵ These handling fees appear to be in line with market conditions. A study prepared for Kreditanstalt für Wiederaufbau in the context of earlier notifications (N 313-315/2008), and partially resubmitted in the context of the present notification, by Deloitte&Touche considers them to be appropriate.

1/1/2007 to 30/06/2008, plus the credit risk premium corresponding to the risk profile of the recipient, as stipulated by the Communication from the Commission on the revision of the method for setting the reference and discount rates" (hereinafter referred to as Commission reference rate Communication 2008).⁶

(18) The German authorities confirm that the conditions laid down in section 4.4.2 of the Temporary Framework for granting aid in the form of a subsidized interest rate will be fully met. In particular, the German authorities confirm

- that the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1/1/2007 to 30/06/2008 is 64 basis points;
- that the interest rate the loan beneficiaries have to pay will at no point in time be below the central bank overnight rate plus 64 basis points plus risk premium established according to the loan margin grid provided by the Commission's reference rate communication 2008.
- that subsidized interest rates will be applied only to interest rate payments due before 31 December 2012, and that for interest rate payments after 31 December 2012, interest rates defined in line with the applicable Commission reference rate communication shall be payable;
- that the relevant overnight rates for Germany are available from the following website: http://www.euribor.org/html/content/eonia_about.html;
- that interest rate subsidies under the Sonderprogramm will not be combined with de minimis aid under the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (hereinafter referred to as de minimis Regulation⁷) that is granted to meet the same eligible costs.
- that de minimis aid granted under the de minimis Regulation as from 1 January 2008 will be deducted from the aid to be granted under the Sonderprogramm.
- that interest rate subsidies under the Sonderprogramm can be combined with aid for other purposes only insofar as the aid ceilings applicable to the aid for other purposes are not exceeded.

The German authorities commit themselves to transmit the implementing rules of the Sonderprogramm as soon as possible after approval of the notified aid scheme.

2.10. Monitoring and reporting, language of decision, business secrets

(19) The German authorities confirm that the monitoring and reporting obligations laid down in Section 6 and footnote 23 of the Temporary Framework will be respected.

⁶ OJ C 14, 19.1.2008, pp. 6-9

⁷ OJ L 379 of 28 December 2006

- (20) The German authorities confirm that the notification does not contain business secrets.
- (21) The German authorities confirm that their acceptance that the Commission decision is adopted in the English language.

3. ASSESSMENT

3.1. Legality of the measure

- (22) By notifying the aid measure before putting into effect, the German authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Existence of state aid

- (23) State resources are involved in the notified scheme since the subsidized loans are made available by the Kreditanstalt für Wiederaufbau, a public development bank.
- (24) The measure is selective since it will be granted only to certain firms. In addition, the loan volume available is limited.
- (25) The measure confers an advantage by relieving the beneficiaries of costs which they would have to bear under normal market conditions since, without the intervention by the State, the borrowers would obtain loans only at higher costs, if at all.
- (26) The measure affects trade between Member States since the scheme is not limited to beneficiaries which are active in sectors where no intra-community trade exists.
- (27) In view of the above, the Commission considers that the notified measure constitutes State aid within the meaning of Article 87 (1) of the EC Treaty. The German authorities do not contest that conclusion.

3.3. Compatibility of the measure

- (28) Having established that the measure involves state aid within the meaning of Article 87 (1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (29) The measures aims at facilitating the access of firms to external finance in a period of time where the normal functioning of credit markets is severely disturbed through the financial crisis, and where the financial crisis ("credit crunch") is affecting the wider economy and is leading to severe disturbances of the economy of Member States.
- (30) By adopting the Temporary Framework on 17 December 2008, the Commission indeed acknowledged (section 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b)."
- (31) The notified Sonderprogramm is conceived to remedy a serious disturbance in the economy of a Member State and is designed to meet the requirements of the

additional category of aid ("Aid in the form of subsidized interest rate") described in section 4.4.2 of the Temporary Framework.

- (32) The Commission considers that the notified measure meets all the conditions of the Temporary Framework: In particular,
- The reduced interest rate subsidies do not go below the interest rate threshold defined (central bank overnight rate plus 64 basis points plus risk premium established according to the loan margin grid provided by the Commission reference rate Communication 2008)
 - The cumulation rules with de minimis aid and aid for other purposes are respected.
 - Firms in difficulty (situation as of 1.7.2008) are excluded from benefitting from the scheme.
 - The benefit of reduced interest rates is limited to loan contracts concluded before 31 December 2010, and to interest rate payments due before 31 December 2012.
 - The monitoring and reporting rules laid down in the Temporary Framework will be respected by the German authorities.

3.4. Conclusion

- (33) For these reasons, the Commission considers that the notified measure is in conformity with the Temporary Framework and considers it to be compatible with the Treaty on the basis of Article 87(3)(b) EC. The Commission notes that the notification does not contain business secrets, and that Germany accepts that the decision be adopted in the English language.

4. DECISION

- (34) The Commission has accordingly decided
- to consider the notified aid scheme as compatible with the EC Treaty

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- (35) The Commission reminds the German authorities of their commitment to transmit the concrete implementing rules as soon as possible after the approval of the notified aid.

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission