



EUROPEAN COMMISSION

Brussels, 23.06.2010
C(2010)4261 final

Subject: State Aid N 222/2010 – Germany
Third extension of the German rescue package for credit institutions in Germany

Sir,

I. PROCEDURE

- (1) On 27 October 2008, the Commission approved a rescue package concerning the measures granted to financial institutions under the financial market stabilization law (Finanzmarktstabilisierungsfondsgesetz - FMStG). By decision C (2008) 8629 fin of 12 December 2008¹ in case N 625/2008 the Commission approved amendments to that rescue package and replaced, for reasons of legal certainty, the decision of 27 October 2008 which had originally approved the rescue package.
- (2) On 22 June 2009, the Commission approved with decision C (2009) 4995 fin² in case N 330/2009 a first prolongation of the rescue package until 31 December 2009.
- (3) On 17 December 2009, the Commission approved with decision C (2009) 10284 fin³.in case N 665/2009 a second prolongation of the rescue package until 30 June 2010.

¹ Commission decision in case N 625/2008 of 12.12.2008 on the German rescue package for credit institutions in Germany, OJ C 143 of 24.6.2009, p. 1.

² Commission decision in case N 330/2009 of 22.6.2009 on the prolongation of the German rescue package for credit institutions in Germany, OJ C 160 of 14.7 2009, page 4.

³ Commission decision in case N 665/2009 of 17 12. 2009 on the second prolongation of the German rescue package for credit institutions in Germany, OJ C 28 of 4.2.2010, page 6.

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- (4) On 3 June 2010, Germany notified to the Commission a request to extend the rescue package for an additional period of six months. This request does not concern the asset relief scheme⁴. Germany also provided a letter from the Deutsche Bundesbank.
- (5) The Commission notes that for reason for urgency Germany exceptionally accepts the adoption of the decision in the English language.
- (6) Pursuant to point 90 of decision C (2008) 8629 fin, Germany submitted the biannual monitoring report.

II. DESCRIPTION

- (7) The purpose of the Finanzmarktstabilisierungsfondsgesetz (FMStG) is to support financial institutions in order to stabilise the German financial market. The law allows for three types of aid measures: recapitalisation of financial institutions, risk assumption⁵ and guaranteeing of bank liabilities.
- (8) The German authorities request a third extension of the rescue package for a further period of six months; i.e. from 1 July 2010 until 31 December 2010. The notified extension does not involve an increase in the overall budget of the scheme already approved.
- (9) The German authorities reiterate that the commitments provided since the introduction, as well as in the first and second prolongations, of the German rescue package⁶ will remain for the notified extension of the measure.
- (10) Germany also undertakes to charge beneficiary banks a guarantee fee⁷ that is higher than under the pricing formula recommended by the ECB in October 2008 at least by
 - 20 basis points for banks with a rating of A+ or A⁸,
 - 30 basis points for banks rated A-⁹ and
 - 40 basis points for banks rated below A-. Banks without a rating will be considered to belong to the category of banks with a BBB rating¹⁰.

⁴ Commission decision in case N 314/2009 of 31.7.2009 on the German asset relief scheme, OJ C199 of 25.8.2009, p. 1.

⁵ Temporary acquisition of assets on condition that these assets are bought back after a maximum of 36 months and the State is compensated for any loss in value.

⁶ See point 5 of Commission decision in case N 330/2009 of 22.6.2009 on the prolongation of the German rescue package for credit institutions in Germany; OJ C 160 of 14.7 2009, page 4.

⁷ The new pricing is set out in detail in the notification.

⁸ Or A1 and A2 depending on the rating system employed.

⁹ Or A3 depending on the rating system employed.

¹⁰ In the case of divergent assessments by different rating agencies the relevant rating for the calculation of the fee increase should be the higher rating. The material time for the rating in the determination of the guarantee fee is the day on which the guarantee is granted in relation to a specific bond issuance by the beneficiary.

- (11) Furthermore, Germany undertakes to present a viability review for every bank that is granted guarantees on new or renewed liabilities as from 1 July 2010 and for which, at the time of the granting of new guarantees, the total outstanding guaranteed liabilities (including guarantees accorded before 1 July 2010) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million. That viability review will be communicated to the Commission within three months of the granting of guarantees and will comply with the principles set out in the Restructuring Communication¹¹. In particular, it will cover the solidity of the funding capacity of the bank concerned; where necessary and in any event where requested by the Commission in case of doubt, a liquidity stress test will be carried out. No separate viability review has to be presented for banks that are already in restructuring or obliged to present a restructuring plan or subject to a pending viability review at the time new guarantees are granted.
- (12) In addition to the existing commitments concerning reporting obligations, Germany undertakes to submit to the Commission a concise mid-term review on the operations of the guarantee scheme by 15 October 2010 at the latest.

III. POSITION OF GERMANY

- (13) In line with the previous decisions on the rescue package¹² the German authorities accept that the rescue package contains State aid elements.
- (14) The German authorities note, and the letter submitted by Deutsche Bundesbank confirms, that beneficiaries' access to the capital market and funding is still affected by the international financial crisis and that it is, thus, necessary to extend the rescue package with the modifications described above.

IV. ASSESSMENT

- (15) In its earlier approval decisions the Commission concluded that the measures comprised under the German rescue scheme constitute State aid within the meaning of Article 107(1) of the Treaty of the European Union ('TFEU'). However, it found that the measures were compatible with the internal market under Article 107(3)(b) TFEU because they were apt to remedy a serious distortion of the German economy. To this end, the Commission had assessed the appropriateness, necessity and proportionality of the measures.
- (16) Although access to funding and capital for banks has gradually improved in most markets over the past year and is no longer a systematic and generalized problem, markets have not yet fully returned to entirely normal functioning. Against this background and taking into account the residual fragility of recovery process and the possibility of setbacks in that process, the continuation of the rescue package can be deemed necessary to ensure financial stability as confirmed by Deutsche Bundesbank. The Commission therefore considers that the extension of the

¹¹ OJ C 195, 19.8.2009, p.11, point 8 in conjunction with section 2.

¹² See footnotes 1,2 ,and 3.

scheme for a further six months is appropriate and necessary to remedy a disturbance of the German economy.

- (17) Moreover, the Commission notes that new applications under the scheme are pending; therefore, a further extension of the scheme is necessary.
- (18) On the basis of the above, the notified extension of the German rescue package does not alter the Commission's previous assessments in its decisions of 12 December 2008, 22 June 2009 and 17 December 2009¹³.
- (19) As regards the specific features of the guarantee scheme, in assessing the request for the prolongation the Commission has to balance its positive effects for financial stability with the distortions of competition and the delay in the return to a normal functioning of the financial markets that the prolongation entails. Guarantee schemes should contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spill-over effects on competitors and other Member States.
- (20) The gradual stabilisation of the market situation and the resulting reduction of the risk premium for unguaranteed debt have brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions. Lower-rated banks for which bond issuances with a government guarantee still hold considerable economic benefits have become the prime users of guarantee schemes.
- (21) It is necessary to minimise distortions across banks in the internal market and avoid the risk of State aid dependence. There should therefore be an adjustment of the terms on which banks may retain for the time being the possibility of accessing government guarantees schemes.
- (22) On the basis of these considerations, the prerequisites for the compatibility of guarantee schemes with Article 107(3)(b) TFEU that have been established by the Banking Communication¹⁴ and the Commission's subsequent decisional practice continue to apply but need to be complemented by requirements aimed at achieving two objectives.
- (23) First, banks should be incentivised to scale down or terminate their recourse to government guarantees by means of pricing rules that bring the funding costs of beneficiary banks closer to market conditions and thereby reduce distortions of competition. This should be achieved by an increase in the guarantee fee¹⁵ in comparison with the ECB recommendations of October 2008 that amounts at least

¹³ See footnotes 1, 2 and 3.

¹⁴ Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25 10 2008.

¹⁵ For liabilities of all eligible maturities.

to 20 basis points for banks with a rating of A+ or A¹⁶, 30 basis points for banks rated A⁻¹⁷, and 40 basis points for banks rated below A⁻¹⁸.

- (24) Second, the use of guarantee schemes should not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments. To this end, the Member State concerned should present a viability review for any bank that requests new guarantees under a scheme which take or keep the total amount of the bank's outstanding guaranteed liabilities above 5% of the bank's total liabilities and above the absolute amount of EUR 500 million. That viability review should be presented on the basis of the parameters established in the Restructuring Communication within three months of the granting of the guarantees¹⁹. The viability review will either confirm the bank's long-term viability without State support or show that farther-reaching restructuring is required.
- (25) The commitment of Germany reproduces a mechanism for the increase of the guarantee fee as indicated above. Moreover, the required presentation of the viability review is also included. Thus, the Commission considers that the notified prolongation until 31 December 2010 of the State guarantee scheme complies with the requirements set out above and is compatible with the internal market.
- (26) As regards the combination of this guarantee scheme with other aid measures, as indicated in the Annex to the Restructuring Communication²⁰, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To this end, an individual ex ante notification is necessary.
- (27) Furthermore, the Commission recalls that based on point 16 of the Restructuring Communication²¹, if aid not initially foreseen in a notified restructuring plan is necessary for the restoration of viability, this additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Commission's final decision on that bank.

¹⁶ Or A1 and A2, depending on the rating system employed.

¹⁷ Or A3, depending on the rating system employed.

¹⁸ Banks without rating will be considered as having a BBB rating.

¹⁹ Except where the bank concerned is already in restructuring or subject a pending viability review on the basis of a restructuring or viability plan; in those circumstances the award of additional State aid will be assessed within the framework of the ongoing restructuring/viability review process.

²⁰ See footnote 15.

²¹ See footnote 15.

- (28) In addition to the above, Germany agrees to provide the Commission with a concise mid-term review of the operation of the scheme by 15 October 2010 in addition to the pre-existing reporting requirements and to complement its future reports on the operation of the scheme with updated available data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances²². This will allow the Commission to assess the appropriateness, necessity and proportionality of possible further prolongations of the scheme beyond 31 December 2010 and the conditions for such prolongations. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

V. DECISION

The Commission concludes that the third extension of the German rescue package constitutes State aid within the meaning of Article 107(1) TFEU. Since the prolonged aid measure fulfils the conditions under Article 107(3) (b) TFEU it is compatible with the internal market, with the result that the Commission raises no objections to it. The Commission recalls that the measure is limited in duration until 31 December 2010.

The Commission notes that for reason for urgency Germany exceptionally accepts the adoption of the decision in the English language.

If this letter contains confidential information which should not be published, 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/community_law/state_aids/state_aids_texts_de.htm.

Your request specifying the relevant information should be sent by registered letter or fax to

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice President of the Commission

²² See point 18 of the Commission decision of 17 December 2008.