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Coronavirus Aid for Companies in Difficulties – Unprecedented Response from KfW, German government and EU Commission

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Last Friday, in response to the outbreak of the coronavirus pandemic (COVID-19), the German government announced various measures described as a big "bazooka" to avert a crisis in the Eurozone's largest economy. The German development bank KfW will play a key role in the context of the announced measures and has been tasked to provide liquidity assistance to German companies hit by the pandemic.

In an unprecedented response, the government promised an **unlimited amount of liquidity** support provided via KfW to be available to all companies ranging from the smallest businesses to large DAX-listed multinational corporations. In addition to a commitment to simplify and streamline the application process, there are also certain improvements in relation to existing KfW support instruments and, in addition, a new KfW Special Programme to address short-term liquidity problems:

1. ERP Start-Up Loan – Universal (for newer companies established within the last five years)
   - Assumption of risk (liability waivers) of up to **80 per cent.** (previously: 50 per cent.) for the on-lending financing partners (usually the regular banks) for **working capital loans up to EUR 200 million**
   - Now also available to large companies with annual sales of up to **EUR 2 billion** (previously: EUR 500 million)
2. KfW Entrepreneur Loan (for older companies established for five years or more)
   - Assumption of risk (liability waivers) of up to **80 per cent.** (previously: 50 per cent.) for the on-lending financing partners (usually the regular banks) for **working capital loans** with a volume of lending of up to **EUR 200 million**
   - Now also available to large companies with annual sales of up to **EUR 2 billion** (previously: EUR 500 million)
3. KfW Loan for Growth (for companies established for five years or more)
   - Temporary widening of the loan purpose to **general corporate finance**, including **working capital** by way of syndicate financing (previously: limited to investments in innovation and digitalisation)

- Assumption of risk (liability waivers) of up to **70 per cent.** (previously: 50 per cent.) for the on-lending financing partners (usually the regular banks)
- Now also available to even larger companies with annual sales of up to **EUR 5 billion** (previously: EUR 2 billion)

4. KfW Special Programme

In addition to existing KfW support instruments, KfW will create a special programme for small- and medium-sized enterprises as well as large companies. This new programme which – according to a joint press release of KfW and the German Banking Industry Committee – will be available next week provides for the assumption of risk (liability waivers) for the on-lending financing partners (usually the regular banks) of as much as **80 per cent.** for **working capital facilities** and even as much as **90 per cent.** for **investment facilities**. Companies that have temporarily experienced financing difficulties due to the crisis shall be generally entitled to benefit from such support. An important new element is that for syndicated loans KfW can act as original lender and thereby have a direct loan participation. In addition, the application procedure is also to be made much easier, which is even more important given that a huge wave of applications is expected.

The launch of these improved and/or new support measures is subject to approval by the European Commission. The German government has announced that it will enable KfW to provide these support measures with the necessary guarantee volumes. The German federal budget guarantees KfW a **financial framework of around EUR 460 billion**. If necessary, this framework can be increased promptly by up to EUR 93 billion. Moreover, we expect that in addition to the funds and guarantees available on the national level more support can be made available through well-established cooperation of KfW with European Investment Fund and European Investment Bank.

The support measures must be seen in the light of European Union's State aid law (see "State aid response to COVID-19 crisis"). The European Commission announced that it intends to adopt a new **"Temporary Framework**" based on Article 107(3)(b) TFEU (aid to remedy a serious disruption in the economy of a Member State) to enable Member States to mitigate as far as possible the economic consequences of the coronavirus crisis, similar to what was done during the 2009 – 2012 financial crisis. A proposal for the Temporary Framework was sent to Member States on Monday evening. The President of the Commission has already indicated that she wishes to ensure flexibility in the application of State aid regulations in the wake of the coronavirus crisis. The EU and Eurogroup finance ministers will work to ensure that the European Commission shows the necessary degree of flexibility. The Commission intends to **adopt the framework in the course of this week**. In particular, under the proposed Temporary Framework, the Commission will approve aid schemes of the Member States which address short- to medium-term **liquidity needs**, by granting aid in the form of limited direct grants or tax advantages (up to EUR 500,000), subsidised loans or State guarantees. To ensure that the Temporary Framework is not used in cases unrelated to the coronavirus pandemic, there is a general eligibility requirement for aid that companies have entered into difficulty after 31 December 2019. It is anticipated that the German measures outlined above will be approved under the framework.

In addition, the proposed framework clarifies that compensation for the damage caused by the coronavirus pandemic crisis and the measures taken against it will be governed by general State aid rules. In the proposed framework, the Commission indicated that in individual cases **compensation** could be authorised under Article 107(2)(b) TFEU, in particular for companies active in sectors that have been particularly hit (e.g. transport, tourism and hospitality or organisers of cancelled events) for damages suffered due to the outbreak. Member States can notify such damage compensation measures and the Commission will assess them directly under Article 107(2)(b) TFEU. The principle of "one time last time" of the Rescue and Restructuring Guidelines is not applicable to undertakings that received aid under those guidelines and suffered a damage directly caused by the e COVID-19 outbreak.

Importantly, the proposed framework clarifies that aid granted by Member States to affected sector companies under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the COVID-19 outbreak does not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity of the **banking sector**. As a result, such aid would not be qualified as extraordinary public financial support under the Directive 2014/59/EU of the European Parliament and of the Council (the BRRD), and would also not be assessed under the strict State aid rules applicable to the banking sector. Therefore, **bail-in requirements** otherwise applicable to the banking sector would **not** be **triggered**.

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