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Subject: SA.56245 (2020/EV) – Germany
Evaluation plan for the block-exempted R&D tax incentive scheme "Forschungszulagengesetz"

Excellency,

1. PROCEDURE

(1) On 17 January 2020, Germany submitted summary information pursuant to Article 11(a) of the Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty[1] (hereinafter "GBER") on a R&D tax incentive scheme *("Forschungszulagengesetz – FZulG)"*), registered under SA.56245 (2020/X). The legal act on which this aid measure is based was promulgated on 14 December 2019. The scheme allows granting R&D tax incentives for eligible costs incurred as from the fiscal year 2020, conditional upon the filing of the respective applications to fiscal authorities in the subsequent year. It was put into effect with reference to Article 25 GBER, at present for the remaining period of validity of the GBER. However, the measure is unlimited in duration under national law – but subject to the approval of the notified evaluation plan, and until the conditions of a (future) block exemption regulation are not met (any longer).

(2) As the German authorities considered that the exempted measure, with an estimated annual average budget of EUR 1 305 million, constitutes a large scheme in the meaning of Article 1(2)(a) of the GBER, they notified on 28 January 2020, following pre-notification contacts, an evaluation plan, registered

[1] OJ L 187, 26.6.2014, p. 1.

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by the Commission as SA.56245 (2020/EV). On 14 February and 30 March 2020, the Commission asked for supplementary information which was provided by Germany by submissions of 28 February and 15 April 2020. In addition, a telephone conference between the German authorities and the Commission services took place on 23 March 2020.

2. DETAILED DESCRIPTION OF THE KEY ELEMENTS OF THE NOTIFIED EVALUATION PLAN

(3) As required by Article 2(16) of the GBER and in line with best practices[2], the evaluation plan is to contain the description of the following main elements: (i) the objectives of the aid scheme to be evaluated, (ii) the evaluation questions, (iii) the result indicators, (iv) the envisaged methodology to conduct the evaluation, (v) the data collection requirements, (vi) the proposed timing of the evaluation (including the date for submission of the final evaluation report), (vii) the approach for the selection of the independent body conducting the evaluation, and (viii) the modalities for ensuring the publicity of the evaluation.

2.1. Objectives of the aid scheme "Forschungszulagengesetz" to be evaluated

(4) The measure aims at enhancing business R&D activity, in particular by SMEs, in view of contributing to the European overarching aim to increase overall expenditures for R&D to an amount of 3.5% of the GDP of Member States by 2025. The newly introduced R&D tax advantages complement already existing and exempted discretionary R&D schemes[3] , with a focus on smaller projects, in particular by SMEs.

(5) At the beneficiary level, the following outcomes are expected:

a) Increase in private spending in R&D&I, with a focus on SMEs;

b) Increase of competitiveness;

c) Improvement and increase of innovativeness and competitiveness of all undertakings, including beneficiaries and others via spill-overs.

(6) The aid scheme provides support in the form of tax advantages to the R&D activity of undertakings of all sizes. Individual aid under the scheme is granted with an aid intensity of 25%, but limited to a maximum amount of eligible costs of EUR 2 million per undertaking per fiscal year. Eligible costs are only personnel costs and costs for research services incurred for the eligible R&D project. The overall aid amount granted for one R&D project over various years per undertaking shall not exceed EUR 15 million.

(7) The granting procedure follows a two-step approach.

[2] Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

[3] State aid registers show more than 2000 R&D discretionary schemes put into effect under the General block exemption regulation 2014, of which about 30% by Germany (Federal and regional level).

- As a first step, a dedicated authority (*Bescheinigungsstelle*/certifying body) assesses and confirms, upon application by the beneficiary, that the envisaged eligible project qualifies as a R&D project;

- As a second step, based on this confirmation, national tax authorities consider upon request by the applicant for the fiscal year in which eligible costs were incurred, the amount of eligible costs for the R&D project. These eligible costs serve as a basis to calculate the individual aid amount of 25 % thereof. This amount reduces the amount of taxes the applicant will have to pay in the fiscal year after the year in which the eligible costs were incurred.[4] The application to the fiscal authorities requiring the R&D tax allowance can be introduced as of the calendar year following the year in which the eligible costs were incurred.

2.2. Evaluation questions and result indicators

(8) The notified evaluation plan identifies the issues to be addressed by the evaluation.

(9) The evaluation questions address both the incentive effect of the aid on the beneficiaries and the scheme's indirect effects (in terms of both positive and negative externalities). The result indicators are linked to the evaluation questions and to the objectives of the scheme.

(10) The direct effects of the aid on the beneficiaries will be addressed by evaluation questions on (1) the increase in research activities by the beneficiaries such as personnel costs, hiring R&D staff, external expenditures for R&D, (2) the extent the scheme led to an increase of R&D activities of undertakings, distinguishing between undertakings that had already pursued own R&D activities before the tax incentives became available, and those which now engage in own research activities for the first time, (3) the reaction and activities triggered by the tax advantage considering size, sector, liquidity and existence on the market, (4) the effects on R&D activities and expenditure of undertakings in Germany compared to those of undertakings abroad.

(11) With regard to the evaluation questions on the direct effects, the following result indicators will be used, among others: (1) R&D expenditure in total of the supported undertakings, (2) aid amounts granted, (3) difference in R&D spending and R&D staff headcount between undertakings which received aid and those which have not, (4) amount of R&D expenditures triggered by the aid and difference between those undertakings which have already pursued own research activities before, and those which carry out R&D activities for the first time, and (5) the share of R&D expenditures of eligible undertakings as compared to other markets.

(12) The indirect effects of the aid scheme (so called "*second round*" effects) are to be captured by studying (1) spill-over effects for undertakings in other sectors, similar technology fields or of the same value chain, (2) effect of the tax advantage on other available project based R&D aid schemes, (3) aid amounts

[4] A surplus will be paid out.

granted in total (budgetary effect), and (4) the effectiveness and proportionality of the scheme.

(13) With regard to the evaluation questions on the indirect effects, amongst others, the following result indicators will be used: (1) types of cooperation, licensing out, effects on value chains and customers, (2) development of market shares, with special attention to those which have not received R&D aid before, (3) effects on tax obligations, (4) value-for-money analysis of the fiscal aid scheme compared to other direct and indirect aid schemes, and (5) administrative burden/red tape for beneficiaries and public authorities. For the evaluation, Germany will mainly rely on administrative data and investigate the possibility of using surveys to collect additional data if necessary.

2.3. Envisaged methodology to conduct the evaluation

(14) The direct effects of the aid scheme on the beneficiaries are to be identified by employing econometric methods, in particular a regression analysis of the type "Matching – Difference-in-Differences" (M-DID), as described in the Commission Staff Working Document on Common methodology for State aid evaluation[5].

(15) The *Difference-in-Differences* strategy is the one that, exploiting the longitudinal nature of the data available, is considered more robust to the presence of unobservable differences between firms benefitting from aid under the evaluated aid scheme, and firms belonging to a control group, provided that these differences remain constant over time (parallel trend assumption).

(16) In order to establish the control group, and in view of the general availability of the R&D tax allowance, the German authorities proposed two approaches: The first approach foresees the identification of the control group based on the funding intensity or exposure of the funded companies. The second approach uses a subset of R&D active companies that have not received a research grant.

(17) To avoid potential biases, the identification of the companies in the support and control group should use appropriate matching techniques (e.g. propensity score or coarsened exact matching). In addition to characteristics such as company size, industry and region, where available, also trends over time in R&D expenditures shall be taken into account (for periods prior to the entry into force of the aid scheme under evaluation). Pre-matching would also support the plausibility of the common trend assumption.

(18) Qualitative methods such as surveys /case studies could be used in a relatively timely manner, even before the actual evaluation is carried out, in order to identify factors influencing the use and impact of R&D tax incentives as soon as possible and, where appropriate, to identify appropriate measures to ensure effective use of resources.

(19) Case studies over a representative sample may also be used as part of the evaluation to assess how decisions on R&D projects (including on their location) are influenced, what impact mechanisms exist in the aided enterprises, and what

[5] See footnote 2

kind of spill-over effects on other enterprises in similar business or technology sectors can be observed.

2.4. Data collection requirements

(20) For the purposes of the evaluation, the German authorities will rely mostly on two databases: the Mannheim Innovation Panel (MIP) run by the Leibniz Center for European Economic Research (ZEW), and the R&D survey statistics published by the Stifterverband.

(21) Depending on availability, the required data is collected continuously or annually or every two years. With regard to the data of the MIP and the data from the R&D survey of science statistics in the Stifterverband, corresponding research data centers ("Forschungsdatenzentren", FDZ) have been set up in both cases, which (in accordance with the German Data Protection Act) enable data access for scientific purposes. The quality of both FDZ, both in terms of data access and data protection, is also ensured by the fact that both are accredited by the Council for Social and Economic Data, and follow its criteria.

(22) In addition, the evaluation will also use the data on applicants collected by the certifying body as referred to in recital (7) and will explore possible additional data sources including surveys.

2.5. Proposed timing of the evaluation, including the date of submission of intermediate reports and final evaluation report

(23) First aid granting awards ("Festsetzungen der Forschungszulage") and subsequent aid payments under the scheme can take place in the course of 2021, whereas the validity of the GBER ends under the present legal framework, pursuant to its Article 59, by 31 December 2020. Pursuant to its Article 58 (4), exempted schemes may continue to be applied under the given legal situation during a transitional period of six months, until 30 June 2021. The Commission announced already its intention to prolong the validity of the GBER until end of 2022. This prolongation is envisaged to enter into force by 31 December 2020, and to cover the period until 31 December 2022. An evaluation of the effects of the scheme before mid-June 2021 is not possible. At the same time, the lawful application of the exempted large scheme beyond an initial period of application of six months is possible only subject to the approval of the notified evaluation plan in this decision, which takes into account a possible extension of the validity of the GBER.

(24) The German authorities will submit a methodological report by 30 June 2021. The methodological report shall contain descriptive statistics (if available) as well as a detailed description of the data and the methodologies that will be used for the evaluation.

(25) Furthermore, the German authorities will submit an intermediate evaluation in the course of 2022 covering the first phase of implementation of the scheme. In 2023 and 2024, the Commission will receive further yearly short updates concerning the developments of the scheme, progress with data collection and updates on the evaluation design.

(26) The evaluation shall be completed in the course of 2025 and will include the evaluation of the operation of the scheme for the period covered by tax declarations for the fiscal years 2020 - 2023; information on the fiscal year 2024 will be taken into account to the extent possible. The results of the evaluation will be included in an evaluation report (“the Additional Evaluation Report”) to be submitted to the Commission by 31 December 2025. .

2.6. Selection of an independent body to conduct the evaluation, or criteria for its selection

(27) The entity, or entities, that will be responsible for carrying out the evaluation, will be selected in accordance with national and EU public procurement rules. The award of the contract to an evaluation body will be based on the technical quality and economic conditions of the tender.

(28) For the purpose of ensuring the quality and reliability of the evaluation, the entity (entities) selected will be functionally independent of the Federal Ministry of Finance, which is responsible for the implementation of the “Forschungszulagengesetz”.

(29) The entities participating in the public procurement procedure must demonstrate their suitability and skills.

(30) The successful candidate entity (entities) have to put together a suitable evaluation team with proven experience in the evaluation of public policies and specific skills in economic and statistical/econometric analysis.

2.7. Modalities for ensuring the publicity of the evaluation

(31) The results of the evaluation of the aid scheme will be made public on the website of the Federal Ministry for Finance.

(32) The evaluation results will serve as a solid background for designing future aid schemes at national and regional levels. The German authorities will use them to highlight potential improvements, and will consider them when developing similar aid measures or deciding on a prolongation of, or successor scheme to, the evaluated aid scheme.

(33) In addition, the involvement of stakeholders outside of the administrations involved of the scheme will be ensured by seminars and technical meetings that will be organised during the evaluation process and after the final report is published.

(34) The collected data will remain at the disposal of the German authorities for future studies and consideration in greater depth. Paragraph 17 para 1 of the national legal basis creating the tax incentive requires, besides the evaluation required under Article 1(b) of the GBER, an evaluation after five years. The collected data may be made available on request to academic institutions or other authorities granting aid to businesses in order to ensure that the impact of such aid can be measured in a similar and consistent manner.

3. ASSESSMENT OF THE NOTIFIED EVALUATION PLAN

(35) The correct application of the GBER is the responsibility of the Member State. The present decision on the evaluation plan does not assess whether the aid scheme to be evaluated was put into effect by the Member State in full respect of all applicable provisions of the GBER. It does therefore neither create legitimate expectations regarding the lawfulness and compatibility of the scheme, nor does it prejudge the position the Commission might take regarding the conformity of the aid scheme with the GBER and its lawfulness and compatibility when monitoring it, or assessing complaints against individual aid granted under it.

(36) Pursuant to Article 1(2)(a) GBER, certain large aid schemes[6] within the meaning of Article 2(15) GBER, with an average annual State aid budget exceeding EUR 150 million, are subject to evaluation. The Commission notes that the annual average budget of the aid scheme concerned (i.e. EUR 1 305 million) exceeds the threshold of EUR 150 million in 2020 laid down in Article 1(2)(a) GBER. Chapter I and section 4 (Article 25) of Chapter III of the GBER constitute the legal basis for the aid scheme to benefit from the exemption from notification provided for in Article 108(3) of the TFEU. However, in the absence of a positive Commission decision on the notifiable evaluation plan, pursuant to the provision in Article 1(2)(b) GBER, the exemption expires six months after the entry into force of the measure, and may continue to apply for a longer period only if the Commission decides to authorise this explicitly by the present decision.

(37) As the Commission explained in recital 8 of the GBER, the evaluation of large schemes is required "[I]n view of the greater potential impact of large schemes on trade and competition". The required "[E]valuation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade." State aid evaluation should in particular allow the direct incentive effect of the aid on the beneficiary to be assessed (i.e. whether the aid has caused the beneficiary to take a different course of action, and how significant the impact of the aid has been). It should also provide an indication of the general positive and negative effects of the aid scheme on the attainment of the desired policy objective and on competition and trade, and could examine the proportionality and appropriateness of the chosen aid instrument.[7]

(38) In the light of these considerations, Article 2(16) of the GBER defines as evaluation plan "a document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data

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[6] Schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44), and 10 of Chapter III of this Regulation (Article 1(2)(a) GBER). 'Aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount (Article 2(15) GBER).

[7] See Staff Working Document referred to in footnote 2 above.

collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation."[8]

(39) The Commission considers that, as described in section 2 of this decision, the notified evaluation plan contains these minimum elements outlined in Article 2(16) of the GBER.

(40) The evaluation plan gives a concise description of the key objectives of the scheme concerned and provides sufficient information to understand the underlying "intervention logic". The scope of the evaluation is defined in an appropriate way.

(41) The evaluation questions are designed in a way as to assess the direct effect of the scheme on the beneficiaries compared to non-beneficiaries in order to measure the incentive effect of the scheme. The evaluation questions addressing indirect effects are linked to the specificities of the aid scheme, both in terms of objectives and aid instruments.

(42) The evaluation plan identifies and justifies result indicators that integrate the evaluation questions for the aid scheme concerned, and explains the data collection requirements and availabilities necessary in this context. The data sources to be used for the evaluation are described clearly and in detail. The Commission notes that the evaluation body will be able to take advantage of several different databases, gathering a more complete set of information.

(43) The evaluation plan sets out and explains the main methods that will be used in order to identify the effects of the scheme, and discusses why these methods are likely to be appropriate for the scheme in question. The proposed evaluation methodology sufficiently allows identifying the likely causal impact of the scheme itself.

(44) The proposed timeline of the evaluation is reasonable in view of the characteristics of the scheme concerned.

(45) The proposed criteria for the selection of the evaluation body on the basis of an open tender meet the independence and skills criteria

(46) The proposed modalities for the publication of the evaluation results are appropriate and ensure transparency. In particular, the Commission takes note of the commitment to disseminate and make publicly available the results of the evaluation report.

(47) In view of the above, the Commission considers that the evaluation plan meets all requirements laid down in the GBER, is established in line with the common methodology proposed in the Staff Working Document, and is suitable given the specificities of the large aid scheme to be evaluated.

[8] Further guidance is given in the Staff Working Document referred to in footnote 2 above.

(48) The Commission notes the commitment made by the German authorities to conduct the evaluation according to the plan described in the present decision. The Commission also notes that the German authorities will submit a methodological report by 30 June 2021, annual interim reports in 2022, 2022, and 2023, the draft final report by 31 October 2024, and the final evaluation report by 31 December 2025. The German authorities are invited to inform the Commission without delay of any element that might seriously compromise the full and timely implementation of the evaluation plan.

(49) The Commission notes the commitment made by the German authorities to take into account the evaluation results for the design of any subsequent aid measure with a similar objective.

(50) The Commission reminds that the application of the exempted scheme has to be suspended if the methodological report and the final evaluation report are not submitted in good time and sufficient quality.

(51) Therefore, pursuant to Article 1(2)(a) of the GBER, the Commission decides that the GBER shall continue to apply to the aid scheme for which the evaluation plan was submitted, for a period exceeding the initial six months after the fiscal scheme at hand was applied for the first time, until the end of its validity, and as from the date of the notification of this decision to Germany.

(52) The Commission reminds that alterations to the evaluated scheme, other than modifications which cannot affect the compatibility of the scheme under the GBER or cannot significantly affect the content of the approved evaluation plan, are, pursuant to Article 1(2)(b) of the GBER, excluded from the scope of the GBER, and must therefore be notified to the Commission.

4. CONCLUSION

(53) The Commission has accordingly decided:

- that the exemption of the national aid scheme for which the evaluation plan was submitted, shall continue to apply beyond the initial six-months period, until six months after the final date of applicability of Commission Regulation 651/2014 of 17 June 2014, as amended, which is laid down in its Article 59.

- to publish this decision on the Internet site of the Commission.

If this letter contains confidential information which should not be disclosed to third parties, 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/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President