



EUROPEAN COMMISSION

Brussels, 04.07.2012
C(2012) 4696 final

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for information
purposes only.**

Subject: State aid SA.34845 (2012/N) – Germany
Broadband infrastructure development in Thuringia (amendment)

Sir,

1. SUMMARY

- (1) I am pleased to inform you that the Commission has assessed the amendment of the Directive of the Free State of Thuringia on the granting of subsidies from ERDF resources for the construction of broadband infrastructure in under-served areas of Thuringia - Broadband infrastructure development directive (*'Richtlinie des Freistaates Thüringen über die Gewährung von Zuwendungen aus Mitteln des EFRE zur Errichtung von Breitbandinfrastrukturen in unterversorgten Gebieten Thüringens - Richtlinie Breitbandinfrastrukturausbau'*), which the Commission approved on 8.12.2011¹ (hereinafter: 'the measure'), and has decided not to raise objections as the state aid contained in the amended measure remains compatible with Article 107(3)(c) TFEU.

¹ Case SA.33364 (2011/N) – Germany, Broadband infrastructure development in Thuringia. See: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33364.

His Excellency Mr Guido WESTERWELLE
Federal Minister for Foreign Affairs
Werderscher Markt 1
D - 10117 Berlin

2. PROCEDURE

- (2) On 21.05.2012, the Federal Republic of Germany notified an amendment to the measure to the Commission under Article 108(3) TFEU. Additional information was requested on 8.06.2012, to which Germany replied on 15.06.2012.

3. DESCRIPTION OF THE AMENDMENT TO THE MEASURE

- (3) The objective of the measure, which was approved until 31.12.2015, is to enable modern information and communication technologies to be used in under-served areas of Thuringia by creating reliable, high-quality, affordable and sustainable broadband infrastructure. The aid is aimed at closing the profitability gap, i.e. the difference between investment costs and the profitability threshold for providing (basic) broadband services in the under-served areas.
- (4) The measure is described in more detail in decision SA.33364 (2011/N) of 8.12.2011 (see footnote 1).
- (5) In the course of the procedure approving the measure, the German authorities confirmed that a clawback mechanism in accordance with paragraph 51(h) of the Broadband Guidelines² would be included in the procedure for final verification of the use of funds. If the original level of aid granted was not shown to be justified, the excess would be clawed back from the applicant.
- (6) However, according to the German authorities, the cost of implementing a claw-back mechanism under the measure would be disproportionate in view of the small aid amounts that the projects under the measure would cover (on average 40 000 to 45 000 EUR)³. In those circumstances, the German authorities request to amend the measure, in order to abolish the claw-back requirement, in line with footnote 59 of the Broadband Guidelines, according to which "*in exceptional circumstances duly demonstrated by the notifying Member State, setting up such [claw-back] mechanism for very low aid amounts ... may impose a disproportionate burden on the granting authorities and will not therefore be required by the Commission.*"

4. ASSESSMENT OF THE MEASURE

4.1. Presence of aid

- (7) The changes introduced to the notified measure do not alter the conclusion of the Commission in the previous case SA.33364 (2011/N) that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

² Communication by the Commission - Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ C 235, 30.9.2009, p. 7.

³ Moreover, based on statistical information, it is estimated that the cost of implementation of the claw-back mechanism would amount to around 90 000 EUR per year, whereas the funds that could be clawed back under the measure are estimated to amount to around 72 000 EUR per year. The cost of implementation of the claw-back mechanism under the measure would thus clearly exceed the amounts expected to be recovered.

4.2. Compatibility of the aid with the internal market

- (8) The abolishment of the claw-back mechanism in the measure does not modify the original compatibility assessment regarding the approved scheme SA.33364 (2011/N).
- (9) The Commission notes that the measure provides for only very small aid amounts and that it is expected that the costs of implementation of the claw-back mechanism will exceed the funds to be clawed back under the measure (see recital (6)). For this reason, the claw-back mechanism would represent a disproportionate administrative burden and the Commission accepts that no such claw-back mechanism is required under the measure⁴.
- (10) Moreover, the German Authorities commit to strengthen the monitoring mechanism and transparency requirements, by ensuring, for every project benefiting of aid under the measure, that the following information is published on the central web-site www.thueringen-online.de: the aid beneficiary, the aid amount and intensity, the target area, the technology selected, the wholesale access products and prices for these products.
- (11) There are no other amendments to the scheme. Therefore, the Commission sees no reason to depart from its previous positive compatibility assessment in case SA.33364 (2011/N).

5. DECISION

- (12) In view of the above, the Commission finds that the aid measure in question, as amended, remains compatible with the internal market in accordance with Article 107(3)(c) TFEU and has accordingly decided not to raise objections to the notified measure.
- (13) The Commission would remind the Federal Republic of Germany of the requirement to submit to it annual reports on the application of the aid measure and to inform it pursuant to Article 108(3) TFEU of all plans to modify this aid measure or approve a new one. In view of the duration of the scheme, the Commission would draw Germany's attention to any future revisions of the Broadband Guidelines, which might make appropriate changes to the scheme necessary.

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:

⁴ See also, e.g., state aid cases N 368/2009 - Germany: Amendment of State aid broadband scheme N 115/2008 – Broadband coverage in rural areas in Germany, of 22.12.2009; N 383/2009, Broadband in rural areas of Saxony, of 8.02.2010; N 53/2010, Germany - Federal framework programme on duct support, of 12.07.2010; N 62/2010, High-speed broadband construction aid in sparsely populated areas of Finland; and footnote 59 of the Broadband Guidelines.

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
Rue Joseph II 70 / Jozef II straat 70
B-1049 Brussels
Fax No: +32 229 61242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President