



Germany extends its measures to support the economy

GERMAN GOVERNMENT ADOPTS NEW MEASURES TO COPE WITH THE FINANCIAL AND ECONOMIC CRISIS

In reaction to the ongoing economic and financial crisis, the German government has decided upon a second stimulus package to boost the economy. The package consists of increased public spending on infrastructure and education projects as well as the expansion of public guarantees for loans and a simplification of procurement rules. Other measures focus on the individual citizen and are tailored to reduce the burden of taxes and social contributions. This briefing outlines the package's main elements aiming at companies.

In addition to the first package of measures to support the economy (see www.freshfields.com/publications/pdfs/2008/dec08/24805.pdf), the German government recently agreed on a second stimulus package amounting to €50bn. Together, these packages add up to 1.5 per cent of the annual German gross domestic product. Some measures are tailored to help companies while others aim at private individuals.

Most of these measures still have to be passed by parliament. The legislation process is currently expected to be completed in mid-February.

Measures focussing on companies

The following four measures are particularly important for companies.

- A loan guarantee programme.
- Infrastructure projects.
- An increase of public spending for innovations.
- A simplification of public procurement rules.

Loan guarantee programme

In the last stimulus package, the German public bank KfW established a special programme to support small and medium-sized enterprises (SMEs) by facilitating access to capital through loans and guarantees for investments.

The new stimulus package will make the conditions for these loans and guarantees for SMEs more flexible. In particular, the duration of the loans will be amended.

These will be available from a contract period of one year or even less than a year up to a contract period of 15 years. Furthermore, the existing programme will be prolonged until the end of 2010. It will also be extended to project financing so that KfW can refinance project loans of project financing banks up to €200m per project. Additionally, KfW may directly join a consortium of banks and bear a maximum share of 35 per cent of the borrowed capital up to a maximum amount of €200m per project.

The new stimulus package also contains a specific programme with a budget of €25bn for large companies. Such companies with an annual revenue of more than €500m may apply for subsidised loans under this scheme. They may take up loans at market conditions up to a maximum amount of €300m each. KfW will then indemnify the lending banks up to 70 per cent of the amount borrowed. These loans are not necessarily tied to specific projects or plans. Instead, they may also be used for financing the ongoing business. As a member of a consortium of banks KfW may furthermore directly finance large companies by bearing a maximum share of 50 per cent of the borrowed capital up to a maximum amount of €200m per consortium loan.

Finally, existing guarantees will be extended and new guarantees will be introduced by KfW. The total volume of these guarantees will be €100bn. The aim is to improve the access to capital by securing the risk of default. A specific focus will be on the financial situation of credit insurers as well as leasing and factoring companies. The prerequisites for access to these guarantees are

a solid equity capitalisation and available securities. Furthermore, the guarantees are available only to those companies that had not encountered difficulties before 1 July 2008.

Infrastructure projects

The German state intends to spend more than €17bn within the next two years for investments in additional, not already existing infrastructure projects. This money will be provided within a fast-track scheme. The federal government will contribute €14bn and the federal states €3bn.

The federal government plans to make the following investments:

- €2bn for federal roads, railways and rivers;
- €2bn for federal government buildings, equipment and research conducted by the government;
- €6.5bn for education, ie the construction or renovation of day-care facilities for children, schools, universities and research institutes on the state or local level; and
- €3.5bn for infrastructure on the local level such as hospitals, local roads and urban or rural development.

The federal states will co-finance with €3bn those of the above-mentioned projects that are implemented on the local or regional level.

We expect that a considerable share of infrastructure projects already planned, eg the expansion of existing, and the construction of new motorways will be implemented shortly. Many of these projects will comprise opportunities for public private partnerships.

Furthermore, the government intends to promote the expansion of broadband internet networks in Germany. Until 2010, all households, even in remote areas, shall be connected to broadband networks. Until 2018, all households shall have internet access points with a capacity of at least 50m/bit per second. To reach these targets, the government will develop a broadband strategy until mid-February. This strategy will comprise measures to lower the costs of innovations, more public spending as well as an investor and growth-oriented regulation.

Increased public spending for innovations

The existing 'Central innovation programme for small and medium-sized enterprises' of the federal

government, which aims to promote research and development (R&D) projects in smaller companies with less than 250 employees and mainly focuses on eastern Germany, will now be extended. First, it will be made available to companies located in western Germany, too. Second, it will also be made available to larger companies with up to 1,000 employees in both eastern and western Germany. The additional sum provided for the programme amounts to €450m per year.

This funding can be used by companies with business operations in Germany for R&D projects aiming at the development of new products, procedures and services without restriction to any specific technology or industry. Three categories of projects are promoted by the programme:

- cooperative projects among companies or between companies and research institutes;
- network projects consisting of at least six companies; and
- individual projects.

Under the existing scheme, the money is provided as grants up to a maximum sum of €2m per R&D project.

An additional amount of €500m in the years 2009 and 2010 will be spent on R&D in the mobility sector. This programme focuses on hybrid, fuel cell and storage technology. It will be implemented via state subsidies or loans by the public bank KfW. However, further coordination with European measures regarding mobility, especially the funding provided by the European Investment Bank, is necessary before implementation.

Simplification of public procurement rules

According to EU law, for contracts regarding construction works worth more than approximately €5m and for contracts regarding the provision of services and supplies worth more than approximately €200,000, a Europe-wide public invitation to tender is necessary. Below these thresholds, German procurement rules apply.

According to these German procurement rules, a Germany-wide public invitation to tender is generally necessary unless exceptions such as disproportionate costs or a particular urgency apply. Only in case of such exceptions, a limited invitation to tender or even no tender at all is necessary.

However, to expedite and facilitate public investments, the government introduces new thresholds for federal contracts. As a matter of principle, only a limited invitation to tender or no tender at all will be necessary if the contracts to be awarded are below these new thresholds. These will be valid for two years and are fixed at the following amounts.

- For construction works worth less than €1m: only a limited invitation to tender is necessary. This means that the government institution awarding the construction contract can invite a limited number of companies to the bidding procedure.
- For construction works worth less than €100,000: no invitation to tender is necessary. The government institution can award the construction contract right away to one company.
- For the provision of services and supplies worth less than €100,000: no or only a limited invitation to tender is necessary.

Additionally, several other measures are aimed at facilitating the awarding of contracts with public entities. These measures include the shortening of periods for tenders as well as an acceleration of the planning process of federal institutions. The federal states and local authorities are encouraged to simplify their own procurement procedures by introducing the same or similar thresholds or by raising their existing thresholds, too.

Outlook

The aforementioned measures have been passed by the German federal government and will presumably be accepted by the German parliament on 13 February 2009. However, according to the European law on state aids the EU Commission has to approve both the loan guarantee programme as well as the additional subsidies for innovations. Given the Commission's approval for the first German package of measures to support the economy and the Commission's 'temporary framework' for state aids to tackle the financial crisis, an approval of the new measures is expected until mid-2009 at the latest.

In particular as for the infrastructure projects, swift actions are necessary. To benefit from the newly provided money, the public entities should identify

their requirements soon. The funding for infrastructure projects will only be made available until the end of 2010. If no specific projects are planned and/or executed until then, the money will be forfeited.

For further information please contact	Dr Michael Schäfer Partner T +49 40 36 90 61 26 E michael.schaefer@freshfields.com
	Dr Thomas Voland Associate T +49 40 36 90 62 85 E thomas.voland@freshfields.com

Freshfields Bruckhaus Deringer LLP is a limited liability partnership registered in England and Wales with registered number OC334789. It is regulated by the Solicitors Regulation Authority. For regulatory information please refer to www.freshfields.com/support/legalnotice. Any reference to a partner means a member, or a consultant or employee with equivalent standing and qualifications, of Freshfields Bruckhaus Deringer LLP or any of its affiliated firms or entities.