

**Framework for the Coordination of the Joint Task of the federal government and the Länder for the Improvement of Regional Economic Structures (GRW)
- as of 10 June 2015 –**

[Excerpt]

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Introduction

Regional policy within the Social Market Economy

Throughout the existence of the Federal Republic of Germany, regional policy, which provides support for regions that are structurally weak, has been a cornerstone of the Social Market Economy. The concept of regional policy is underpinned by the German Basic Law, which calls for the establishment of “equivalent living conditions”, and by the political goal of ensuring equal opportunities across the entire territory of the Federal Republic, including the opportunity to participate in economic and social development, and of ensuring balanced and equivalent levels of regional development. A balanced structure of the labour market, of incomes, of the welfare system, and of the regional structures in Germany are all key to ensuring public acceptance of the social market economy. And that is not all: creating a balance between regions that are structurally strong and ones that are structurally weak helps foster prosperity and social stability throughout the entire country. By establishing equivalent living conditions, we can safeguard our prosperity and maintain economic progress in Germany.

Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures

Underlying principles and objectives

The most important instrument Germany uses in its national regional policy is the Joint Federal Government/Länder Scheme for the Improvement of Regional Economic Structures (GRW). It was formed by the Federal Government and the Länder in 1969 and has since been used to promote development in the regions which are especially in need of structural change. At times, when unforeseen developments have necessitated additional action, the regular scheme has been supplemented by special programmes, including in the case of the 2002 floods in Germany, and of the global financial and economic crisis that began in 2007. The GRW has played a key role in the establishment of viable and competitive economic structures in the new Länder.

Its purpose and justification has remained the same:

There are still differences between the German regions when it comes to their ability to bring about structural change. In cases where regions are not able to achieve this on their own, the government is called to find ways of compensating for the disadvantages suffered by these regions because of their structural weakness, so that they can keep pace with overall economic development rates and so that no region is left behind permanently. First and foremost, this means to strengthen these regions’ ability to bring about structural change, to become more competitive, and to stand on their own two feet. This means that regions that are structurally weak are encouraged to play an active part in their development, rather than remain in a passive role.

The number-one goal of the GRW is to harness each region’s potential for development to create good-quality jobs and safeguard them for the long term. This is how the GRW promotes long-term growth and employment at regional level. It makes it easier for regions to go through structural change, helps stabilise regional job markets, and boosts economic growth in Germany.

The GRW follows a medium to long-term approach. There is a wide range of possible instruments that can be used to promote development. All instruments focus on the supply side, i.e. the private sector. This is to ensure that the economic structure of a region, as well as the way in which it develops, is always determined by the aggregated executive decisions of a large number of companies that all need to compete successfully on the market.

Instruments and focal areas

Support is available for commercial investments, investments in local commerce-related infrastructure, and for non-investment-related activities, including the formation of clusters. This means that the Länder have a wide range of tools at their disposal which they can use to tackle regional problems in a targeted manner.

The purpose of the framework for the coordination of the GRW is to determine the focal areas of the GRW, which notably include financing for SMEs, support for technology and innovation, and support for rural areas.

- Small and medium-sized enterprises (SMEs): The GRW is a key instrument of SME policy in Germany and supports SMEs based regions that structurally weak in their role as “job generators”. One way of delivering this, for instance, is to allow SMEs to claim higher rates of support than large corporations that are based in the same region or another region classed in the same category of support. Another instrument that can be used is infrastructure funding for technology, innovation, and start-up centres, which support SMEs in the early stages of their development and help companies stay innovative.
- Technology and innovation: The investment support granted under the GRW helps bring down the cost incurred by investors as they establish a modern manufacturing system. This support, combined with other targeted instruments that promote technology transfer, e.g. support for clusters and of institutions conducting business-relevant research, helps to strengthen regions’ capacities for innovation.
- Rural areas: It is important for rural areas to be attractive for companies, so that these can create and safeguard jobs in the countryside. The GRW is aimed at both urban and rural areas and therefore takes into account and responds to the particular needs of rural areas. As a general rule, rural areas tend to find it difficult to attract productive capital and jobs and to retain these, meaning that there is a particular need for jobs to be created and safeguarded close to where people live in the countryside. This means placing a stronger focus on local hubs and towns that can act as generators of growth and employment within rural areas, so as to unlock regions’ potential and encourage the formation of networks.

The GRW’s coordinating function

– coordination within the scheme itself –

The purpose of regional policy and its individual measures is to alleviate the disadvantage suffered by regions that are structurally very weak. At the same time, regional policy must allow for fair competition between regions and not result in a subsidies race between the various Länder and regions.

This is why the rules governing the GRW are set and coordinated jointly by the Federation and the Länder. This applies to the definition of the regions that are eligible to receive support, the eligibility criteria, other requirements, the type and level of support, the procedure used to allocate and provide the funding, and to monitoring and evaluation (cf. Section 4 of the Act on the Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures (GRWG)).

- A uniform and transparent process is used to assess the pre-defined (labour-market) regions and to determine which areas are to be classed as Assisted Areas. The process uses a highly differentiated set of indicators to create a ranking of all of Germany’s regions, starting from the weakest in structural terms to the strongest. In general, a region’s position in this ranking will determine the level of support for which it is eligible (cf. map showing Assisted Areas).
- Under EU state-aid rules, the outcomes of the process, as seen on the map of Assisted Areas, are subject to a periodic review. This is to ensure that way in which funding is allocated reflects the state of regional development at this particular point in time, meaning that regions that have started to flourish will no longer be eligible to receive support, whereas regions that are in the process of falling behind will start to receive support. At the same time, this process guarantees that regional-policy funding made available to support regions that are structurally weak is channelled into the areas where it is most needed.
- Maximum rates of support under the GRW and the scope of the support are subject to state-aid rules and closely linked to the respective region’s level of structural weakness and its need of support.

In this sense, the rules agreed upon by the Federation and the Länder as part of their coordinating function form a framework, within which the Länder have scope to define their own priorities and thus use targeted measures to cater to the specific needs of the regions in question.

– coordination beyond the scheme –

The definition of the regions that are eligible to receive support, and the maximum rates of support for commercial investments are relevant not only in the context of the GRW, but also other regional development programmes at the EU, Federal, Länder, and local levels. Similarly, the uniform eligibility criteria and the uniform rules according to which support is made available are also used for purposes other than the scheme itself;

- including low-interest loans from the ERP regional programme, which are awarded based on the map of regions that are eligible to receive support.
- Some of the funds from the European Regional Development Fund (ERDF) used to amplify the effects of national support programmes are allocated to GRW projects in line with the rules set out in the coordination framework.

This means that the GRW has an important coordinating function that extends to all of the instruments designed to promote economic development at regional level in Germany.

Coordination with other measures related to land-use

Economic policy often has an impact on land-use. Regional-policy action is at its most efficient where it is part of an overall economic strategy. This requires close coordination between the GRW and other measures taken in the context of economic policy. The fact that there is a clear requirement for GRW projects to be closely coordinated with various government policies including labour market, innovation, education, and environmental policy ensures that all of the regional-policy instruments available in Germany are used within an integrated approach that allows for synergies to be used to boost growth, employment, and income levels in the relevant regions.

Underlying legal basis

- EU -

The coordination framework, which sets out the rules according to which funding is made available, transposes the European rules on national regional aid into national law. Like all other instruments designed to promote economic development, the GRW is subject to EU state-aid rules, which means that the definition of GRW Assisted Areas, the eligibility criteria for support, and the maximum rates of support must all be in line with the relevant EU provisions on state aid.

- national -

Article 72(2) of the German Basic Law, which calls for the establishment of equivalent living conditions, provides the constitutional basis for the GRW (as do other provisions, including Section 2(1) of the Regional Planning Act). The Federation, the Länder, and the municipalities are all tasked with working towards this objective.

The German Basic Law assigns responsibility for regional policy mainly to the Länder (Section 30) and the municipalities/local government associations (Section 28). The 1969 amendment of the German Basic Law saw the Federation being assigned a share in this task (Article 91a of the German Basic Law) and led to the establishment of the Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures (GRW).

The Act on the GRW (GWRG) sets out the principles underpinning the support provided under the scheme and the cooperation between the Federation and the Länder (cf. Annex 2).

As part of its coordinating function, the Federation contributes to the establishment and enforcement of the coordination framework and to the financing of the scheme.

In particular, the coordination framework sets out rules relating to (cf. Section 4 Act on the GRW):

- the map of Assisted Areas (Part I and Annex 10 of this coordination framework),

- the list of measures that are eligible to receive support, including specific requirements, and the type and level of support (Part II),
- the way in which the federal part of the funding is distributed among the Länder (Part III),
- the financial management of the funds (Part IV),
- reporting, statistical analyses, and evaluation (Part V).

The coordination framework is subject to regular review and, if necessary, adjustment. Creating this coordination framework is the most important task of the coordination committee, which is chaired by the Federal Minister for Economic Affairs and Energy, and of which the Federal Minister of Finance and the Länder Ministers/Senators of Finance are also members.

Provision of the support

The actual provision of the support is a task that falls solely to the Länder: it is they who select projects they deem worthy of support and it is they who issue recipients with notices of approval and monitor their compliance with the relevant terms and conditions.

The Federal Ministry for Economic Affairs and Energy is tasked with compiling regular reports on regional policy for the German Bundestag and its committees, informing them about the work of the GRW. The content of these reports must be coordinated with the Länder.

Funding envelope

Each year, in their Annual Budget Acts, the Federal and Länder parliaments determine the amount of funding that is to be earmarked for the GRW. Their budget plans list the amount of liquid funds that are available for expenses over the course of the financial year as well as the amount of commitment appropriations, i.e. the cost of the legal obligations that can be entered for the coming years. Pursuant to Article 91a of the German Basic Law, the Federation and the Länder each provide half of the financing for the GRW. The coordination committee decides how the appropriations are to be distributed among the Länder and what they are to be used for.

Monitoring and performance review

Funds provided under regional policy must be used in an efficient and forward-looking way. Proof of necessity is to be provided for each measure. This means that there is a need for regular performance review.

For many years now, the GRW has been subject to regular reviews regarding its performance in key areas. The review is conducted based on the data kept by the Federal Office of Economics and Export Control (BAFA) on each case in which funding has been approved. For each case, the Office records the relevant data provided in the notices of approval (i.e. prior to the investment) and the documents submitted as proof of use (after the investment has been made), allowing for a comparison between the target situation and the actual situation. Furthermore, as part of the verification process for proof-of-use, the effect that the support has had on the job situation is also recorded. This happens five years after the end of the investment project and helps to measure the lasting effect of the GRW funding. For projects related to business-relevant infrastructure, the period in which the support is tied to a particular purpose is usually 15 years.

In addition to the comparison between the target vs. the actual data, regular ex-post evaluations are conducted to monitor the outcome of projects that seek to promote commercial investments (regional studies focusing on effects on employment and incomes); as far as support for infrastructure is concerned, the Federation and the Länder are in the process of establishing a uniform monitoring and evaluation system based on the findings of an expertise that was commissioned to find the best underlying method for this.

This multi-stage monitoring and performance review system jointly created by the Federation and the Länder will lay the basis that will continue to ensure an efficient use of scarce funding, and for further developing the GRW.

Part I Stipulation of Assisted Areas (pursuant to Section 1 of the Act on the GRW)

A. Requirements under applicable state-aid rules

(1) The level of support for commercial activity in regions that are structurally weak depends on the category of support to which the region has been assigned under state-aid rules. In its Guidelines on regional State aid,¹ the European Commission defined all of the “A-areas” in Europe (in line with Article 107(3)(a) of the Treaty on the Functioning of the European Union – TFEU) and the maximum share of the population for each Member State that can be covered by “C-areas” (in line with Article 107(3)(c) TFEU) (the ‘cap’).

(2) As of 1 July 2014, there are no areas in Germany that are classes as Assisted Areas eligible to receive the highest rate of support (A-areas) anymore. The cap for C-areas stands at 25.85% of the German population. As they defined the new Assisted Areas under the GRW, the Federal Government and the Länder made full use of the scope they had under the state-aid rules to use regional policy to alleviate particular problems that exist in some regions and to encourage structural change. Above the category C areas, whose coverage is capped by the regional aid guidelines¹, a new category of Assisted Area, the “D-area”, was introduced within the GRW. Support for commercial activity in the d areas is subject to the provisions on horizontal state aid and is granted in line with the provisions of the General Block Exemption Regulation (GBER)² that relate to SMEs and of the De minimis Regulation³.

B. Set of regional indicators

In principle, a set of regional indicators is used to define the C-areas in line with the EU cap. For this purpose, the territory of the Federal Republic is divided up into what are called labour-market regions. These are formed around the regional employment centres and include areas from and to which there is a great deal of commuter traffic. These labour-market regions are then scored against a mixed indicator and ranked according to their overall performance, starting with the region that is structurally the weakest (in terms of economic performance) to the one that is the strongest. The mixed indicator is composed of the following regional indicators:

- | | |
|---|--------------|
| a) Average unemployment rate between 2009 and 2012 | 45 per cent |
| b) Gross annual salary per employee subject to social insurance contributions in 2010 | 40 per cent |
| c) Projection of the work force in the years ranging from 2011 to 2018 | 7.5 per cent |
| d) Infrastructure indicator (as of 30 September 2012) | 7.5 per cent |

C. Assisted Areas as of 2014

The decision as to which areas are to be designated C and D areas as of 1 July 2014 (Annex 10), which was taken by the coordination committee on the basis of regions’ performance against a set of regional indicators, is reflective of the problems that exist in Germany’s regions and tackles them in a fair and competent manner. With the exception of the labour-market region of Leipzig, which has been designated a non-pre-defined C-area, all of the labour-market regions in the New Länder have been designated as C-areas. Up until 31 December 2017, the maximum rates of support available to commercial business in these areas are 35/25/15 per cent respectively for small/medium-sized/large enterprises. As of 1 January 2018, these rates will drop by 5 percentage points each. The maximum rates of funding that apply in the NUTS⁴-3 regions of Cottbus, Spree-Neiße, Frankfurt/Oder, Märkisch-Oderland, Oder-Spree, Barnim, Uckermark, Ostvorpommern,

¹ Guidelines on Regional state aid 2014-2020 – Regional aid Guidelines (OJ C 209 of 23 July 2013, p.1).

² Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation – GBER) (OJ L 187 of 26 June 2014, p.1).

³ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid Text (De minimis Regulation) (OJ L 352 of 24 December 2013, p.1).

⁴ NUTS: Nomenclature des unités territoriales statistiques; a hierarchical system for the identification and classification of geographical reference units in the used in official statistics published by the Member States of the European Union.

Uecker-Randow and Görlitz are higher than in the other pre-defined C-areas (+5 percentage points up until 31 December 2017; +10 percentage points from 1 January 2018 to 31 December 2020). This is on account of the fact that, without these higher rates), the gap between the support available in these areas and the neighbouring A-areas across the national border would have been in excess of 15 percentage points. For C-areas bordering on A-areas, there is scope for the maximum rate of support to be increased up to the point where the gap between the two areas' maximum rates amounts to no more than 15 percentage points.

Part II Rules relating to requirements and the type and level of support

All support granted under the Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures (hereinafter: “GRW funds”) shall be subject to the following rules specifying requirements and the type and level of support that is available. The task of providing the actual support shall be reserved to the Länder. The Länder shall be free to define their own priorities, take regional needs into account, and apply stricter rules than the ones set out in Part II.

A. Trade and industry (including non-profit, non-university business-related research institutions)

1. General information⁵

1.1 Definitions

1.1.1 Permanent establishment

The term ‘permanent establishment’ is used within the meaning of Section 12 of the Fiscal Code (AO); the term ‘commercial’ is used within the meaning of the Trade Tax Act (GewStG).⁶ In the interest of promoting teleworking jobs pursuant to 2.3.1, the place at which a teleworker performs his/her duties shall be regarded as a non-independent part of the enterprise’s permanent establishment.

1.1.2 Single investment

Any initial investment made by an investor (group) who has received support for another investment in the same NUTS-3 region and for which work began no more than three years prior to the new investment shall be regarded as part of the same single investment. If the single investment falls into the category of large-scale investment, the overall state aid granted for this single investment shall not exceed the maximum amount of support for large investment projects.⁷

1.1.3 Start-up

The start-up phase of an enterprise shall be defined as the period of 60 months following the first registration of the commercial enterprise. An enterprise shall be regarded as a start-up if it has registered commercial operations for the first time and unless it is under majority ownership of one or several independent entrepreneurs or existing enterprises.

1.1.4 Job

- (1) The number of permanent jobs shall be indicated separately from the number of employees.
- (2) The number of permanent jobs shall be indicated as full-time equivalent (FTE).
- (3) Permanent jobs shall be defined as jobs which, from the outset, are created for the long term and retained at least for the minimum duration (cf. 2.7.2 (4)).

⁵ Pursuant to EU law, care shall be taken that all requirements, including those relating to the type and levels of support shall be conducive to the purpose for which the support is given. Section A shall form the legal basis for the granting of state aid within the meaning of the common rules as set out in the GBER (Chapter 1), on the granting of state aid within the meaning of the specific rules on regional investment aid as set out in the GBER (Chapter III, Section 1, Subsection A, Articles 13-14), and for the specific rules on the granting of state aid to SMEs as set out in the GBER (Chapter III, Section 2, Article 17). The European Commission’s Regulations relating to state aid shall apply as amended from time to time.

⁶ Fiscal Code in the version promulgated on 1 October 2002 (Federal Gazette I, p. 3866; 2003 I p. 61), as amended from time to time; Section 2 of the Trade Tax Act in the version promulgated on 15 October 2002 (Federal Gazette I, p. 4167) each as amended from time to time.

⁷ Cf. Article 14(13) GBER.

(4) The Länder shall be free to decide if agency workers can be counted towards the number of permanent jobs.

(5) Part-time jobs shall be counted as a proportion of the annual working hours of a full-time job.

(6) Seasonal jobs and their annual average working hours as set out in a collective agreement or practised by the enterprise shall be counted towards the number of permanent jobs, provided that they are available and filled on a permanent basis for the season relevant to the permanent establishment.

(7) Where more than one shift is operated, the number of permanent jobs shall, as a general rule, be considered to be equivalent to the corresponding number of employees.

(8) A job shall be considered to be a teleworking job if an employee uses electronic media (for instance data processing equipment that is operated in online or offline mode) at their home to perform their duties under their employment contract for an enterprise located in a different place. A job shall be considered to be an isolated teleworking job if the employee performs all of their activities for the enterprise at their home. A job shall be considered to be an alternating teleworking job if the employee performs part of their activities for the enterprise at their home, and part of their activities on company premises/on the premises of the employer.

1.1.5 Small and medium-sized enterprises, large enterprises⁸

(1) Medium-sized enterprises shall be defined as companies

- a) employing fewer than 250 persons and
- b) having an annual turnover of a maximum of €50 million or an annual balance sheet total of a maximum of €43 million.

(2) Small enterprises shall be defined as companies

- a) employing fewer than 50 persons and
- b) having an annual turnover or an annual balance sheet total of a maximum of €10 million.

(3) Large enterprises shall be defined as companies that do not meet the above requirements.

(4) The calculation methods specified in Annex I of the GBER shall be used to determine the thresholds for autonomous enterprises, partner enterprises and ‘linked enterprises’.

1.2 Principles underpinning the support for trade and industry (including non-profit, non-university business-related research institutions)

GRW funding is available for investment projects undertaken by trade and industry, provided that the projects strengthen businesses’ competitiveness and ability to adjust, and help create new permanent jobs and/or safeguard existing permanent jobs (strategy for development). The principles and objectives which are set out in the coordination framework for the GRW and that underpin all support for regional development shall apply.

1.2.1 Assisted areas

GRW funding may only be used in the designated Assisted Areas⁹ listed in Part I and shown in Annex 10.

1.2.2 Legal entitlement

There shall be no legal entitlement to GRW funding.

1.2.3 Subsidiarity

GRW funding shall be used as supplemental support. It shall therefore not be allocated with the intention of replacing other public-sector financing.

1.2.4 Time of assessment

⁸ Definition as in Annex I (GBER).

⁹ Cf. the list of Assisted Areas and the Map of Areas Receiving Assistance in the period from 2014-2020 in Annex 10.

The assessment as to whether a project is eligible to be considered for support and the assessment regarding aid intensity and the amount of support shall be made based on the facts as they stand at the time at which the grant is approved¹⁰.

1.3 Procedure

1.3.1 Application for support

(1) GRW funding shall be granted upon application and take the form of a grant or a low-interest loan pursuant to Part II C no 3. It shall be mandatory for any application to be made to an authorised authority¹¹ and prior to the beginning of work on the investment project. It shall be mandatory for any application to be made using the official form¹² intended for this purpose.

(2) The beginning of work on the investment project shall be defined as

- a) the time of the conclusion of a delivery or service contract associated with project implementation; or
- b) the beginning of construction work associated with the investment; or
- c) the time of the placing of the first binding order for equipment; or
- d) the time at which any other commitment is made that renders the investment irreversible.

Work on the investment project shall be deemed to have started at the time at which the first of these actions is performed. Neither the purchase of land nor preparatory work such as the filing of requests for approval or the conducting of preliminary feasibility studies shall be taken as the beginning of work on the investment project. Where the project involves construction work, neither planning nor ground surveys shall be taken as the beginning of work. In cases where a permanent establishment is being taken over, the beginning of work on the investment project shall be defined as the time of the acquisition of assets that are directly linked to the permanent establishment.

1.3.2 Eligibility

(1) The right to apply for support of trade and industry shall be reserved to the party undertaking the business investment. In the case of a partnership within the meaning of Section 15 of the Income Tax Act (EStG) or of an integrated company within the meaning of Section 2(2) of the Trade Tax Act, the party using the assets at the permanent establishment situated within the Assisted Area shall be eligible to apply. Where an enterprise has been split up and where this demerger has been recognised for tax purposes, it shall be mandatory for a joint application to be filed by the holding company and the operating company.

(2) In the case of a hire-purchase or lease of an asset, the hire-purchaser or lessee shall be eligible to apply.

(3) The hire-purchase or leasing agreement shall state:

- a) The purchasing or manufacturing costs of the object, the period for which the lease is non-cancellable, the level of the relevant rental or lease instalments, and the terms under which the hirer or lessee shall be able to purchase the object and/or renew the rental agreement or the lease, and the basis of assessment for these, which must not exceed the residential book value.
- b) Where the leased or rented object is real estate, use of any variation clauses permitting adjustments to be made to the leasing instalments in order to account for changes regarding interest rates and/or administrative costs.

1.4 Support granted prior to the filing of the application

Any financial support granted to the applicant from public-sector funding in earlier years shall be taken into account as the application is being considered.

¹⁰ Cf. Article 2, point 28 GBER.

¹¹ Cf. explanations on how to fill in the Application Form, Annex 6.

¹² The official form can be found in Annex 6.

1.5 Consideration of applications

(1) The granting authority shall decide whether an investment project is eligible to be considered for support and, if necessary, shall rank projects according to their priority by applying the criteria set out in 2.6.1 and used to determine if a project is worthy of funding.

(2) The authority shall also verify that

- a) the investment project is in line with the objectives and underlying principles of regional planning and meets any other requirements related to regional planning;
- b) the project has been proved by the competent authorities;
- c) that measures have been taken to ensure that any harmful emissions (especially air and water pollution, soil contamination, noise) are avoided or limited to the absolute minimum, that proper waste disposal is guaranteed from the beginning of operations at the project that receives direct funding, or from the beginning of operations at the permanent establishments of trade and industry that are being established in industrial or commercial sites made available with the support of GRW funds;
- d) that any project that involves the creation of new jobs or the safeguarding of existing ones has been cleared by the competent Employment Agency;
- e) that the investment project
 - aa) is in line with the area development plan(s) of the municipality and possibly of the various neighbouring municipalities, as laid down pursuant to the Federal Building Code (BauGB); in the absence of an area development plan, it shall be mandatory for the project to meet the requirements under the zoning and building statutes (Sections 29ff Federal Building Code);
 - bb) is connected to urban modernisation and development action taken pursuant to the Federal Building Code and, if so, is conducive to reaching these intended goals for redevelopment (Sections 139, 149, 165(4), 171 and 164(a) and (b) Federal Building Code);
 - cc) is in line with the outcomes of the agricultural and structural preliminary plan drawn up in compliance with the principles governing funding under the Joint Scheme for the Improvement of Agricultural Structures and Coastal Protection.

2. Requirements

2.1 Primary effect

Investment projects shall be eligible to be considered for support if they lend themselves to the creation of additional sources of income, thus having a non-insignificant, direct, sustained, positive effect on overall income in the respective economic area ('primary effect').

2.1.1 The notion of "nature of output"

It shall be possible for these requirements to be considered to be met if the goods or services produced at the permanent establishment are of a nature that makes it likely for them to be regularly and predominantly (i.e. than 50 per cent of turnover) exported to markets beyond the region (the notion of 'nature of output')¹³.

2.1.2 Possibility for proof-of-compliance to be demonstrated case-by-case

Projects shall also be eligible to be considered for funding if the majority of goods or services produced at that particular permanent establishment are indeed predominantly exported to markets beyond the region, thus having a non-insignificant, direct, sustained, positive effect on overall income in the respective economic area ('case-by-case proof-of-compliance'). As a general rule, export markets shall be considered to be "beyond the region" if they are situated outside a 50 km radius of the municipality to which the permanent establishment belongs. Projects shall also be eligible to be considered for support if the applicant submits a substantiated projection according to which implementation of the investment project is likely to result in a situation whereby the goods or services produced at the permanent establishment are predominantly sold beyond the region.

¹³ In the case of the activities listed in Annex 8 (White List), the 'nature of output' is such that it shall be possible for the requirements relating to the primary effect to be presumed to be met.

Proof of the fact that the goods or services produced are predominantly sold beyond the region shall have to be submitted by the end of the third year following completion of the investment project.

2.1.3 Training facilities

Once a permanent establishment has met the requirement for a primary effect to be demonstrated, this requirement shall also be considered to be met by the permanent establishment's training facilities (e.g. training labs, workshops and offices).

2.2 Incentive effect

State aid shall be considered to have an incentive effect if the beneficiary has made a written application before work on the project or activity has started¹⁴ (cf. 1.3.1).

2.3 Employment effects and the “special-efforts requirement”

2.3.1 Employment effects

(1) It shall be mandatory for all investment projects to generate employment in the Assisted Areas, either by way of creating new permanent jobs or by safeguarding existing ones. Vocational-training places shall be eligible to be considered for support in the same way as permanent jobs. During a monitoring period of at least five years following completion of the investment project, it shall be mandatory for the jobs created or safeguarded as part of the investment project to be filled or at least permanently advertised on the job market.

(2) Investments made to create or safeguard isolated or alternating teleworking jobs shall be eligible to be considered for support, provided that both the permanent establishment of the enterprise and the place from which the teleworker performs his/her duties are located within the Assisted Area. If the permanent establishment and the place from which the teleworker performs his/her duties are located in different categories of Assisted Areas, the maximum rate of support that applies for the Assisted Area in which the teleworker performs his/her duties shall prevail. If the permanent establishment and the place from which the teleworker performs his/her duties are located in two different Länder, any support shall be subject to agreement between the Länder concerned. In particular, it shall be mandatory for agreement to be reached as to whether and how the Länder should share the burden of financing the individual investments to be made at the permanent establishment and the place from which the teleworker performs his/her duties. If the Länder concerned have decided to share the burden of financing, they shall have the option to consider, as part of their decision, the extent to which each of the investments is projected to have any of the special structural effects that are listed in 2.6.1(3). The task of issuing the document confirming approval of support shall be reserved to the *Land* in which the permanent establishment is situated.

2.3.2 Special efforts

(1) Investments shall only be eligible to be considered for support if the scale of the investment or the number of permanent jobs to be created by the investment requires the applicant to make special efforts.

(2) Consequently, investment projects shall only be eligible to be considered for support if the amount of the investment over one year, at the time of the application, exceeds the average amount of write-offs earned over the past three years – (excluding special write-offs) by at least 50 per cent, or if there is an increase of at least 15 per cent in the total number of permanent jobs at the enterprise's permanent establishments located within the municipality¹⁵. It shall be possible for vocational-training places to be treated the same as permanent jobs. The requirements shall be deemed to be fulfilled where an enterprise invests in a municipality in which it has not previously invested, or where an enterprise diversifies its activities¹⁶, or in the case of acquisition of a permanent establishment that has been closed down or is in danger of being closed down.

¹⁴ Pursuant to Article 6 (2) of the GBER.

¹⁵ In cases of investment support being granted for SMEs based in D-areas, the jobs target pursuant to Article 17(5)(b) GBER shall also have to be met.

¹⁶ Within the meaning of Article 2, point 51 GBER in conjunction with point 50.

(3) As an additional requirement, a project shall only be eligible to be considered for funding if the cost of investment linked to

- fundamental changes being made to the production process¹⁷ exceeds the write-offs that have been made over the preceding three financial years for all of the assets linked to the activity which is to be modernised.
- diversification of production at the existing permanent establishment exceeds the book value of the assets which are to be reused by at least 200 per cent. The book value as defined for the financial year preceding the work shall apply.¹⁸

2.4 Eligible investment projects

(1) In the case of the applicant being an SME, the following types of investments shall be eligible to be considered for support:

- a) Investments to establish a new permanent establishment (investments to establish);
- b) Investments to expand the capacity of an existing permanent establishment (investments to expand);
- c) Investments to diversify production at a permanent establishment to include output that has previously not been produced there;
- d) Investments to overhaul the entire process of production at an existing permanent establishment;
- e) Investments to acquire assets of a permanent establishment that has been closed down, or that would have been closed down had it not been for this acquisition; provided that the assets are being acquired by an investor that has no relationship to the seller. In the case of small enterprises that are being taken over by family members of the original owner, or a former employee, the condition that the assets must be acquired by a third party that has no relationship to the buyer shall be waived. An acquisition of shares of an enterprise shall not be considered to be an initial investment.

(2) In the case of the applicant being a large enterprise, the following types of investments shall be eligible to be considered for support:

- a) Investments made pursuant to Article 2 point 51 GBER in a permanent establishment in the relevant region. This applies to
 - aa) investments to establish a new permanent establishment (investments to establish);
 - bb) investments to diversify production at a permanent establishment; provided that the new activity is not the same or a similar activity as the activity that was previously conducted at the permanent establishment¹⁹, and
 - cc) investments to acquire assets of a permanent establishment that has been closed down, or that would have been closed down had it not been for this acquisition; provided that the assets are being acquired by an investor that has no relationship to the seller and provided that the new activity to be conducted with the assets acquired is not the same or a similar activity as the activity that was previously conducted at the permanent establishment¹⁹. An acquisition of shares of an enterprise shall not be considered to be an initial investment.
- b) Initial investments to diversify production at an existing permanent establishment located in a C-area by means of adding to the product range or introducing process innovation²⁰. Every project shall be subject to individual notification to the European Commission²¹.

2.5 Consensus requirement

Investments that are made at or at around the time when a significant reduction of jobs occurs at another permanent establishment linked to the enterprise and situated in an Assisted Area receiving a lower level of GRW support, and that are linked in nature/substance to this reduction of jobs, shall only be eligible to be

¹⁷ 'Production' and 'products' shall include services and the provision of services.

¹⁸ 2.3.2 (3) shall be waived where SME support is granted pursuant to Article 17 GBER.

¹⁹ The criterion here shall be that the new activity must not be considered as belonging to the same class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities (cf. Article 2 point 50 GBER).

²⁰ For a definition of process innovation, cf. Article 2 point 97 GBER.

²¹ Cf. point 15 of the Guidelines on regional State aid.

considered for support if consensus is reached about this with the *Land/Länder* affected by the reduction in jobs. A significant reduction of jobs shall be deemed to occur whenever the number of jobs lost at the other permanent establishment is equivalent to half or more of the number of newly created jobs. Where it proves impossible to reach consensus on granting support for the investment in the target area, the maximum rate of support for which the project shall be eligible to be considered shall be equivalent to the rate of support that applies pursuant to 2.6.1(1) in the Assisted Area in which the other permanent establishment is situated.

2.6 Maximum rates of support, state-aid intensity, share of investment borne by recipient

2.6.1 Maximum rates of support

(1) ²²In the Assisted Areas pursuant to Part 1, the combined state-aid intensity of the support granted to an investment project from GRW funds and any other public-sector funds shall not exceed the following maximum rates of support²³:

a) Pre-defined C-areas (former A-areas):

	Between 1 July 2014 and 31 December 2017 ²⁴	Between 1 January 2018 and 31 December 2020
Permanent establishments of small enterprises	35 per cent,	30 per cent,
Permanent establishments of medium-sized enterprises	25 per cent,	20 per cent,
Permanent establishments of large enterprises	15 per cent.	10 per cent.

b) Non-pre-defined C-areas:

Permanent establishments of small enterprises	30 per cent,
Permanent establishments of medium-sized enterprises	20 per cent,
Permanent establishments of large enterprises	10 per cent.

For C-areas bordering on A-areas²⁵, the applicable maximum rate of support shall be the maximum rate of support that applies in the bordering NUTS-3 regions or parts thereof, thereby ensuring that the gap between the two areas' maximum rates amounts to no more than 15 percentage points²⁶.

²² Cf. the list of Assisted Areas and the Map of Areas Receiving Assistance in the period from 2014-2020 in Annex 10.

²³ For large projects, the following adjusted maximum rates shall apply pursuant to Article 4(1)(a) in conjunction with Article 2 point 20 GBER:

Eligible costs	Adjusted maximum rate of support
Up to €50 million	100% of the maximum rate of support applying in the region
Amount between €50 million and €100 million	50% of the maximum rate of support applying in the region
Amount exceeding €100 million	According to the individual notification

It shall not be possible for SME supplements to be granted for large investment projects.

²⁴ Temporary increase of the maximum rates of support applying in former A-areas by 5 percentage points for the period between 1 July 2014 and 31 December 2017 in line with point 175 of the Guidelines on regional State aid.

²⁵ Cf. the list of Assisted Areas and the Map of Areas Receiving Assistance in the period from 2014-2020 in Annex 10.

²⁶ Cf. point 175 of the Guidelines on regional State aid.

c) D-areas

Permanent establishments of small enterprises ²⁷ , ²⁸	20 per cent,
Permanent establishments of medium-sized enterprises ^{27, 28}	10 per cent
Permanent establishments of large enterprises ²⁹	a maximum total amount of €200,000 over any period of three financial years.

(2) The criteria that shall be used to decide whether an enterprise is deemed to be a small, medium-sized or large enterprise are set out in 1.1.5.

(3) The rates of support specified for C-areas shall be maximum rates of support and it shall only be possible for this maximum support to be granted in full where an individual project has a special structural impact. A project shall be considered to have a special structural impact when it is exceptionally well-suited to counteracting quantitative and qualitative deficiencies in the economic structure, also regarding the labour market in the Assisted Area. This shall be considered to be the case, for instance in the case of

- investments that raise or maintain the level of employment in a region that is affected by grave labour-market issues;
- investments that have a particularly positive effect on energy efficiency;
- investments that strengthen a region's capacity for innovation;
- investments made in connection with business start-ups.

2.6.2 Aid intensity

Aid intensity shall be defined as gross grant equivalent, i.e. the discounted value of the aid as a percentage of the discounted value of the eligible cost as it stands at the time of grant.

2.6.3 Calculating the amount of support

The amount of support that is granted in regional aid shall be calculated based on the eligible costs of the tangible and intangible goods which form the fixed assets of the initial investment (capital grants), or of the wage costs linked to the jobs directly created by the investment project (wage grants). Where the aid is cumulated with other types of aid for capital investment and/or wage grants, the combined gross grant equivalent of the support shall not exceed the most favourable maximum amount that is permissible under the rules that apply for the calculation of each type of support. To calculate the total amount of support, the gross grant equivalents for each type of support shall be added up. In cases where expenditure that qualifies for regional aid qualifies – in part or in total – for other programmes that serve other objectives, it shall be possible for the portion of the expenditure that qualifies for both types of support to be subject to the maximum rate of support that is more favourable.

2.6.4 Contribution made by the beneficiary himself/herself

The contribution to the investment that is made by the beneficiary himself/herself, using equity or external funding, shall at least be equivalent to 25 per cent of the eligible costs. This minimum contribution by the beneficiary shall be made without the use of any public-sector funding.

²⁷ The legal basis for all investment aid granted to SMEs in D-areas is set out in Article 17 GBER. The threshold pursuant to Article 4(1)(c) GBER shall apply: €7.5 million per enterprise and investment project.

²⁸ The requirement for individual notification set out in Article 4(1) GBER and the requirement for documentation to be retained for ten years pursuant to Article 12 GBER shall be complied with.

²⁹ The legal basis for all support granted in D-areas is set out in Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid. Pursuant to Article 3 (2) of this Regulation, the total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed €200,000 over any period of three financial years.

2.6.5 Nominal amount

It shall be possible for aid intensity to be calculated based on the nominal amounts of GRW grants, provided that the aid intensity defined as the gross grant equivalent does not exceed the maximum permissible rate.

2.6.6 Loans

(1) The gross grant equivalent of support granted in the form of low-interest loans shall be defined as the difference between the interest rate paid and the reference rate which is to be determined using the method stipulated by the European Commission³⁰.

(2) Subordinated loans shall not be eligible to be considered for support.

2.6.7 Guarantees

The gross grant equivalent of support granted in the form of guarantees shall be calculated using the methods approved by the European Commission³¹.

2.6.8 Notification to the Commission

(1) Regional aid shall be subject to individual notification³² to the European Commission if the amount of the aid (granted from GRW funds and, if applicable, from other programmes) exceeds the applicable notification threshold.

(2) The following notification thresholds shall apply

- a) to regional investment aid: the ‘adjusted maximum rate of support’ calculated using a method that is in accordance with Article 2 point 20 GBER for an investment with eligible costs of €100 million (Article 4(1)(a) GBER³³);
- b) to investment aid to SMEs pursuant to Article 17 GBER (cf. footnote 27): €7.5 million per enterprise and investment project (Article 4(1)(c) GBER).

(3) In addition to this, regional aid³⁴ shall also be subject to mandatory notification if the recipient has ceased to conduct the same activity or a similar activity within the European Economic Area within the two years preceding the application for aid, or if the recipient, at the time of the application, has plans to cease such an activity within two years after completion of the investment for which funding has been received.

(4) Furthermore, all regional aid to be approved pursuant to 2.4(2)(b) for a large enterprise seeking to diversify production in an existing permanent establishment located in a C-area by means of adding to the product range or introducing process innovation shall be subject to individual notification.

³⁰ The reference rate shall be set in line with the provisions set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).

³¹ Further information on how to calculate the gross grant equivalent of support granted in the form of guarantees, can be found on the website at <http://www.pwc.de/de/offentliche-unternehmen/berechnung-des-beihilfewertes-staatlicher-buergschaften.jhtml>.

³² Cf. 1.1.2 for a definition of ‘individual investment’.

³³

Aid intensity	Notification threshold
10%	€7.50 million
15%	€11.25 million
20%	€15.00 million
25%	€18.75 million
30%	€22.50 million
35%	€26.25 million
40%	€30.00 million
45%	€33.75 million
50%	€37.50 million

³⁴ This requirement shall not apply to investment aid granted to SMEs in D-areas (cf. footnote 27).

2.7 Eligible costs

2.7.1 Right of choice

It shall be possible for GRW funds to be granted in the form of capital grants or low-interest loans pursuant to Part C 3 or in the form of wage grants. The investor shall be able to choose between these options.

2.7.2 Capital grants and low-interest loans

(1) Costs eligible for capital grants and low-interest loans shall include:

- a) the costs for the procurement or manufacture of the physical fixed assets forming part of the investment project (including buildings, installations, machinery);
- b) the costs for the procurement or manufacture of movable assets used within the Assisted Area³⁵;
- c) the costs for the procurement of intangible assets; for SMEs this shall apply to the full amount of the costs of the total eligible investment project; for large enterprises this shall apply to no more than a maximum of 50 per cent of the total eligible investment costs. Intangible assets shall mean patents, operating licences or patent-protected technical expertise or technical expertise that is not patent-protected. Intangible assets shall only be eligible if
 - aa) they are being capitalised and can be written off;
 - bb) the investor has acquired them from a third party (not a ‘linked enterprise’ or an enterprise that is affiliated with the investor in economic or legal terms, or at the level of the individuals involved) and at market conditions; and
 - cc) provided that the assets are used solely within the permanent establishment that is in receipt of the support.
- d) hired or leased assets; provided that the risk associated with maintenance of the assets for which support is received lies with the hire-purchaser or lessee.
 - aa) It shall be mandatory for hire-purchase or leasing agreements for assets other than land or buildings to take the form of a financing lease that results in ownership of the assets for which support is granted being transferred to the investor at the end of the term. In these cases, it shall be mandatory for the hired or leased assets to be capitalised by the applicant at the time when the agreement is concluded.
 - bb) The minimum term for hire or leasing agreements for land or buildings shall be five years; in the case of SMEs, the minimum term shall expire no earlier than three years after the estimated date of completion of the investment project. It shall only be possible for grants to be given if the lessor and the applicant accept joint and several liability for any obligation to repay the grant. It shall be possible for the lessor’s joint and several liability to be reduced in accordance with the extent to which the benefits of the grant are passed on to the beneficiary.
- e) in the case of an acquisition of a permanent establishment, the eligible costs for the procurement of the physical fixed assets, up to their market price. Any costs for the procurement of physical fixed assets for which support has already been granted shall be deducted from the amount;
- f) the capitalised value of land that is indispensable to the investment project for which an application has been submitted, up to the market price of the land.

(2) The following costs shall not be eligible for support:

- a) investments made to replace existing assets;
- b) any costs for the procurement or manufacture of cars, estate cars, trucks, omnibuses, aircraft, ships, rolling stock or any vehicles that are approved for road traffic and mainly serve the purpose of transportation;
- c) any costs for the procurement of used assets, unless the investment involves the acquisition of a permanent establishment that has been closed down or is in danger of being closed down, or unless the used assets are acquired by a start-up small or medium-sized enterprise. Used assets shall only be eligible for support if they are not being purchased from ‘linked enterprises’ or enterprises that are affiliated with the investor in economic or legal terms, or at the level of the individuals involved, and provided that no public-sector funds have been made available for these assets at any earlier time.

³⁵ The derogations provided for in the GBER do not apply to movable assets used outside the Assisted Area; such assets are subject to individual notification.

In the case of small enterprises that are being taken over by family members of the original owner, or by former employees, the condition that the assets must be acquired by a third party unrelated to the buyer shall be waived;

d) borrowing costs that can be capitalised (interest to be paid over the construction period).

(3) Where an investment is made in connection with the relocation of a permanent establishment, it shall be mandatory for any (potential) proceeds from the sale of the former permanent establishment and for any amount received in compensation payments (due, e.g., pursuant to the Federal Building Code) to be deducted from the amount of investment costs that are eligible for support.

(4) It shall be mandatory for assets for which support has been received to remain within the permanent establishment for which support has been received for a minimum of five years after completion of the investment project, unless they are replaced with assets that are of the same value or higher. The assets replacing the assets for which support has been received shall not again be eligible for support.

(5) It shall only be possible for support to be provided for the portion of the investment cost that does not exceed €500,000 per newly created permanent job, or €250,000 per permanent job that has been safeguarded.

2.7.3 Wage grants

(1) Costs that are eligible for wage grants shall include the cost of the wages that are paid over a period of two years to persons who have been recruited. Jobs shall be eligible to be considered for support provided that they are linked to investment projects that meet the criteria set out in 2.4. It shall be mandatory for the majority of the jobs that have been newly created to fulfil one of the following criteria:

- a) Jobs that require skills that are above average;
- b) Jobs that are linked to high value creation; or
- c) Jobs in an industry in which there is major capacity for innovation.

(2) Wage costs shall be defined as the gross wages (before tax) and statutory social-security contributions. Any grants received as part of an employment-support scheme shall be deducted from the amount of the wage grant. A job shall be deemed to be linked to the investment if it revolves around an activity that has to do with the investment, and if it is created within three years of completion of the investment. The level of support shall be calculated based on the number of jobs that have been newly created and have led to a net increase in the number of persons employed compared to the number of persons employed, on average, during the twelve months preceding the application. It shall be mandatory for every job for which support has been received to remain filled for a minimum of five years.

(3) It shall be possible for half of the wage grant to be paid out to the beneficiary at the time at which the jobs are filled for the first time, and for the remaining half to be paid out after the first year of employment.

2.8 Implementation period

As a matter of principle, investment projects shall only be eligible to be considered for support if they are implemented within a period of 36 months.

2.9 Support for investments made by non-profit, non-university business-related research institutions

(1) Support for investments made by non-profit, non-university business-related research institutions shall be eligible to be considered for funding and the maximum rates of support set out in 2.6.1(1) shall apply.

(2) The maximum rates of support shall apply also when the support is cumulated with other types of support.

(3) In order to be eligible to submit an application, institutions shall meet the following criteria:

- a) they shall conduct research and development in science or technology;
- b) they shall employ skilled scientific staff;
- c) they shall focus primarily on providing research-and-development services to small and medium-sized enterprises;
- d) research and development (R&D) must account for a minimum of 70 per cent of total output; and
- e) the institution must not receive any institutional public-sector funding.

(4) 2.1 (Primary effect), 2.3.2 (Special efforts) and the requirements set out in 2.4 (Eligible investment projects) shall not apply.

3. Exclusion from support

3.1 Exclusion from support

The following sectors, in particular, shall be excluded from support:

- a) Agriculture and forestry, aquaculture, fisheries (unless the project is about processing or distribution);
- b) The iron and steel sectors (pursuant to Article 2, point 43 GBER),
- c) Mining, extraction of sand, gravel, clay, stone and similar industries in the primary-production sector;
- d) Energy and water supply (except for power stations and water-supply facilities that primarily serve individual enterprises' own needs);³⁶
- e) The construction sector (except for areas that feature on the White List (Annex 8);
- f) Retailing (except for mail order);
- g) Transport and storage;
- h) Hospitals, clinics, sanatoriums, and similar facilities;
- i) The synthetic-fibres industry³⁷;
- j) Support granted to an enterprise that finds itself in difficulty³⁸ (except in cases where support is granted for the purpose of disaster relief after a natural disaster has occurred);
- k) Airports;
- l) Enterprises that mainly conduct activities that fall within Section K 'Financial and insurance activities' of the NACE Rev. 2 Statistical Classification of Economic Activities, and
- m) Enterprises that mainly conduct activities that fall within Class 70.22 'Management consultancy activities' (except technical consultancy) of the NACE Rev. 2 Statistical Classification of Economic Activities.

3.2 Limitation of the scope of the support

(1) Under state-aid rules, there is limited scope for supporting the 'production and marketing of agricultural produce'³⁹ and of fishery and aquaculture products⁴⁰.

(2) In principle, investment projects in the shipbuilding sector shall be eligible to be considered for support. It shall, however, be borne in mind that, under the regional aid guidelines, all investment projects in shipyards are subject to individual notification to the European Commission, if they are linked to the construction, conversion or repair of self-propelled commercial vessels within the meaning of No 12(d) of the former Framework on state aid to shipbuilding⁴¹.

³⁶ Pursuant to Article 13(1)(a) GBER, the entire field of "energy generation, distribution and infrastructure" is excluded from the scope of regional aid. However, there is scope for support under the Guidelines on State aid for environmental protection and energy (2014-2020) (OJ 200 of 28 June 2014, p.1).

³⁷ Article 13(1)(a) in conjunction with Article 2 point 44 GBER.

³⁸ Article 2 point 18 GBER.

³⁹ There is no scope for aid to be granted for the production or marketing of agricultural produce,

a) where the amount of the aid is calculated based on the price or quantity of such produce purchased from primary producers or put on the market by the enterprises concerned; or

b) where the aid is conditional on being partly or entirely passed on to primary producers (cf. Article 1(3)(c) GBER). Cf. also the 2014 Community guidelines for state aid in the agriculture and forestry sector. There is no scope for aid to be granted for the processing or marketing of milk, imitation dairy products or substitute dairy products within the meaning of Article 3(2) of Council Regulation (EEC) No 1898/87 of 2 July 1987 (OJ EC L 182 of 3 July 1987, p.36).

⁴⁰ Cf. Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (General Block Exemption Regulation applicable to the fishery and aquaculture sector) (OJ L 369 of 24 December 2014, p.37).

⁴¹ Cf. OJ C 364 of 14 December 2011, p.9.

3.3 Commencement of the project prior to application

It shall not be possible for GRW funds to be received for projects on which work has been started prior to the application (1.3.1).

3.4 Repayment of aid under applicable state-aid rules

Applicants who have failed to act on an aid-repayment order issued based on a decision of the European Union shall only be considered eligible for support once they have repaid the amount stated in the aid-repayment order.

4. Revocation of approval, and recovery of funds in cases of failure to meet the requirements set out in the Coordination Framework

4.1 Principle of recovery of support

In cases where, following completion of the investment project or the relevant measure, there is failure to meet the requirements that are set out in the Coordination Framework and upon which the relevant support has been approved, the approval shall be revoked and any funds paid out recovered from the beneficiary.

4.2 Refraining from revoking the approval and recovering the funds

4.2.1 Responsibility

(1) It shall only be possible for a grant approval not to be revoked and funds not to be recovered where the beneficiary can demonstrate that the failure to meet the requirements pursuant to 2.3 or 2.7.2 (5) have resulted from certain circumstances through no fault of his/her own, which he/she could not have foreseen at the time of application, even provided that he/she has acted with an honourable merchant's due diligence.

(2) Cases in which the beneficiary shall not be considered to be at fault for an extension of the implementation period shall notably include

- those where delays in the provision of supplies or services have been exclusively caused by third parties;
- those where, despite diligent cooperation on the part of the investor, there have been unexpected delays in the planning procedures conducted by the state;
- those where poor ground conditions, extreme weather conditions, opposition by third parties, or specific terms imposed by the authorities have led to delays in implementation.

4.2.2 Requirements to be met

(1) It shall be possible to refrain from revoking an approval and from recovering funds that have already been granted

- a) pro rata, where the employment targets set out in 2.3.2(2), option two, or 2.7.2(5) have been missed in no more than 30 months within the five-year monitoring period following completion of the investment (cf. 2.3.1).
- b) where the employment targets envisaged pursuant to 2.3.2(2), option two, have been missed as a result of changes in the market structure, and in no more than 36 months within the five-year monitoring period following completion of the investment (2.3.1). If a decision is made not to revoke the approval, the five-year monitoring period pursuant to 2.3.1 shall be extended by the cumulated time periods during which the employment targets have not been met, to up to a maximum of eight years.
- c) pro rata or in full, where, as a result of fundamental changes in the market structure, the number of permanent jobs lost in the permanent establishment is so high that the minimum employment targets set out in 2.3.2(2), second option, have proved impossible to meet.
- d) where the envisaged jobs have not been filled solely because the labour market has been unable to deliver.
- e) where the minimum amount of investment pursuant to 2.3.2(2), option one, has been missed only by a small margin, and as a result of an extension of the implementation period based on which the approval was granted, or as a result of a drop in prices for the relevant assets, at a time later than the date of application. The minimum amount of investment shall not be considered to have been missed only by a small margin where the amount that has been invested is more than 10 per cent lower than the minimum amount of investment pursuant to 2.3.2(2), option one.

f) where the employment targets set out in 2.3.2(2), option 2, or 2.7.2(5) have been missed as a result of damage caused by natural disaster for which insurance cover is not available at a cost that is economically viable, and where the targets have been missed in no more than 36 months within the five-year monitoring period following completion of the investment, or where the requirement set out in 2.7.2(4) for the investment to be retained for a minimum of five years has not been met.⁴²

(2) As a matter of principle, the provisions set out above shall not apply where the beneficiary is insolvent and ceases his/her business activities (with assets being sold separately), or in cases where the permanent establishment is shut down.

(3) This provision shall also apply *mutatis mutandis* for investment projects that have been approved on the basis of an earlier version of the framework.

4.2.3 Rules applying to small and medium-sized enterprises

In duly justified cases and in derogation from 2.7.2(4) and 2.7.3(2), it shall be possible for non-compliance with the requirement for the investment to be retained for at least the minimum duration of five years not to result in the grant approval being revoked or in funds granted in 2007 or later being recovered, provided that the beneficiary is a small or medium-sized enterprise and provided that the requirement for the investment to be retained for at least the minimum duration of three years has been met.

⁴² In cases where a decision is made not to revoke the approval and not to recover funds that have already been granted, based on the grounds that the requirement for the investment to be retained for a minimum of five years has not been met as a result of damage caused by natural disaster for which insurance cover is not available at a cost that is economically viable, the requirements set out in Article 50 of the GBER (Aid to make good the damage caused by certain natural disasters) shall apply. The specific grounds (natural disaster) on which the decision is made not to recover funds shall be notified to the European Commission prior to the recovery being waived.

Annex 6 Application for public-sector financial support to trade and industry within the scope of the activities to promote regional economic development⁴³

1. General information

1.1

To		<i>Not to be filled in by the applicant</i>
		Registration stamp (if cover letter is stamped, confirmation of receipt by the application centre will suffice)
		Date of receipt
		Date of approval
		Project no.

→ In order to process your application, we require you to answer the questions set out below.

The legal basis for this process is set out in Section 4 of the Act on the Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures of 6 October 1969 (Federal Gazette I, p.1861), as amended from time to time, in conjunction with the rules laid out in the Joint Coordination Framework, as amended from time to time. For information on additional legislation that applies in your *Land*, please refer to the Annex to this Application Form and/or consult the website of the Application Centre in charge of your application.

Please tick the boxes that are applicable.

1.2 Applicant

Firm (name and address, municipality code number, if applicable)	
If different from the above: Investor (name and address, municipality code number, if applicable)	
<i>Land</i>	District / administrative region
Processed by	
Phone/Fax/email address:	
Bank details	
Bank:BIC:	
IBAN:	

⁴³ And to non-profit, non-university business-related research institutions that meet the criteria set out in Part II A 2.9 of the Joint Coordination Framework.

Legal form and treatment under tax and corporate law (if necessary, please elaborate)	Competent Tax Office
	Postcode / City/Town
	Tax no.

1.3 I/We apply for

- an investment grant made available under the framework for the Coordination of the Joint Task ‘Improving Regional Economic Structures’ (GRW)
 - in the form of a grant for capital expenditure
 - in the form of an investment grant
 - in the form of a low-interest loan
 - in the form of a wage grant.
- financial support made available from the budget of the *Land*
 - ➔ if applicable, please complete the supplementary form

1.4 Public-sector funding has been granted/requested for the following permanent establishment(s) listed under 2.1:

<i>Investment period</i>	<i>Date of application and date and file reference of the notice of (non-)approval</i>
Start Month Year	
Completion Month Year	

Earlier applications will be used by the granting authority as a means to monitor success and as part of the decision process for this Application.

1.5 Assessment of the shareholding structure of small and medium-sized enterprises

Do any of these statements apply?

- Is the permanent establishment part of an enterprise of which 25% or more of the capital share or of the voting rights is directly owned by another enterprise or a public-sector entity, or owned jointly by two or more linked enterprises or public-sector entities?
- Does the enterprise hold a stake of 25% or more in one or more other enterprises?
- Does the enterprise prepare a consolidated balance sheet of its own, or are its figures included in another enterprise’s consolidated balance sheet?

- no
- yes ➔ Please describe the shareholding structure and the structure of the voting rights
(attach separate document if necessary):

1.6 **Number of employees, annual turnover and annual balance sheet total of the enterprise⁴⁴**

Number of employees ⁴⁵ on the enterprise's payroll	<input type="checkbox"/> up to 49 <input type="checkbox"/> 50 – 249 <input type="checkbox"/> 250 or more
Annual turnover	<input type="checkbox"/> up to €10 million <input type="checkbox"/> more than €10 million and up to €50 million <input type="checkbox"/> more than €50 million
Annual balance sheet total	<input type="checkbox"/> up to €10 million <input type="checkbox"/> more than €10 million and up to €43 million <input type="checkbox"/> more than €43 million

Not to be filled in by the applicant

SME within the meaning of Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER) (OJ L 187 of 26 June 2014, p.1).	
<input type="checkbox"/> yes	if yes: <input type="checkbox"/> small enterprise <input type="checkbox"/> medium-sized enterprise
<input type="checkbox"/> no	

1.7 **Information on any bail-out and restructuring aid granted prior to the Application, and on the economic situation of the enterprise⁴⁶**

Does the enterprise currently find itself in a situation of economic difficulty?

no yes → Please elaborate (attach document if necessary):

If so, are the permanent establishment, the enterprise, or the group still undergoing restructuring?

no yes → Please elaborate (attach document if necessary):

Have the permanent establishment, the enterprise, or the group received a bail-out, and is the loan yet to be repaid or the guarantee yet to expire?

no yes → Please elaborate (attach document if necessary):

Have the permanent establishment, the enterprise, or the group received restructuring aid, and are any of them still subject to a plan of restructuring?

no yes → Please elaborate (attach document if necessary):

⁴⁴ For the enterprise and taking into account all of its partner enterprises and all linked enterprises within the meaning of 'SME' as defined in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation - GBER) (OJ L 187 of 26 June 2014, p.1).

⁴⁵ For a definition see Annex I Article 5 GBER.

⁴⁶ Cf. Article 2, point 18 GBER.

2. Details about the investment project

2.1 Place of investment

Postcode	City/Town / part of the city/town	Street and number	
Code referencing the municipality	District	<i>Land</i>	
Enterprise no. of the permanent establishment for which support is requested, as assigned by the Federal Employment Agency (BA) <input type="checkbox"/> known (<i>information available from the Federal Employment Agency Eschberger Weg 68, 66121 Saarbrücken</i>); <i>email: betriebsnummernservice@arbeitsagentur.de</i>) Enterprise no. assigned by the <input type="text"/> <input type="checkbox"/> unknown, because the permanent establishment is new; Note: information is to be supplied within 2 months after grant approval			

Does the applicant have other permanent establishments in the same municipality?

- no yes → Please indicate the sector and the address(es) of the permanent establishment(s):

Sector:
Address:

2.2 Type of investment project

- **SME, large enterprise** – investment to establish a new permanent establishment (investment to establish)
- **SME** – investment to expand the capacity of an existing permanent establishment (investment to expand)
- **SME** – investment to diversify production⁴⁷ at a permanent establishment to include output that has previously not been produced there
- **Large enterprise** – investment to diversify production at the permanent establishment; provided that the new activity is not the same or a similar activity as the activity that was previously conducted at the permanent establishment

Is the new activity considered as belonging to the same class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities as the activity previously conducted at the permanent establishment?

- yes no, the activity is classed as NACE

- **SME** – investment to overhaul the entire process of production at an existing permanent establishment (process innovation)
- **large enterprise** – initial investment to diversify production at an existing permanent establishment located in a C-area by means of adding to the product range⁴⁸ or introducing process innovation [projects are subject to individual notification to the European Commission]
- **SME, large enterprise** – investment to acquire assets of a permanent establishment

Was the permanent establishment closed down prior to the acquisition of the relevant assets?


- yes no

Had it not been for this acquisition, would the permanent establishment have been closed down?

- yes no

Does the investment involve the acquisition of a smaller enterprise⁴⁹?

- yes no

 Does the party acquiring the permanent establishment have a relationship to the seller?

- yes, he/she is a
 - family relation of the original owner
 - former employee
- no

Only to be answered if applicant is a large enterprise: Is the new activity to be conducted with the assets acquired the same or a similar activity as the activity that was previously conducted at the permanent establishment?⁵⁰

⁴⁷ In this context, “production” and “products” shall include services and the provision of services.

⁴⁸ If the related new activity is classed as belonging to the **same** class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities as the activity previously conducted at the permanent establishment.

⁴⁹ For a definition see Annex I GBER.

⁵⁰ The criterion here is that the new activity must not be considered as belonging to the same class (four-digit numerical code) of the NACE Rev.2 statistical classification of economic activities (cf. Article 2 point 50 GBER).

yes no

2.3 Description and justification of the investment project

A description of the envisaged investments and the future prospects for the permanent establishment (e.g. sales prospects) is to be provided on a **separate document attached to the Application Form**, which also lists all of the assets individually. The information must include facts about the enterprise’s economic development and its development in terms of the legal structure (e.g. stakeholdings, supply of commodities and intermediate goods, output, capacity utilisation, turnover).

In the case of an investment to diversify, the applicant must demonstrate how the investment will make it possible for new products⁵¹ that have not previously been made at the permanent establishment to be produced. Large enterprises must demonstrate how the investment will make it possible for new products that have not been previously made at the permanent establishment to be produced, and/or for new activities to be conducted, new products to be developed, or innovative processes to be introduced.

2.4 Type of economic activity performed at the permanent establishment

Identifier and code used in official statistical records ⁵²	Class (four-digit numerical code) under the NACE Rev. 2 statistical classification of economic activities ⁵³

Manufacturing programme or type of commercial activity

If the manufacturing of commercial activity is related to several industries or classes of industry, please provide further details, e.g. figures on output ⁵⁴ and turnover broken down according to industry (if necessary, information can be provided in a separate document attached to the Application Form).

Information regarding the regions in which (the clients to whom) the products and services produced at the permanent establishment are sold

Please provide details, e.g. sales figures broken down according to sales to individual districts, Länder, and countries; if necessary in a separate document attached to the Application Form. The information is required in case that proof-of-compliance with the requirement for exports beyond the region has to be established on a case-by-case basis. Where possible, suitable supporting evidence must also be provided.

Not to be filled in by the applicant

The permanent establishment meets the criteria linked to the primary effect: <ul style="list-style-type: none"> • based on the White List <input type="checkbox"/> yes <input type="checkbox"/> no • by providing case-by-case proof-of-compliance
--

⁵¹ Cf. footnote 47 (for point 2.2).

⁵² The code used in the official statistical records to designate an economic activity is based on the statistical classification of economic activities published by the Federal Statistical Office in Wiesbaden, as amended from time to time.

⁵³ Cf. Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 of 30 December 2006, p.1).

⁵⁴ Cf. footnote 47 (for point 2.2).

yes no

3. Information relating to employment targets and to write-offs and book values associated with the permanent establishment

3.1 Number of permanent jobs provided at the time of Application

Permanent jobs (1)		Vocational-training places (2)	Total (1) + (2)
For women	For men		
Of which agency workers:		---	

Additional information to be supplied if the Application is for wage grants:

Number of persons employed (jobs) on average during the 12 months preceding the Application	
--	--

3.2 Number of jobs following completion of the investment

- Number of **additional** permanent jobs envisaged for the time following completion of the investments listed in 4:

Permanent jobs (1)		Vocational-training places (2)	Total (1) + (2)
For women ⁵⁵	For men ⁵⁵		

- Number of **safeguarded** permanent jobs envisaged for the time following completion of the investments listed in 4:

Permanent jobs (1)		Vocational-training places (2)	Total (1) + (2)
For women ⁵⁵	For men ⁵⁵		

- *Only to be answered if the Application is for wage grants:*

Number of employees (jobs) after completion of the investment	
--	--

Not to be filled in by the applicant

Number of additional			Number of permanent jobs provided at the time of applica-	Increase by the time of completion of the investment (in %)
Permanent jobs	Vocational-training	Total		

⁵⁵ Information requested for statistical purposes.

	places		tion	

3.3 Information relating to investments that involve relocation

Has there been/Will there be a reduction of jobs at another permanent establishment at or at around the time of the investment described under 2, and, if so, is this reduction in jobs linked to the investment in substance/nature?

- no yes → Please provide the following figures:

Number of permanent jobs formerly provided:
Number of jobs that have been/are to be cut:
Address of the permanent establishment:

Has an activity that is the same activity or an activity similar to⁵⁶ the one for which investment support is being requested been ceased at a site located in the European Economic Area (EEA), either by the enterprise applying for support or by an enterprise linked to it, at any time during the two years preceding the Application, or are there plans for such an activity to be ceased at a site located within the EEA within the two years following completion of the investment?

- no yes → Time of cessation of the activity

Address of the permanent establishment in question:

3.4 Write-offs earned over the three financial years preceding the Application, excluding special write-offs

Year	Sum (in €)
	,--
	,--
	,--

Not to be filled in by the applicant

Annual average of write-offs earned (in €)	
Annual average of the investment volume for the envisaged investment project (in €)	
Annual average of the investment volume as a percent-	

⁵⁶ The same activity or an activity similar to [it]: an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as set out in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 of 30 December 2006, p.1).

age of the average annual write-offs (in %)	
---	--

3.5 a) Book value of the re-used assets as it stood in the financial year preceding the beginning of work (only to be answered if the investment is an investment to diversify production⁵⁷ at the existing permanent establishment)

Year	Sum (in €)
	,--

Book value of re-used assets (in €):	,--
--------------------------------------	-----

Not to be filled in by the applicant

Costs of the investment volume that are eligible for support (in €)	
Eligible cost of re-used assets (in % of their book value)	

b) Total write-offs made on assets linked to the activity which is to be modernised that have been earned over the three financial years preceding the Application (only to be answered if the investment involves fundamental changes being made to the production process at the existing permanent establishment)

Year	Sum (in €)
	,--
	,--
	,--
Total	,--

Not to be filled in by the applicant

Total write-offs made in the three financial years preceding the Application (in €)	
Costs of the investment volume that are eligible for support (in €)	
Costs of the investment volume that are eligible for support, stated as a percentage of the write-offs made in the three financial years preceding the Application (in €)	

⁵⁷ Cf. footnote 5 referring to no. 2.2.

4. Investments

4.1 Volume of investments

		Sum (in €)
Total investments		
1.	Costs for the procurement of intangible assets	
2.	Costs for the procurement or manufacture of the physical fixed assets forming part of the investment project	
	of which:	
	a) Land	
	b) Investments made to replace existing assets	
	c) Costs for the procurement or manufacture of vehicles	
	d) Used assets	
	e) Borrowing costs that can be capitalised (interest to be paid over the construction period)	
3.	f) Costs for the leasing/hiring of assets	
4.	Other costs	
	Total for 1. to 4.	
5.	Proceeds from the sale of assets (in the case of relocation)	
6.	Compensation payments (in the case of relocation)	

→ Please note: The total sum stated for the investments must be equivalent to the total sum of financing.

Have any pieces of public-sector land or any public-sector buildings been bought?

no

yes

Not to be filled in by the applicant

Cost of investment linked to the creation of new permanent jobs	
Cost of investment linked to the safeguarding of existing permanent jobs	
In total	
Eligible costs	

4.2 Time frame for the project

Start

Day	Month	Year

Completion

Day	Month	Year

4.3 If investments are to be made over several years (usually 36 calendar months)

Investments per year	
Year	Sum (in €)

5. Wage grants

Number of newly created permanent jobs	
Number of newly created permanent jobs that meet one of the criteria set out in 2.7.3(1) of Part II A of the Coordination Framework	
Total wage costs and statutory social-security contributions for newly created permanent jobs (over 2 years) (in €)	
Total eligible wage costs (€)	

6. Financing

Source	Sum (in €)
• Enterprise's own funds	
• Funds borrowed (at market conditions; without support)	
• Public-sector financing support (e.g. low-interest loan, loan guarantee, investment grant)	
• Total financing (please provide proof that the project is fully and properly financed – e.g. a letter from the main bank)	

➔ Please note: The total sum of financing must be equivalent to the total sum stated for the investments.

Not to be filled in by the applicant

Is the enterprise contributing at least 25% of the eligible costs from its own funds (without support)?
 yes no

7. Public-sector financial support

The **total financing** (point 6) of the project includes the following types of public-sector financing support that have either been applied for and approved, or are yet to be applied for:

Source of funds <input checked="" type="checkbox"/> please tick if applicable ↓	Amount (in €)	Loan					Subsidy value (in %)	<i>Not to be filled in by the applicant</i>
		(in €)	Term (in years)	of which repayment-free	Interest rate (in %)	Actual interest rate paid (in %)		
Funds made available under the Joint Federal/Länder Scheme for the Improvement of Regional Economic Structures (GRW) <input type="checkbox"/>								
<ul style="list-style-type: none"> • Standard support <input type="checkbox"/> • Special programme⁵⁸ <input type="checkbox"/> Name:								
Financial support granted by the EU <input type="checkbox"/> Name:								
Financial support granted from federal funds <input type="checkbox"/> Name:								
Financial support granted from the funds of the <i>Land</i> <input type="checkbox"/> Name:								
Support from the ERP Special Fund <input type="checkbox"/> Name:								
Other public-sector financial support <input type="checkbox"/> Name:								
		Loan amount (in €)	Term (in years)		Interest subsidy in %			
Interest subsidy <input type="checkbox"/>								
		Loan amount (in €)			Guarantee in %			
Guarantee <input type="checkbox"/>								

⁵⁸ Abbreviation of the name of the special programme.

in total	
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8. Declarations:

- 8.1 I/We hereby declare that I/we did not begin work on the investment project prior to filing the Application (date of receipt of the Application). The beginning of work on the investment project will be defined as
- a) the time of the conclusion of a delivery or service contract associated with project implementation; or
 - b) the beginning of construction work associated with the investment⁵⁹; or
 - c) the time of the placing of the first binding order for equipment; or
 - d) the time at which any other commitment is made that renders the investment irreversible.

Work on the investment project will be deemed to have started at the time at which the first of these actions is performed. Neither the purchase of land nor preparatory work such as the filing of requests for approval or the conducting of preliminary feasibility studies will be taken as the beginning of work on the investment project. Where the project involves construction work, neither planning nor ground surveys will be taken as the beginning of work. In cases where a permanent establishment is being taken over, the beginning of work on the investment project will be defined as the time of the acquisition of assets that are directly linked to the permanent establishment.

- 8.2 I/We hereby declare that my/our enterprise is not subject to a recovery order following a previous decision of the European Commission declaring an aid illegal and incompatible with the internal market, with which I/we have failed to fully comply.
- 8.3 I/We hereby declare that I/we have not, at any time during the two years preceding the Application, ceased to perform the activity for which I/we have requested investment support, or an activity similar to it, at any site located in the European Economic Area (EEA), and that I/we have no plans to cease such an activity at any time during the two years following completion of the investment.
- 8.4 I/We hereby declare that any waste water and waste generated in connection with the investment described under point 4 will be properly managed/disposed of, and that any air pollution that may occur will be within permissible limits.
- 8.5 I/We have been notified by the granting authority or an authority authorised by the granting authority that the following information to be provided as part of this Application constitutes information within the meaning of Section 264 of the German Criminal Code (information relevant to the granting of subsidies), and that subsidy fraud constitutes an offence punishable under this provision:
- a) Applicant's details (1.2); any information provided in the user or leasing agreement (cf. Explanatory notes for 1.2);
 - b) Legal form and treatment under tax and corporate law (1.3);
 - c) Support for the permanent establishment or for the acquisition of used assets that has been granted prior to the Application (1.4), information about any bail-out and restructuring aid received prior to the Application (1.7);
 - d) Shareholding structure (1.5; 8.10);
 - e) Information relating to the number of employees, annual turnover, and the annual balance sheet total (1.6);
 - f) Place of investment and other permanent establishments (2.1);
 - g) Information relating to the investment project, where this information concerns reliable facts that are known as of today (2.3);
 - h) Economic activity, manufacturing programme or type of commercial activity (2.4);
 - i) Number of permanent jobs at the time of application (3.1);
 - j) Information relating to investments involving relocation (3.3);
 - k) Write-offs earned over the past three financial years (3.4);
 - l) Book value of re-used assets; write-offs earned over the three financial years preceding the application (3.5);
 - m) Beginning of work on the investment project (4.2 and 8.1);
 - n) Information provided on any other public-sector financing support requested/received (7);
 - o) Information related to the acquisition of public-sector land or public-sector buildings and the relevant purchasing price (2.2; 4.1);

⁵⁹ The commissioning and conducting of planning services for construction work or ground surveys will not be taken as the beginning of work – unless these services are the sole purpose of the grant.

p) Declaration made under 8.3.

Furthermore, I am/We are familiar with Section 4 of the Subsidies Act of 29 July 1976 (Federal Gazette 1, p. 2037), pursuant to which fictitious transactions and fictitious actions, in particular, will be considered to be immaterial as to whether a subsidy or an advantage associated with a subsidy is to be approved, granted, recovered, extended, or remain with the recipient. This means that the relevant decisions will be taken based on the actual intention.

8.6 I am/We are familiar with Section 3 of the Subsidies Act and the requirements regarding disclosure of information; most importantly, I/we will inform the authority that has issued the letter confirming the approval/the granting authority of any deviations from the information stated above, and will do so by contacting the application centre with which I/we have filed the application.

8.7 I am/We are aware that the data provided in this application will be held on storage media by the competent authority in the Federal Republic of Germany, and that it may be used for statistical purposes and to monitor the success of the support schemes for business. I am/We are aware that the *Land* or the Federal Government, following consultation with the Land, may decide to publish the following information in the interest of increasing transparency regarding business support measures.

- Recipient's name
- Enterprise number of the beneficiary
- Type of enterprise (SME/large enterprise) at the time of grant
- Region in which the beneficiary's site is located, at NUTS-II level⁶⁰
- Industry at NACE group level⁶¹
- Amount of support⁶²
- Support instrument (grant/interest subsidy, loan/repayable advance, guarantee, tax relief or tax exemption, risk financing, other)
- Date of grant
- Objective of the grant
- Number of permanent jobs
- Granting authority

8.8 I am/We are aware that the European Regional Development Fund (ERDF) may contribute to the support, in which case Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013, p. 320) applies in conjunction with Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013, p. 289).

In accordance with the EU provisions governing the EU Structural Funds, the managing authority, as part of the information and publicity measures it is charged with, maintains a register of beneficiaries, of projects for which support has been granted, and of the amount of public-sector funds allocated.

I/We agree to the information listed above being recorded in the register.

Officials or authorised representatives of the European Commission may, without prejudice to the right of Member States to carry out their own reviews, conduct in-situ examinations, including examinations of individual projects, so as to ascertain whether the management and control systems in operation are effective.

⁶⁰ NUTS — classification of spatial units that is used for statistical purposes. In most cases, the region is to be indicated at NUTS 2 level.

⁶¹ Cf. Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 of 30 December 2006, p.1).

⁶² Gross grant equivalent or, in the case of state aid being granted as part of a venture capital scheme ('risk finance aid'), the amount of the investment. In the case of operating aid, the applicant can state the annual amount of the aid per beneficiary. In the case of tax schemes or schemes that fall within the scope of Article 16 (regional urban development aid) or of Article 21 (risk finance aid) [Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty], it is sufficient for the beneficiary to state the aid amount by indicating the applicable 'range' pursuant to Article 9(2) of the Regulation.

In cases where the European Agricultural Fund for Rural Development (EAFRD) contributes to the support, the following provisions of Community law apply: Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013) in conjunction with Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013, p. 487); Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013, p. 589); Regulation (EU) No 1310/2013 of the European Parliament and of the Council of 17 December 2013 (OJ L 347 of 20 December 2013, p. 865), and any delegated Regulations and implementing regulations that have been issued under these Regulations.

<u>Place/Date</u>	<u>Signature/stamp</u>

In cases where an enterprise has been split up, or where there is a partnership of corporate partners, or in the case of the enterprise being part of an integrated company, the Application must also be signed by the other partner to make it legal and binding.

<u>Place/Date</u>	<u>Signature/stamp</u>

8.9 Declaration of Consent to the publication, processing, and sharing of data relating to the support

I/We agree to the data supplied in this Application, as far as it relates to the beneficiary, the project, and the amount of support granted, being published in a suitable form, either by the *Land*, or by the Federal Government, following consultation with the *Land*, in the interest of increasing transparency regarding business support measures.

I am/We are aware that all of the personal and factual data provided in this Application will be held on storage media by the authority responsible for the place of investment or by another Application Centre (cf. point 1.1 of the Explanatory notes), and that it will be processed for the purposes of processing of the Application and managing subsidies, and for statistical purposes. The authority responsible for the place of investment and all other Application Centres are authorised to pass on this data, along with the Decision Notice and the reasons on which the granting authority has based that decision, to all public-sector entities in the Federal Republic of Germany which are involved in the financing and in the expert review of this project, and, in cases where the ERDF contributes to the support, to the departments of the European Commission that are in charge of managing and controlling the Structural Funds.

This consent specifically includes the recording, storing, and use of personal and factual data that is required to verify any information provided as proof-of-use.

<u>Place/Date</u>	<u>Signature/stamp</u>

8.10 Declaration on the shareholding structure of SMEs

I/We hereby declare that, in view of the shareholding structure and to the best of our knowledge, the permanent establishment is part of an enterprise of which 75% or more of the capital share is not directly owned by another enterprise or a public-sector entity, and not owned jointly by two or more linked enterprises or public-sector entities. I am/We are aware that the assessment as to whether or not the enterprise is to be considered to be a small or medium-sized enterprise will be taken based on the situation at the time at which GRW funds are approved. In view of the fact that the information provided under point 1 refers to the situation as it stands of today, I/we hereby commit to immediately informing the competent authority of any changes regarding the

facts on which information is requested under 1.2, 1.3, 1.5, and 1.6, and to doing so by contacting the Application Centre with which the Application has been filed.

Place/Date

Signature/stamp

Explanatory notes on the individual points of the Application Form

1. A *single* copy of the Application Form can be used by the applicant to request public-sector financing support for a *single* project to be implemented at a *single* permanent establishment. If an investment projects involves more than one permanent establishment, the applicant must file separate applications for each permanent establishment.

The applicant may arrange to be represented. However, pursuant to Section 14(5) of the Administrative Procedures Act in conjunction with the Legal Counsel Act, any authorised representative or legal counsel who, on a commercial basis, takes care of another party's legal matters without being duly authorised to do so, will not be accepted.

The Application must be submitted prior to the beginning of work on the investment project. The date of registration at the application centre (stamp) will be taken as the date of application (cf. 1.1).

The beginning of work on the investment project is defined as

- a) the time of the conclusion of a delivery or service contract associated with project implementation; or
- b) the beginning of construction work associated with the investment; or
- c) the time of the placing of the first binding order for equipment; or
- d) the time at which any other commitment is made that renders the investment irreversible.

Work on the investment project will be deemed to have started at the time at which the first of these actions is performed. Neither the purchase of land nor preparatory work such as the filing of requests for approval or the conducting of preliminary feasibility studies will be taken as the beginning of work on the investment project. Where the project involves construction work, neither planning nor ground surveys will be taken as the beginning of work. In cases where a permanent establishment is being taken over, the beginning of work on the investment project will be taken as the time of the acquisition of assets that are directly linked to the permanent establishment.

- 1.1 The Application can only be filed with the authority responsible for processing applications for the respective site or with another application centre in the same *Land*.

Applications are to be submitted to the following authorities:

In Bavaria

Government of Lower Bavaria (Niederbayern),
Regierungsplatz 540, 84028 Landshut
Government of the Upper Palatinate (Oberpfalz),
Emmeramsplatz 8, 93047 Regensburg
Government of Upper Franconia (Oberfranken),
Ludwigstraße 20, 95444 Bayreuth

In Berlin

Investitionsbank Berlin, Bundesallee 210, 10719 Berlin

In Brandenburg

Investitionsbank des Landes Brandenburg,
Postfach 90 02 61, 14438 Potsdam

In Bremen

BAB Bremer Aufbau-Bank GmbH
Kontorhaus am Markt, Langenstraße 2 - 4, 28195 Bremen
BIS Bremerhavener Gesellschaft für Investitionsförderung und Stadtentwicklung GmbH,
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In Saxony

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In Saxony-Anhalt

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In Thuringia

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- 1.2 In cases where an enterprise has been split up, or where there is a partnership of corporate partners, or in the case of the enterprise being part of an integrated company, the Application must be signed by all the parties involved.

In cases where an enterprise has been split up, or where there is a partnership of corporate partners, a letter of confirmation issued by the competent Tax Office must be supplied as supporting evidence.

In the case of leasing or hire-purchase contracts, the application from the user (lessee, hire-purchaser) shall be based on a binding offer by the investor to conclude a leasing / hire-purchase contract. This contract shall cite the costs of purchasing and manufacturing the object, the period of use, the fee for the use and any agreements on options to extend the contract.

The leasing or hire-purchase agreement must meet the following requirements:

- The hire-purchase or leasing agreements for assets other than land or real estate must take the form of a financing lease that results in ownership of the assets for which support is granted being transferred to the

investor at the end of the term. The risk associated with maintenance of the assets for which support is received must lie with the hire-purchaser or lessee.

- The minimum term for hire-purchase or leasing agreements for land or real estate is five years; in the case of SMEs, the minimum term must expire no earlier than three years after the estimated date of completion of the investment project. Furthermore, variation clauses regarding the leasing rates due to changes in interest rates and/or administrative costs must be indicated. The risk associated with maintenance of the assets for which support is received must lie with the hire-purchaser or lessee.

1.2 A more detailed description of the legal structure shall particularly be necessary if this is not obvious from the enterprise (e.g. as an unincorporated firm the legal structures of Gesellschaft bürgerlichen Rechts - GbR -, OHG, KG, GmbH & Co. KG, as an incorporated firm the legal structures of GmbH, AG, KGaA or as a cooperative, association or sole proprietorship).

With regard to the situation in terms of tax legislation and corporate law, in the case that a enterprise has been split up, or where there is a partnership of corporate partners, or in the case of the enterprise being part of an integrated company, greater details must be provided of the relationship between the holding company and the operating company, the corporate partner and the unincorporated firm, or of the dominant enterprise and the dependent enterprise. A corresponding confirmation from the tax office must be presented.

1.5 The decision on granting GRW funding shall be taken on the basis of the facts at the time when the funding is granted.

1.6 This means that the competent authority must be informed of changes (cf. 8.9).

Where 25% or more of the capital or the voting rights of the enterprise are held by another or several companies or entrepreneurs, the applicant must state whether the participating companies or entrepreneurs are public holding companies, venture capital companies or institutional investors. If the enterprises or entrepreneurs are public holding companies, venture capital companies or institutional investors, it must also be stated whether the participating companies or entrepreneurs exercise control over the company jointly or severally.

If it is not possible to ascertain who holds the shares in view of the shareholding structure, the applicant must make the declaration mentioned under 8.9.

2.1 Assistance can only be provided within the Assisted Areas. These consist of the areas stipulated in the relevant Coordination Framework pursuant to the Act on the GRW. Where necessary, the precise present and previous description of the place of investment should be given (e.g. where names have changed due to territorial reforms).

2.2 A more detailed description and justification of the investment project shall be required in order to enable wherever possible an assessment of the facts without time-consuming follow-up questions.

If used assets are mentioned in the separate document regarding the envisaged investment, it must be stated whether the investment takes place in the context of the acquisition of a company site that has been closed down or is under threat of closure, or whether the enterprise to be acquired is an enterprise in the start-up phase. The start-up phase of an enterprise shall be defined as the period of 60 months following the investment to found the enterprise. An enterprise shall be regarded as a start-up if it has registered commercial operations for the first time and unless it is under majority ownership of one or several independent entrepreneurs or enterprises. Furthermore, it must be stated whether the used assets are to be purchased at market conditions from linked enterprises or enterprises that are affiliated with the investor in economic or legal terms, or at the level of the individuals involved, and whether public-sector funds have been made available for these assets at any earlier time.

If land is acquired or included in the project, it must be stated whether this plot of land is necessary for the investment project for which the application is being made. Evidence must be provided of the market value of the land.

3.1 The number of permanent jobs must be indicated separately from the number of employees.

3.3 Permanent jobs are defined as jobs which, from the outset, are created for the long term, at least for the minimum duration of five years after completion of the investment; Here, it shall be necessary to state:

- In every case the existing non-vacant permanent jobs, if appropriate in the fractions of their regular take-up compared with a full-time job, in the permanent establishment(s) in which the investment project to be assisted is carried out, including
 - permanent jobs for full-time employees and students at vocational academies as well as training places in full,
 - permanent jobs for part-time and seasonal workers as a fraction of their time in terms of the annual hours worked compared with the annual working hours of a full-time job,
 - permanent jobs for workers on reduced old age part-time work as a fraction of the time of their take-up during the phase in which they work,
 - Permanent jobs for agency workers as a fraction of their average take-up in the last 12 months prior to submission of the application as long as the worker is deployed in the applicant enterprise and the agency workers are employed in a position subject to social security contributions by the agency providing the workers.
- If the applicant has several permanent establishments of the same commercial enterprise in the same municipality, the number of existing and non-vacant permanent jobs shall be indicated for all of these permanent establishments and then contrasted with the number of existing and permanent jobs which have been or are to be filled following the conclusion of the assisted investment project.
- Where more than one shift is operated, the number of permanent jobs shall, as a general rule, be considered to be equivalent to the corresponding number of employees.

In the case of wage grants, it shall also be necessary to cite the number of employees in the relevant permanent establishment as an average for the last 12 months prior to the application and following completion of the project. When the net rise in the number of employees is calculated, jobs which have been cut in this period must be deducted and the full-time, part-time and seasonal employees must be taken into consideration using the fractions of their annual work units.

3.2 ‘Permanent jobs’ must not only be created physically, but also be filled or advertised on the job market.

3.3 Investments that are made at or at around the time when a significant reduction of jobs occurs at another permanent establishment linked to the enterprise and situated in an Assisted Area receiving a lower level of GRW support, and that are linked in nature/substance to this reduction of jobs, are eligible to be considered for support only if consensus is reached about this with the *Land/Länder* affected by the reduction in jobs. A significant reduction of jobs is deemed to occur whenever the number of jobs lost at the other permanent establishment is equivalent to half or more of the number of newly created jobs. Where it proves impossible to reach consensus on granting support for the investment in the target area, the maximum rate of support for which the project is eligible to be considered shall be equivalent to the rate of support that applies pursuant to Part II A 2.6.1(1) in the Assisted Area in which the other permanent establishment is situated.

Any (potential) proceeds from the sale of the former permanent establishment and any amount received in compensation payments must be deducted from the amount of investment costs that are eligible for support.

3.5 In the context of an initial investment, ‘assets’ means both tangible and intangible assets (cf. Article 2 point 49 (a) GBER). Tangible assets include land, buildings and facilities, machinery and equipment (cf. Article 2 point 29 GBER).

A ‘project to diversify’ is a project which involves the repurposing of assets that have previously been used to produce a certain type of goods to now produce⁶³ a new product. Example: land and buildings previously used to manufacture product A are now being entirely or partly used to manufacture product B. Such assets are referred to as ‘re-used assets’.

In the case of an investment to fundamentally change the entire production process, the assets related to the activity to be modernised (e.g. land and buildings for the manufacture or storage of products) must be included. “Activity to be modernised” shall be the activity in the permanent establishment which is redesigned as a result of the fundamental change of the production process, i.e. modernised and thus improved.

4.1 The figures regarding the volume of investment are required in order to describe the investment project in greater detail and thus supplement figure 2 (Description of the investment project). The amounts must be giv-

⁶³ Cf. footnote 5 referring to no. 2.2.

en in euros. Unexpected increases in investment costs can under certain preconditions be made part of the application up to the time the GRW funding is granted; in every case, they must be made known to the application centre as soon as they become known. Where necessary, the amounts for all individual items must be indicated so that the eligible costs of the investment project can be ascertained.

- Intangible assets shall mean: patents, operating licences or patent-protected technical expertise or technical expertise that is not patent-protected.
- The citing of the procurement/manufacturing costs of the physical fixed assets ascribed to the investment project shall be undertaken at this point without the inclusion of the procurement/manufacturing costs of any intangible assets to be leased.
- At this point, it may be necessary to cite the costs of purchase of land factored in by the applicant.
- Investments made to replace existing assets shall not be eligible costs. Procurement to replace existing assets shall not have taken place if the newly purchased or manufactured asset has a significantly different meaning for the operation than the replaced asset due to its technical superiority or more rational modus operandi.
- The eligible costs shall not include vehicles which are licensed for road traffic and primarily serve transportation purposes (e.g. passenger cars, estate cars, trucks, buses, but also aircraft, ships and railway vehicles).
- Not only the actual revenues from the sale shall be indicated, but also those revenues from the sale which would have been attainable (cf. 3.3).
- Compensation amounts can arise for example pursuant to the Federal Building Code or restitution law. In the listing, all of the compensation amounts relating to the relocation of the permanent establishment shall be indicated. If the investor has yet to receive any compensation at the time of application, he must list the anticipated claims to compensation relating to the relocation of the permanent establishment (cf. 3.3).

4.2 As a matter of principle, investment projects are only eligible to be considered for support if they are implemented within a period of 36 months.

7. Here, all public financial assistance for the investment project must be indicated in every case. Where the public financial assistance has yet to be applied for or is not yet known or the subsidy value has not yet been decided, the corresponding changes must be subsequently reported.

Annex 8 White List for Part II A 2.1.1 of the Joint Coordination Framework

The primary effect generally exists if the permanent establishment predominantly manufactures/processes one or several of the goods (numbers 1 to 34) or provides one or several of the services (numbers 35 to 50) in the following list:

1. Chemical products (including products of the carbon materials industry)
2. Plastic and products made of plastic
3. Rubber and products made of rubber
4. Heavy clay and fine ceramics
5. Lime, gypsum, cement and their products
6. Rock, stone products and structural elements
7. Glass, glass products and glass processing products
8. Signs and illuminated advertisements
9. Iron, steel, and products made of iron and/or steel, unless excluded pursuant to Part II A (3.1) b).
10. Non-ferrous metals
11. Iron, steel and malleable iron, unless excluded pursuant to Part II A (3.1) b)
12. Non-ferrous cast metals and electroplating technology
13. Machinery and technical equipment
14. Office machinery, data-processing equipment and installations
15. All types of vehicles, including accessories
16. Ships, boats and technical marine equipment
17. Products from electrical engineering, electronics, radio, television and communications equipment
18. Precision mechanics, orthopaedic and optical products, surgical equipment
19. Clocks and watches
20. Iron goods, sheet metal, and hardware
21. Furniture, musical instruments, sports equipment, toys and jewellery
22. Wood products
23. Moulds, models, tools
24. Pulp, mechanical pulp, paper and cardboard and the corresponding products
25. Printed matter
26. Leather and leather articles
27. Footwear
28. Textiles
29. Apparel
30. Upholstery
31. Food, beverages and tobacco where they are intended or suited for supra-regional shipment
32. Animal feed
33. Recycling
34. Manufacture of kits for prefabricated concrete construction elements and manufacture of kits for prefabricated timber construction elements
35. Mail-order businesses
36. Wholesale import/export businesses
37. Data processing (including databases and production of computer programmes)
38. Main headquarters of industrial concerns and of supra-regionally operating services companies
39. Organisation and management of conventions
40. Publishing houses
41. Corporate research and development
42. Technical consultancy
43. Market research and polls
44. Laboratory services for trade and industry
45. Advertising services for trade and industry
46. Exhibition and trade-fair equipment as a company
47. Logistical services
48. Tourism establishments which attain at least 30% of turnover from guests staying overnight
49. Film, TV, video and audio productions
50. Information and communication services

Permanent establishments in the crafts sector, whose output predominantly falls within the categories of goods and services listed in points 1 to 50, shall be eligible to be considered for support.