

YPOG Briefing:

Federal Ministry of Finance (BMF) and Federal Ministry of Justice (BMJ) provide details on the implementation of the draft of the Federal Ministry of Economic Affairs and Climate Action (BMWK) for a startup strategy of the German Federal Government

Cologne, July 21, 2022 | Jonathan Görg

The BMWK has published a draft for a startup strategy of the German Federal Government (the "Draft"). The Draft provides for a package of measures that the German Federal Government intends to implement in the current legislative period. The aim is to create the best possible conditions for startups in Germany in order to increase their contribution to the economic, environmental and social transformation.

The Draft refers to the coalition agreement between the political parties SPD, Bündnis 90/Die Grünen and FDP, which envisaged "improving the conditions for startups in [Germany] as a technology location". According to the Draft, the number of currently 29 unicorns, i.e. startups with a valuation of at least \$1 billion, is to double by 2030.

The various measures intended to achieve this goal comprise the following topics: **financing, talent acquisition and employee participation, digitization, diversity, science spin-offs, startups focusing on public interest, access to public tenders, data access, real-labs and visibility and networking of startups.** The „Eckpunktepapier für ein Zukunftsfinanzierungsgesetz“ (Key Issues Paper), was published jointly by the BMF and the BMJ a few weeks after the Draft and intends to make it easier for startups, growth companies as well as small and medium-sized enterprises to raise equity capital, already contains specific proposals for implementation.

Financing

Startups do not have access to traditional financing methods such as bank financing to the same extent as established companies, with one important exception being the increasingly expanding venture debt market. The German Federal Government is critical about foreign investors predominating, especially in the late-stage segment and in larger financing rounds, and that value creation thus takes place (partially) in other European countries.

To support startups, particularly in larger financing rounds, the German Federal Government intends to make available €10 billion in new public funding via the "Zukunftsfonds" (future fund) over an investment period up to 2030. The required funds have already been released by the Bundestag by adopting the federal budget for 2021. The Bundestag hereby expects, amongst other objectives, to mobilize institutional capital. Considering also private investors, €30 billion will overall be made available for the German venture capital market. To achieve this, existing funds shall be expanded and new funds and modules shall be established, which shall partially be state-financed and subsidized. Financial incentives for startups are to be created not only at a national, but also at an European level. In this context, the German Federal Government mentions the European Tech Champions Initiative, an umbrella fund that is expected to be the key element of a pan-European scale-up

initiative and with which funds for late financing phases shall be established. One example is the Deep Tech Future Fund which supports technology-intensive startups by offering longer financing periods exceeding the usual financing periods in the VC market.

Pension insurance funds and pension funds shall also contribute to such financing. The Draft provides for a minimum investment quota in venture capital funds as part of building up a capital stock for such institutional investors. It remains to be seen to what extent this will be accompanied by deregulation of investments in private equity and venture capital funds. For the time being, supervisory law imposes special restrictions to minimize the risk profile of pension insurance funds and pension funds.

In order to strengthen exit channels, certain amendments to current capital market law are envisaged. In this context, the German Federal Government aims to modernize stock exchange listing regulations, relax the free float rule (admission of multiple voting rights) and facilitate capital increases. According to the Key Issues Paper, stock exchange listings shall be simplified by amending Section 2 (1) of the German Stock Exchange Admission Regulation. Under current law, an expected issuance price of €1.25 million is required for a company to be listed on the stock exchange. This value is to be reduced to €1 million. With regard to capital increases the exclusion of subscription rights and the creation of conditional capital (so-called "bedingtes Kapital") shall be simplified.

Incentives shall also come from the tax side - the Draft provides for the implementation of a sales tax exemption for venture capital funds.

Talent Acquisition and Employee Participation

The startup scene is also and particularly affected by the shortage of skilled professionals, especially in the IT segment. To attract talent, the German Federal Government wants to simplify, accelerate and strengthen the immigration of skilled professionals from non-EU countries and facilitate "remote work" from abroad. Existing hurdles in immigration law are to be lowered, particularly with regard to the recognition of professional and university qualifications.

The Key Issues Paper also suggests tax improvements such as amending Section 19a of the German Income Tax Act (EstG), which came into force just under a year ago, for example by extending the 12-year period and/or abolishing taxation in the event of a change of employer, without, however, committing to specific changes.

Furthermore, by increasing the tax allowance for issuing free or discounted shares in the company, employee participation shall be made more attractive. The Key Issues Paper proposes an increase from currently €1.440 to €5.000.

Digitization

The German Federal Government is further planning a significant legal change in the area of digitization. In order to make it as simple and digital as possible to establish a company, a notarial online procedure for establishing a limited liability company ("GmbH"), both by way of cash contributions and by way of contributions-in-kind, shall be implemented, accompanied by the option of online registration with the commercial register as well as in the registers of cooperatives, partnerships and associations.

A so-called "one-stop shop" is to be created in order to handle the founding process completely digitally and unbureaucratically. This shall be combined with an electronic platform that allows founders to search for, apply for and implement funding.

Diversity

In order to increase the proportion of female founders of startups, the German Federal Government wants to establish a new funding campaign within the EXIST funding program called "EXIST Women", intending to create more financial incentives for female founders. Additionally, public funds and investment companies shall have equal gender representation. This shall, on the one hand, result in the institutional investors being staffed more gender-balanced and, on the other hand, easier access to venture capital and business angels for female founders overall.

Science Spin-offs

The EXIST funding program will launch an excellence initiative in order to support projects with a long duration that aim to establish cross-university ecosystems.

Other measures comprise support for the transfer of intellectual property as well as networking within and exchanges between universities, particularly in the form of best practices.

Public Benefit-focused Startups

Startups, that solve social problems by entrepreneurial means shall be supported not only financially through European structural funds, but also by increasing their visibility. The Draft in particular proposes the allocation of public funds and strengthening incubators and accelerators that support relevant startups.

Access to Public Tenders

So far, only 31 percent of startups have applied for public tenders. In order to increase such applications, the establishment of an e-marketplace at the Competence Center for Innovative Procurement (KOINNO) and a central e-tender platform is planned, which will provide data on all tender procedures. These measures aim to simplify access to public funds by digitizing such tender procedures.

Access to Data

In order to provide start-ups with sufficient access to data, data sharing shall be incentivized. For this purpose, a legal claim shall facilitate access to public sector data and reduce legal uncertainties.

Real-labs

Real-labs offer startups the opportunity to pilot their ideas under supervision in a real-world environment. The German Federal Government envisages to constitute a legal framework regarding real-labs in order to create innovation-friendly conditions, especially in the field of artificial intelligence. Companies shall be able to test technologies and business models that push the limits of what is



permissible under general law in close cooperation with the supervisory authorities considering the special requirements imposed by start-ups.

Visibility and Networking of Startups

The German Federal Government will organize an annual "Startup Summit Germany" where players of the startup ecosystem can exchange ideas and network.

Outlook

For some measures, the draft remains unclear - in particular, specifications on the timing and, in some cases, the content of the measures would have been desirable. In this context, the Draft only states that the measures shall be implemented "within the legislative period". In terms of content, in particular the implementation of the minimum investment quota in VC funds for pension funds, which are subject to strict regulatory requirements, is not further specified. It also remains unclear which companies will ultimately benefit from the measures. "Startups" are rather vaguely described as "young innovative companies with growth ambitions".

Regarding the increase of the tax-free amount, the draft does not contain any concrete figures. The tax-free amount was only recently increased from €360 to €1.440 per year by the Fund Location Act 2021, which amended Section 3 No. 39 of the German Income Tax Act (EStG). However, compared to countries such as the UK (currently around €4.200 per year), Austria (€4.500 per year) or Spain (€12.000 per year), Germany lags far behind. The Key Issues Paper, which in contrast to the Draft proposes an increase in the tax allowance to €5,000, is to be welcomed. With the proposed increase, Germany would rank on a level with its European neighbors and even provide better conditions than some of them. Nevertheless, regarding employee stock option participation, politicians and the industry have so far failed to find a practical solution, as the market practice of granting employees virtual shares or option rights rather than real shares cannot yet be reflected in a tax-privileged manner.

In the context of digitization, the implementation of the Digitalization Directive Act, which will come into force on August 01, 2022, will facilitate the founding process by enabling not only the online formation of limited liability companies but also the online application to certain registers. [more information: [Going Digital – The German Notary](#)]. Following this, founders and managing directors will no longer have to appear at the notary office physically. The online process is not limited to the formation of a GmbH against cash contributions but shall also apply to formations against non-cash contributions. In addition, shareholder resolutions amending the articles of association, including capital measures shall also fall within the scope of the online procedure.

To conclude, the concrete statements on strengthening diversity, e.g. through gender parity in public funds, as well as increasing the visibility of startups and the planned legislative and structural support for access to public tenders, data and real laboratories are particularly welcome.

We are happy to support you and open for further exchange.

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