



# Advisory report

on the

audit of selected coronavirus-related  
expenditure items of departmental budget  
No. 15 and the Health Fund

(Distribution of protective masks to vulnerable  
groups of people, compensation payments to  
hospitals and increase in intensive care beds)

addressed to the parliamentary Budget Committee

This report comprises the concluding audit findings issued by the German SAI in accordance with Article 96 (4), sent. 1 Federal Budget Code. The decision on its disclosure is reserved to the German SAI.

Ref.: IX 1 – 2021 – 0572

Potsdam, 9 June 2021

## 0 Executive summary

We reviewed the distribution of protective masks to vulnerable groups of people, compensation payments to hospitals and the increase in intensive care beds. In light of anticipated future payments that have an impact on the federal budget running into billions, we consider it necessary to report our key findings to the parliamentary Budget Committee:

### **Distribution of protective masks to vulnerable groups of people**

- 0.1 The German legislator decided to provide particularly vulnerable groups of people with particle-filtering masks. The legislator authorised the Federal Ministry of Health (Ministry) to specify by statutory instrument the eligible groups and further details of the procedure.
- 0.2 Until the beginning of April 2021, the federal government paid €2.1 billion via the Federal Office for Social Security for providing the masks. The Federal Joint Committee recommended that especially high-risk patients be identified by rules which could be easily implemented. Focus ought to be mainly on criteria such as age and need for long-term care. However, the Ministry extended the group of beneficiaries and determined that high-risk groups should be selected based on chronic conditions.
- 0.3 The Ministry decided to distribute the protective masks via pharmacies. The Ministry did not consider alternative distribution channels. In October and November 2020, a consultancy determined the prices for protective masks based on internet research and online pharmacies. Current prices charged by local pharmacies and drugstores were not taken into account. The Ministry determined to refund €6 per mask. The refund was reduced to €3.90 for each mask provided after mid-February 2021. The Ministry could not present any price analyses on which these amounts could have been based.

- 0.4 We note with concern that the Ministry was not able to find a simple definition which can be applied in practice for the group of beneficiaries. Furthermore, the Ministry did not attempt to find alternative distribution channels to the ultimately expensive distribution via pharmacies. We did not learn how the Ministry determined the two refunds and what profit mark-up the Ministry included for the pharmacies.
- 0.5 The Ministry emphasized that it had had only four weeks for conceptual considerations during the preparatory phase. Implementation had been “remarkably smooth”. The Ministry continued that using the definition proposed by the Federal Joint Committee would have entailed the risk of not reaching vulnerable groups. The Ministry decided to distribute the protective masks via pharmacies because the distribution involved considerable demands. The pharmacies were the only ones capable of meeting the demands. The refund of €6 per mask was largely based on a market survey. In October 2020, this survey indicated an average gross amount of €5.11. When determining the refund, the Ministry also had to take into account the costs for procurement, consulting services and repackaging, if necessary.
- 0.6 We conclude that the chosen approach also did not cover all vulnerable people. Furthermore, even ineligible people received masks. The Ministry should have chosen a simple definition which can be applied in practice.
- 0.7 So far, the Ministry has not provided a plausible justification for determining the refunds paid to the pharmacies. The Ministry based the refund of €6 per mask set at the end of November 2020 on the gross amount of €5.11 per mask determined by means of a price analysis at the beginning of October. However, a more current price analysis of the Ministry made at the end of November 2020, which was thus available when the refund was set, revealed that, at that time, certified protective masks could be bought wholesale at an average price of €1.62. Pharmacies also bought the masks

wholesale. Therefore, we hold that the refund of €6 per mask resulted in pharmacies being significantly overcompensated for distributing masks.

The same applies to the lower refund of €3.90 per mask paid as of February 2021. The Ministry itself pointed out that it had observed the average wholesale price of €1.62 drop to a price range from 40 to 80 cents from the end of November 2020 to the end of February 2021. Therefore, we can assume that even the second refund significantly overcompensated for the costs incurred by pharmacies when taking into account a profit mark-up that is usual in the market. We demand that the Ministry pays more attention to properly and efficiently using funds in case of future measures paid by the taxpayers. This also includes always involving the federal states in funding public health tasks.

### **Compensation payments to hospitals**

- 0.8 In March 2020, the legislator decided to make compensation payments to authorised hospitals for postponing or cancelling elective hospitalisations, operations and surgeries with the aim of increasing capacity for treating COVID-19 patients. The eligibility criteria for these payments were changed several times. Most recently, these compensation payments were tied to regional availability of free intensive care capacities (beds) below a level of 25 per cent of total capacity and a 7-day incidence of more than 50 per 100,000 inhabitants in an administrative district or independent town. The Ministry was authorised to adjust the eligibility criteria by statutory instrument.
- 0.9 For 2020, the federal government paid €10.2 billion via the Federal Office for Social Security for compensation payments. Payments made by statutory health insurers for hospital treatments increased from €80.2 billion in 2019 to €81,5 billion in 2020. Utilisation of all hospital beds decreased from 75.1 per cent in 2019 to 67.3 per cent in 2020, utilisation of intensive care beds from 69.6 per cent

to 68.6 per cent. In 2020, empty hospital beds beyond the usual level were not so much due to postponed non-urgent operations but to potential patients not making so much use of them.

- 0.10 On 22 March 2021, the Federal Chancellor and the heads of the federal states decided that the economic situation of hospitals should be further stabilised by making compensation payments. By statutory instrument, the Ministry lowered the requirement of the 7-day incidence rate of more than 70 cases to more than 50 per 100,000 inhabitants.
- 0.11 The current system of compensation payments gave rise to undesirable deadweight effects. Vis-à-vis the Ministry, the Robert Koch Institute assumed that hospitals sometimes reported too low numbers of intensive care beds. At times, the number of patients in intensive care units reduced. However, the overall percentage of free beds (not including emergency reserves) remained low. The data reported were not fully appropriate to assess the situation. The Robert Koch Institute recommended that compensation payments no longer depend on these data.
- 0.12 Last year, compensation payments pursuant to Article 21 of the Hospitals Financing Act resulted in public funds being spent to massively overcompensate many hospitals: Even though bed occupancy reduced by almost 8 percentage points, the payments made by statutory health insurers for hospital treatments increased by 1.7 per cent in 2020 compared to 2019. In addition, hospitals received compensation payments of the federal government. These compensation payments amounted to €10.2 billion in 2020 alone. With these payments, the federal government did not mainly pay for maintaining free hospital capacity for COVID-19 patients but rather shared the economic risk of insufficient hospital occupancy.
- 0.13 The stated aim of delegated legislation was to increase intensive care bed capacity for COVID-19 patients. Safeguarding the financial health of hospitals was not a primary concern. However, the

eligibility criteria adjusted in March 2021 to improve the economic situation of hospitals significantly broadened the purpose of compensation payments pursued by the statutory provision laid down in the Hospitals Financing Act. Furthermore, from a general point of view, it seems arguable that billions of euros may be spent under a statutory instrument without Parliament deciding on the funds and their appropriateness.

0.14 The Ministry did not have any fundamental objections to the scope of delegated legislation. The Ministry stated that, essentially, it merely extended the rules in place and adapted them to the trend in infection rates. A regulation by statutory instrument was needed because decisions had to be made at short notice during the pandemic. At most, overcompensations occurred in the period from March to July 2020. After that time, the amount of compensation payments was based on the cost structure of the hospitals. Apart from that, some hospitals only had limited leeway for meeting the eligibility criteria. The Ministry continued that the incidence of the administrative district or independent town was taken into account.

0.15 In general, we see difficulties in making regulations by statutory instrument involving expenditures of several billions of euros. We do not question that this approach is legally permissible but we see a risk of partially undermining Parliament's power over the budget. Apart from that, the current approach bears the risk of potential beneficiaries having exerted influence on payment-triggering parameters. The Robert Koch Institute reported about contacts made to subsequently change the number of free intensive care beds announced. As a result, capacity shortages might have been shown that do not reflect reality. We note with concern that this happened in light of the particular significance of anticipated shortages in intensive care for identifying (policy) measures required to address the crisis. Therefore, we recommend using parameters preventing disincentives and deadweight effects. In addition to the 7-day incidence, further criteria should be used for

properly assessing the local epidemic situation.

### **Increase in intensive care beds**

- 0.16 For increasing the number of intensive care beds with ventilators, authorised hospitals received a one-time payment of €50,000 for each intensive care bed from 16 March to 30 September 2020. This measure was funded from the liquidity reserve of the Health Fund.
- 0.17 For increasing the number of intensive care beds, the Federal Office for Social Security paid approximately €686.1 million from the middle of March 2020 to the beginning of March 2021. The Ministry noted that the definition of an “intensive care bed” left scope for interpretation. According to the Ministry, the actual number of available intensive care beds was not reliably determined owing to a lack of a uniform definition. In March 2021, the Ministry still had no valid information on that matter.
- 0.18 We note with concern that the Ministry has so far not been able to reliably determine the actual number of available intensive care beds and the number of additional intensive care beds.
- 0.19 The Ministry stated that the number of additional intensive care beds could not be determined because of the fact that no uniform definition had been in place until spring 2020. This means that there was no precise basis. The Ministry held that the regulations were a compromise between the necessary speed and effectiveness of the support on the one hand and the necessary monitoring and management of the use of funds on the other hand. If monitoring and management were strengthened, the support could not have been provided as required in the short term.
- 0.20 We considered it to be a promising approach to use contributions made by the community of insured persons amounting to almost €700 million in order to prevent anticipated shortages in intensive care beds to address the epidemic. This enormous amount of funds

was supposed to create 13,700 additional intensive care beds. However, available statistics and data collections do not reflect such an increase in capacity. The same applies to the figures provided in the intensive care register of the German Interdisciplinary Association of Critical Care and Emergency Medicine. This makes it all the more important to be able to monitor the proper and appropriate use of funds. Clarifying the proper use of funds is not only of significance for the past. For enhancing the performance of the health system and for addressing future epidemic events, increasing the number of available intensive care beds by another 13,700 would be relevant: it is an increase of no less than 57 per cent compared to the number of 24,000 available intensive care beds (occupied and free beds) throughout Germany in April 2021. Thus, this is also a reason why the Ministry needs to clarify where the beds created by the support are and whether they are ready for use.

0.21 We acknowledge that the Ministry needed to pay unbureaucratic and effective financial support because of the unpredictable trend of the COVID-19 pandemic. However, the Ministry needs to ensure the targeted management and continuous monitoring of the appropriated funds at all times. First of all, the federal states should be required to ask hospitals to submit vouchers on the purchase of accessories and retrofitting measures. The Ministry should also examine to what extent mandatory monitoring requirements and claims for repayment by the Health Fund or the Federal Office for Social Security can be enforced retroactively. In future, corresponding responsibilities of the federal states to review the documents to be submitted by the beneficiaries and the related reporting requirements vis-à-vis the payer – that is the Health Fund or the Federal Office for Social Security in this case – should be legally enshrined.