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COMMUNICATION FROM THE COMMISSION

Guidelines on State aid to promote risk finance investments

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1. INTRODUCTION

1. On the basis of Article 107(3), point (c), of the Treaty on the Functioning of the European Union, State aid designed to facilitate the development of certain economic activities may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission has historically acknowledged the importance to the economies of Member States of the risk finance market and the need to improve access to risk finance for small and medium sized enterprises ('SMEs'), small middle-capitalisation firms ('mid-caps') and innovative mid-caps[1], and the consequent need to have a set of guidelines to ensure a consistent approach in assessing risk finance aid measures. In that vein, the Commission adopted the 2006 Risk Capital Guidelines[2] which were subsequently replaced by the 2014 Risk Finance Guidelines[3] as part of the State Aid Modernisation package[4]. The 2014 Risk Finance Guidelines will expire at the end of 2021. However, Member States may continue to see a need to provide risk finance aid, and guidance on how to support risk finance in full compliance with State aid rules remains necessary.

2. In this regard, SMEs are the backbone of Member States' economies, both in terms of employment and of economic dynamism and growth, and are therefore also central to the Union's economic development and resilience as a whole. As acknowledged in the SME Strategy for a sustainable and digital Europe[5], the Union's 25 million SMEs employ around 100 million people, account for more than half of the Union's gross domestic product (GDP) and play a key role in adding value in every sector of the economy. They bring innovative solutions to address challenges like climate change, inefficient use of resources and loss of social cohesion, and they help spread this innovation supporting the green and digital transition and strengthening the Union's resilience or technological sovereignty. However, to be able to grow and unleash their full potential, SMEs need financing. This is especially true in innovation-oriented, high-tech, high risk sectors. Therefore, an efficient risk finance market for SMEs is crucial for entrepreneurial companies to be able to access the necessary funding at each stage of their development.

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1 The exact definitions of SMEs, small mid-caps and innovative mid-caps for the purpose of these Guidelines are set out in Section 2.3, in paragraph 35.

2 Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2).

3 Communication from the Commission - Guidelines on State aid to promote risk finance investments (OJ C19, 22.1.2014, p. 4).

4 Between 2012 and 2014, the Commission carried out an ambitious State aid modernisation programme based on three main objectives, for more details see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State Aid Modernisation (SAM), COM (2012)209 final of 8.5.2012:
   (a) fostering sustainable, smart and inclusive growth in a competitive internal market;
   (b) focusing the Commission's *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement; and
   (c) streamlining the rules to ensure faster decision making.

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'An SME Strategy for a sustainable and digital Europe', COM(2020)103 final of 10.3.2020.

3. Despite their growth prospects, start-ups and SMEs often face difficulties in gaining access to finance, particularly in the early stages of their development[6] and when they need additional funding to expand. At the heart of those difficulties lies a problem of *asymmetric information*: start-ups and SMEs, especially when they are young or in new or high-tech sectors, are often unable to demonstrate their credit-worthiness or the soundness of their business plans to investors and banks. In such circumstances, the type of active screening and research that investors undertake for providing finance to larger or more established companies may not be worthwhile in the case of transactions involving SMEs and start-ups because the screening costs are too high relative to the value of the investment. Therefore, irrespective of the quality of their project, the innovativeness of their technology and growth potential, start-ups and SMEs will likely not be able to access the necessary finance as long as they lack a proven track record and sufficient collateral. That problem may be particularly pronounced as regards investments into innovative green, high-tech, digital, or aerospace-based technologies or into social innovations driven by social entrepreneurs[7]. As a result of that asymmetric information, business finance markets may fail to provide the necessary equity or debt finance to newly-created and potentially innovative and high-growth start-ups and SMEs, resulting in a persistent capital market failure preventing supply from meeting demand at a price acceptable to both sides, which negatively affects SMEs' growth prospects and undermines the Single Market's productivity growth and overall resilience of the Union's economy. In certain circumstances, small mid-caps and innovative mid-caps face the same market failure.

4. The consequences of a company not receiving finance may go beyond that individual entity, due in particular to *growth externalities.* Many successful sectors witness productivity growth not because companies present in the market gain in productivity, but because the more efficient and technologically advanced companies grow at the expense of the less efficient ones (or ones with obsolete products). Moreover, the economic sectors involved and the overall economy benefit from positive growth externalities linked to the accumulation of knowledge possessed by firms (organizational capital) or by workers (human capital), as well as from the introduction of new goods, in the form of surplus to consumers and/or firms. To the extent that these processes are disturbed by the fact that potentially successful companies may not be able to obtain finance, the wider consequences for productivity growth are likely to be negative. Allowing a wider base of companies to enter the market and scale-up by removing undue obstacles to financing may then spur growth.

5. Therefore, the existence of a financing gap affecting start-ups, SMEs, small mid-caps and innovative mid-caps may justify the deployment of public support measures by Member States in order to facilitate the development of risk finance in their domestic markets. Properly targeted State aid to support the provision of risk finance can be an effective means to alleviate the identified market failure or another relevant obstacle in access to finance and to leverage private resources. In the current context, Member

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6 See the 'Evaluation support study on the EU rules on State aid for access to finance for SMEs', European Union (2020), available on-line: https://ec.europa.eu/competition/state_aid/modernisation/risk_finance_study.zip.

7 Such innovations include for instance changing social practices in support of the green or digital transitions, or making ICT careers more accessible to women.

States may also make use of it to foster recovery from the economic crisis caused by the COVID-19 pandemic.

6. Besides being indispensable for domestic economies of Member States, improved access to finance can positively contribute to some of the Union's central policy objectives. Access to finance constitutes a powerful tool to support the Green Deal[8] and make Europe fit for the digital age[9], as well as to ensure recovery from the economic crisis caused by the COVID-19 pandemic and build a Union that is more resilient also against future crises.

7. The green transition is a core objective of the Union. According to the most recent projections[10], achieving the current climate and energy targets for 2030 could require up to EUR 417 billion of additional annual investment, a challenge for which leveraging significant private investment will be key. Promoting sustainable finance requires the right signals to direct financial and capital flows to green investment. To that end, in 2018 the Commission launched the Sustainable Finance Plan[11], which has been followed recently by a new Sustainable Finance Package[12]. One element to promote green finance is improved disclosure on climate and environmental data so that investors are fully informed about the sustainability of their investments. Within that context, a key step has been the adoption of Regulation (EU) 2020/852 of the European Parliament and of the Council[13], which classifies environmentally sustainable activities (commonly referred to as the 'EU Taxonomy').

8. Concerning the digital transition, the 2030 Digital Compass Communication[14] underlines the need to support the Union's development of critical digital technologies in a way that fosters its productivity growth and economic development in full coherence with its societal values and objectives. National spending by Member States is crucial to enable a massive scale-up of investments, alongside relevant Union funds and private investments, in order to achieve that objective.

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8 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal', COM(2019)640 final of 11.12.2019.

9 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Shaping Europe's digital future', COM(2020)67 final of 19.2.2020.

10 Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, COM(2021)557 final of 14.7.2021.

11 Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions 'Action Plan: Financing Sustainable Growth', COM(2018)97 final of 8.3.2018.

12 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU taxonomy, corporate sustainability reporting, sustainability preferences and fiduciary duties: Directing finance towards the European Green Deal', COM(2021)188 final of 21.4.2021.

13 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

14 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '2030 Digital Compass: the European way for the Digital Decade', COM(2021)118 final of 9.3.2021.

9. As for the crisis caused by the COVID-19 pandemic, recovery is an urgent priority, using the momentum to make progress on the digital and green transition, which will make the economy more resilient and more competitive. The Recovery and Resilience Facility (‘RRF’)[15] is the first and most important part of the EU Recovery Package adopted in response to the crisis, making EUR 672.5 billion available for Member States in the form of loans and grants as financial support for the crucial first years of the recovery, upon approval of their draft recovery and resilience plans. In this context, the Commission has identified flagship areas[16] which it encourages Member States to include in their recovery and resilience plans, given their relevance across Member States, the very large investments required, and their potential to create jobs and growth and reap the benefits from the green and digital transitions.

10. Moreover, as the updated Industrial Strategy[17] underlined, the Union needs to learn from the COVID-19 pandemic and its impact on the global value chains; improving its single market resilience and addressing strategic dependencies while safeguarding an open, competitive, and trade-based EU economy is at the core of these efforts.

11. Given the importance of effective access to finance for the Union’s core objectives, there is a need to further boost efforts building on Union policies aimed at improving such access, such as the Capital Markets Union (‘CMU’) and the use of the Union’s budget.

12. In this regard, the Commission adopted the first CMU action plan[18] in 2015 in order to mobilise capital in the Union and channel it to all companies. One of its main objectives was to improve the access of SMEs to finance, in particular to non-banking finance. Since then, the Union has made significant progress, largely delivering on the individual actions announced in the 2015 CMU action plan and its 2017 mid-term review. Many of those actions were aimed at improving access to funding for all undertakings irrespective of size or age, but some of them were aimed, to a great extent, at facilitating access to capital markets specifically for

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[15] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

[16] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank ‘Annual Sustainable Growth Strategy 2021’, COM(2020)575 final of 17.9.2020 identifies seven flagship areas: power up –The frontloading of future-proof clean technologies and acceleration of the development and use of renewables; renovate – The improvement of energy efficiency of public and private buildings; recharge and refuel – The promotion of future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, charging and refuelling stations and extension of public transport; connect – the fast rollout of rapid broadband services to all regions and households, including fiber and 5G networks; modernise – the digitalisation of public administration and services, including judicial and healthcare systems; scale-up – the increase in European industrial data cloud capacities and the development of the most powerful, cutting edge, and sustainable processors; reskill and upskill – the adaptation of education systems to support digital skills and educational and vocational training for all ages.

[17] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery’, COM(2021)350 final of 5.5.2021.

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Action Plan on Building a Capital Markets Union’, COM(2015)0468 final of 30.9.2015.

SMEs and small mid-caps[19]. A new CMU action plan[20] was launched in 2020 to deepen the Union's CMU over the coming years in order to continue developing the capital markets and ensure access to market financing, in particular for small and medium-sized businesses. In this context, in accordance with Article 33(9) of Directive 2014/65/EU of the European Parliament and of the Council[21], the Commission has also set up a Technical Expert Stakeholder Group on SMEs which was mandated to assess the barriers to SMEs tapping public markets.

13. In view of the importance of improving access to finance for SMEs, the Commission complements the Union's legislation and policy actions with the Union budget, in order to address structural market failures that limit the growth of start-ups and SMEs. To that end, the use of financial instruments[22] was enhanced under the 2014-2020 Multiannual Financial Framework ('MFF'). In particular, the Union funding programmes established by Regulation (EU) No 1287/2013 of the European Parliament and of the Council ('Competitiveness of Enterprises and small and medium-sized enterprises' ('COSME'))[23] and Regulation (EU) No 1291/2013 of the European Parliament and of the Council[24] ('Horizon 2020') contributed to improving the use of public resources through risk-sharing funding mechanisms to the benefit of SMEs in their start-up, growth and transfer phases, as well as small mid-caps and innovative mid-caps, with a particular emphasis on actions designed to provide seamless support from innovation to market, including the commercial implementation of research and development ('R&D') results[25]. Furthermore, the

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19 For instance, Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1); Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12); Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (OJ L 173, 12.6.2014, p. 349) as regards the development of SME Growth Markets; Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

20 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee Of The Regions 'A Capital Markets Union for people and businesses-new action plan', COM(2020)590 final of 24.9.2020.

21 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

22 Financial instruments cover non-grant financial instruments, which may take the form of debt instruments (loans, guarantees) or equity instruments (pure equity, quasi-equity investments or other risk-sharing instruments).

23 Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 – 2020) and repealing Decision No 1639/2006/EC, (OJ L 347, 20.12.2013, p. 33).

24 Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014 – 2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

25 Furthermore, in order to provide better access to loan finance, a specific Risk Sharing Instrument (RSI) was created jointly by the Commission, the European Investment Fund and the European Investment Bank, under the Seventh Framework Programme for Research (FP7), see http://www.eif.org/what_we_do/guarantees/RSI/index.htm. The RSI provided partial guarantees to financial intermediaries through a risk-sharing mechanism, thus reducing their financial risks and encouraging them to provide lending to SMEs undertaking R&D or innovation activities.

European Innovation Council ('EIC') has supported start-ups and SMEs since 2018, under the Horizon 2020 programme, and will continue to do so, as well as to support small mid-caps, under the Union's resarch and innovation funding programme Horizon Europe[26], with the aim of enhancing performance of the Union's venture capital market. The launch of the European Scale-up Action for Risk capital ('ESCALAR')[27], as a pilot programme by the Commission and the European Investment Fund ('EIF'), as well as work on the creation of a private-public fund[28] to help finance initial public offerings of SMEs, reveals the importance attached to facilitating start-up and SME growth as well as the need to further complete the range of existing public support measures at all funding stages. The EIF also activated a 'fund of funds' in 2020, with the ISEP (InnovFin Space Equity Pilot) initiative, engaging four private Venture Capital investors to increase equity investment in european aerospace and defence companies. This model is being pursued further by the CASSINI initiative and in particular its planned Growth Fund.[29] In addition, the Union's cohesion policy has been contributing increasingly to the financing of SMEs, including via provision of risk capital, since early 2000, reaching EUR 10 billion of support at the end of 2013 and an additional EUR 15 billion of commitments by 23 Member States as of end 2020. Financial instruments under cohesion policy supported about 365 000 SMEs across Europe in the course of 2020 alone. Finally, the new InvestEU Programme[30], which will bring together 14 different financial instruments currently available to support investment in the Union, as well as funds contributed from shared management to the Member State compartment, has a specific window dedicated to the funding of small businesses while InvestEU's three other windows can also fund SMEs within their scope.

[26] Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe - the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

[27] The European Scale-up Action for Risk capital (ESCALAR) is a pilot programme launched by the European Commission and managed by the EIF, using resources of the Investment Plan for Europe to address the financing gap experienced by high-growth European companies (scale-ups). ESCALAR was launched on 4 April 2020 and is intended to substantially increase fund resources, thus allowing larger investment tickets and creating greater capacity for investments in scale-ups.

[28] In her Political Guidelines for the next European Commission 2019-2024, then Candidate President Von der Leyen announced the creation of a private-public fund specialising in IPOs of SMEs with a view to providing public support in the form of funding to ease high-potential SMEs' access to public markets.

[29] The CASSINI initiative, first announced in the 'SME Strategy for a sustainable and digital Europe' COM(2020)103 final of 10.3.2020, is a collection of concrete actions whose aims include easing access to risk capital for space-based SMEs to fund their expansion. The CASSINI Growth fund will function as a fund of funds similarly to ISEP, by investing in venture capital funds that commit to act as 'thematic funds', i.e. to invest in the space sector while still deciding autonomously in which specific firms they want to invest in. The CASSINI Growth fund will tackle a shortage of capital in the expansion stage, which is well known to adversely affect new space SMEs in the Union.

[30] Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30). The intention of the InvestEU Programme is to encourage public and private investor participation in financing and investment operations by providing guarantees from the Union budget to address failures and sub-optimal investment situations. It builds on the success of the European Fund for Strategic Investments (EFSI) which was launched in 2015 to close the investment gap in the Union in the aftermath of the financial and economic crisis.

14. Both the Commission's experience in the risk finance aid area (under the 2014 Risk Finance Guidelines as well as the General Block Exemption Regulation[31]), and the abovementioned initiatives (see paragraphs 12 and 13) at the Union level aimed at improving access to finance, demonstrate that access to finance continues to be a priority both for the Union and for its Member States. Against this background, it is therefore crucial that the Commission continues to provide guidance to Member States on how it will assess the compatibility of risk finance measures with the internal market. This is also demonstrated by the evaluation that the 2014 Risk Finance Guidelines underwent in 2019 and 2020: the so-called Fitness Check[32]. The results of the Fitness Check show that as a rule, the Risk Finance Guidelines remain relevant and fit for purpose. Further clarification and simplification of the rules is, however, necessary. These revised Risk Finance Guidelines will facilitate the deployment of adequately targeted risk finance State aid by Member States, taking into account the positive contribution of such aid to the Commission priorities outlined above (see paragraphs 6 to 9), in addition to the positive effects of the aid in ensuring access to finance.

15. Following the adoption in 2016 of the Notice on the notion of aid[33] and having regard, in particular, to Section 4.2 thereof[34], these Guidelines no longer address whether or not a public support measure constitutes State aid, but focus on the conditions under which a State aid measure may be found compatible with the internal market.

16. For these reasons, the Commission has decided to make certain changes to the 2014 Risk Finance Guidelines, to clarify the rules and bring administrative simplification in order to facilitate the deployment of State aid in support of risk finance.

2. SCOPE OF THE GUIDELINES AND DEFINITIONS

2.1. Scope of these Guidelines

17. The Commission will apply the principles set out in these Guidelines to risk finance measures which do not satisfy all the conditions laid down in Section 3 of the General Block Exemption Regulation ('Aid for access to finance for SMEs'). The Member State concerned must notify those measures (see Section 2.2) in accordance with Article 108(3) of the Treaty and the Commission will carry out a substantive compatibility assessment as set out in Section 3 of these Guidelines.

18. However, Member States may also choose to design risk finance measures in such a way that the measures do not entail State aid under Article 107(1) of the Treaty, for instance because they comply with the market economy operator test[35] or because

31 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 (OJ L 187, 26.06.2014, p. 1).

32 On-line available on: https://ec.europa.eu/competition/state_aid/modernisation/fitness_check_en.html.

33 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1).

34 In that notice, the Commission clarifies its understanding of how the notion of State aid laid down in Article 107(1) of the Treaty should be interpreted. Section 4.2 ('The market economy operator (MEO) test') of that notice provides guidance as regards when a public support measure does not constitute State aid due to the fact that it is carried out under normal market conditions.

35 See footnote 34.

they fulfil the conditions of the applicable *de minimis* Regulation[36]. Such cases do not need to be notified to the Commission.

19. These Guidelines do not address the compatibility with the internal market of State aid measures which meet the criteria laid down in other State aid guidelines, frameworks or regulations. The Commission will pay particular attention to the need to prevent the use of these Guidelines to pursue policy objectives which are addressed principally by other State aid frameworks, guidelines and regulations.

20. These Guidelines are without prejudice to the assessment under State aid rules of other types of financial instruments than those covered herein, such as instruments providing for the securitisation of existing loans.

21. The Commission will only apply the principles set out in these Guidelines to risk finance schemes. They will not be applied in respect of *ad hoc* measures providing risk finance aid to individual undertakings, except in the case of measures aimed at supporting a specific alternative trading platform.

22. It is important to recall that risk finance aid measures have to be deployed through financial intermediaries or alternative trading platforms, except for fiscal incentives on direct investments in eligible undertakings. Therefore, a measure whereby the Member State or public entity makes direct investments in companies without the involvement of such intermediary vehicles does not fall under the scope of the risk finance State aid rules in the General Block Exemption Regulation or these Guidelines.

23. In light of their more established track record and higher collateralisation, the Commission considers that as a rule, large enterprises do not face the same difficulties in accessing finance as start-ups and SMEs do and thus aid to such enterprises should not be covered by these Guidelines. Exceptionally, a risk finance measure in favour of large undertakings may be considered compatible on the basis of these Guidelines where it is targeted at small mid-caps, in accordance with Section 3.2.2.1, point (a), or innovative mid-caps that carry out research and development (‘R&D’) and innovation projects, in accordance with Section 3.2.2.1, point (b).

24. The Commission will not apply the principles in these Guidelines to risk finance aid to companies listed on the official list of a regulated market, since the fact that they are listed on a regulated market demonstrates their ability to attract private financing.

25. Risk finance aid measures without any participation from independent private investors will not be considered compatible under these Guidelines. In such cases, the Member State should consider alternative policy options which may be more appropriate to achieve the same objectives and results, such as regional investment aid or start-up aid permitted under the General Block Exemption Regulation.

26. Risk finance aid measures where no appreciable risk is undertaken by the independent private investors, or where the benefits flow entirely to the private

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[36] 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 (OJ L 352, 24.12.2013, p. 1); Commission Regulation (EU) No 1408/2013 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 in the agricultural sector (OJ L 352, 24.12.2013, p. 9); Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

investors, will not be considered compatible on the basis of these Guidelines. Sharing the risks and rewards is a necessary condition under these Guidelines to limit the financial exposure of, and to ensure a fair return to, the State.

27. With the exception of risk finance aid in the form of replacement capital subject to the conditions laid down in Article 21 of the General Block Exemption Regulation, risk finance aid covered by these Guidelines may not be used to support buy-outs.

28. Risk finance aid will not be considered compatible with the internal market under these Guidelines if awarded to:

(a) undertakings in difficulty, as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty;[37] however, for the purposes of these Guidelines, SMEs that have been operating in any market for no longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation that qualify for risk finance investments following due diligence by the selected financial intermediary will not be considered as undertakings in difficulty, unless they are subject to insolvency proceedings or fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors;

(b) undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market.

29. The Commission will not apply the principles in these Guidelines to aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity, as well as aid contingent upon the use of domestic over imported goods.

30. Risk finance measures often involve complex constructions creating incentives for one set of economic operators (investors) to provide risk finance to another set of operators (eligible undertakings). Depending on the design of the measure, and even if the intention of the public authorities may be only to provide benefits to the latter group, undertakings at either or both levels may benefit from State aid. Moreover, risk finance measures usually involve one or more financial intermediaries which may have a status separate from that of the investors and the final beneficiaries in which investments are made. In such cases it is also necessary to reflect on whether the financial intermediary can be considered to benefit from State aid. Any aid to the financial intermediary should be limited by passing on the advantage to the final beneficiaries as set out in these Guidelines. The fact that financial intermediaries may increase their assets and their managers may achieve a higher turnover through their commissions is considered to constitute only a secondary economic effect of the aid measure and not an advantage procured by the aid to the financial intermediaries or managers. However, if the risk finance measure is designed in such a way as to channel its secondary effects towards identifiable financial intermediaries or towards identifiable groups of financial intermediaries, those financial intermediaries will be considered to benefit from an indirect advantage.

[37] Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

2.2. Notifiable risk finance aid

31. Member States must notify, pursuant to Article 108(3) of the Treaty, risk finance measures which: (i) constitute State aid within the meaning of Article 107(1) of the Treaty (in particular measures that do not comply with the market economy operator test[38] and fall outside the scope of the *de minimis* Regulations[39]), and (ii) do not satisfy all the conditions laid down in Section 3 of the General Block Exemption Regulation ('Aid for access to finance for SMEs'). The Commission will assess the compatibility of those measures with the internal market under Article 107(3), point (c), of the Treaty. These Guidelines focus on those risk finance measures which are most likely to be found compatible under Article 107(3), point (c), of the Treaty, subject to a number of conditions which will be explained in greater detail in Section 3 of these Guidelines. Such measures fall into one of two categories.

32. The first category covers risk finance measures which target undertakings that do not fulfil all the **eligibility requirements** for risk finance aid as laid down in Section 3 of the General Block Exemption Regulation. That category encompasses, in particular, measures targeting the following undertakings:

    (a) small mid-caps;

    (b) innovative mid-caps;

    (c) SMEs receiving the initial risk finance investment while they have been operating in any market for longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation;

    (d) start-ups and SMEs requiring an overall risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation;

    (e) alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation.

33. The second category consists of measures whose **design parameters** differ from those set out in Section 3 of the General Block Exemption Regulation. That category encompasses, in particular, the following cases:

    (a) financial instruments with independent private investor participation below the ratios provided for in the General Block Exemption Regulation;

    (b) financial instruments with design parameters above the ceilings provided for in the General Block Exemption Regulation;

    (c) financial instruments other than guarantees where financial intermediaries, investors or fund managers are selected by giving preference to protection against potential losses (downside protection) over prioritised returns from profits (upside incentives);

    (d) fiscal incentives to corporate investors, including financial intermediaries or their managers acting as co-investors.

34. Unless otherwise specified in these Guidelines, all compatibility conditions applicable to risk finance aid under Section 3 of the General Block Exemption

[38] See footnote 34.
[39] See footnote 36.

Regulation will guide the Commission's assessment of the categories of notifiable measures.

2.3. Definitions

35. For the purposes of these Guidelines:

(1) 'alternative trading platform' means a multilateral trading facility as defined in Article 4(1), point (22), of Directive 2014/65/EU where at least 50 % of the financial instruments admitted to trading are issued by SMEs;

(2) 'buy-out' means the purchase of at least a controlling percentage of a company's equity from the current shareholders to take over its assets and operations;

(3) 'downside protection' means a reduced exposure to losses in the event of underperformance of the underlying transaction compared to the public investors;

(4) 'eligible undertakings' means start-ups, SMEs, small mid-caps and innovative mid-caps;

(5) 'entrusted entity' means the European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission; the entrusted entity can be selected or directly appointed in accordance with Directive 2014/24/EU of the European Parliament and of the Council[40] or in accordance with Article 38(4), point (b)(iii), of Regulation (EU) No 1303/2013 of the European Parliament and of the Council[41] or in accordance with Article 59(3), point (c) of Regulation (EU) No 2021/1060 of the European Parliament and of the Council[42];

(6) 'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;

(7) 'evaluation plan' means a document covering one or more aid schemes and containing at least the following minimum elements:

(a) the objectives to be evaluated;

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40 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

41 Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

42 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

(b) the evaluation questions;

(c) the result indicators;

(d) the envisaged methodology to conduct the evaluation;

(e) the data collection requirements;

(f) the proposed timing of the evaluation including the date of submission of the interim and the final evaluation reports;

(g) the description of the independent body that will carry out the evaluation or the criteria that will be used for its selection;

(h) the arrangements for making the evaluation publicly available;

(8) ‘exit’ means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares or loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering (‘IPO’);

(9) ‘fair rate of return’ means the expected internal rate of return equivalent to a risk-adjusted discount rate reflecting the level of risk of the investment and the nature and volume of the capital to be invested by the private investors;

(10) ‘final beneficiary’ means an eligible undertaking that has received investment under a risk finance State aid measure;

(11) ‘financial intermediary’ means any financial institution, regardless of its form and ownership, including funds of funds, private investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;

(12) ‘first commercial sale’ means the first sale by an undertaking on a product or service market, excluding limited sales to test the market;

(13) ‘first loss piece’ means the most junior risk tranche that carries the highest risk of losses, comprising the expected losses of the target portfolio;

(14) ‘follow-on investment’ means additional investment in a company subsequent to one or more previous risk finance investment rounds;

(15) ‘fund of funds’ means a fund which invests in or contributes resources to other funds rather than directly in companies or in financial assets such as shares or bonds;

(16) ‘guarantee’ means a written commitment to assume responsibility for all or part of a third party’s newly originated risk finance loan transactions such as debt or lease instruments, as well as quasi-equity instruments;

(17) ‘guarantee cap’ means the maximum exposure of a public investor expressed as a percentage of the total investments made in a guaranteed portfolio;

(18) ‘guarantee rate’ means the percentage of loss coverage by a public investor of each and every transaction eligible under the risk finance State aid measure;

(19) ‘independent private investor’ means an independent private investor within the meaning of Article 2 of the General Block Exemption Regulation;

(20) ‘innovative mid-cap’ means a mid-cap that meets one of the following conditions: fulfills the criteria to be considered an ‘innovative enterprise’ within the meaning of Article 2 of the General Block Exemption Regulation;

has recently been awarded a Seal of Excellence quality label by the European Innovation Council in accordance with the Horizon 2020 work programme 2018-2020[43] or with Article 2(23) and Article 15(2) of Regulation (EU) 2021/695; or has recently received an investment from the European Innovation Council Fund, such as an investment in the context of the Accelerator Programme as referred to in Article 48 of Regulation (EU) 2021/695; and either has participated to any CASSINI[44] action (CASSINI Business Accelerator or Matchmaking), or has received investment from CASSINI Seed and Growth Funding Facility, or has been awarded a CASSINI Prize, meeting the evaluation thresholds set therein, or has been supported by space-related projects funded by Horizon Europe which has resulted in the creation of a start-up;

(21) 'leverage of private resources' means the degree to which public investment attracts additional investment from private sources;

(22) 'loan instrument' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period; it may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield;

(23) 'mid-cap' means an undertaking that is not an SME and whose number of employees does not exceed 1 500, calculated in accordance with Articles 3 to 6 of Annex I to the General Block Exemption Regulation. For the purpose of the application of this definition, several entities will be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled;

(24) 'natural person' means a person other than a legal entity who is not an undertaking within the meaning of Article 107(1) of the Treaty;

(25) 'new loan' means a newly initiated loan instrument designed to finance new investments or working capital, to the exclusion of refinancing of: (i) existing loans or of (ii) other forms of financing;

(26) 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which is unsecured in the event of default; quasi-equity investments may be structured as debt, unsecured and

[43] Commission Implementing Decision C(2017)7124 of 27.10.2017 on the adoption of the work programme for 2018-2020 within the framework of the Specific Programme Implementing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and on the financing of the work programme for 2018).

[44] The objectives of the CASSINI initiative include: 1) increasing the number of space-based start-ups developing innovative solutions using Union space technologies, 2) their success rate in establishing companies, and 3) easing access for space-based SMEs to risk capital. The CASSINI actions cover the full entrepreneurial cycle and they are geared, by design, towards selection of the most innovative and competitive business ideas (i.e. external contractors apply market-driven criteria to provide mentoring and acceleration, and venture capitalists managing space thematic funds will decide autonomously in picking the ventures they want to invest in). See also footnote 29.

subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

(27) ‘replacement capital’ means the purchase of existing shares in a company from an earlier investor or shareholder;

(28) ‘risk finance investment’ means equity and quasi-equity investments, loans (including leases) and guarantees, or a combination thereof, to eligible undertakings for the purposes of making new investments, to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;

(29) ‘small and medium-size enterprise (‘SME’) means an undertaking fulfilling the criteria laid down in Annex I to the General Block Exemption Regulation;

(30) ‘small mid-cap’ means an undertaking that is not an SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of Annex I to the General Block Exemption Regulation, and the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million. For the purpose of the application of this definition, several entities will be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled;

(31) ‘start-up’ means any unlisted small enterprise up to five years following its registration, that fulfils the following conditions: (a) it has not taken over the activity of another enterprise; (b) it has not yet distributed profits; (c) it has not been formed through a merger[45]. For eligible undertakings that are not subject to registration, the five year eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier;

(32) ‘total financing’ means the overall investment amount made into an eligible undertaking via one or more risk finance investments, including follow-on investments, under any risk finance State aid measure, to the exclusion of entirely private investments provided on market terms and outside the scope of the risk finance State aid measure;

(33) ‘upside-incentive’ means preferential or prioritised returns from profits compared to the public investors.

3. COMPATIBILITY ASSESSMENT OF RISK FINANCE AID

36. On the basis of Article 107(3), point (c), of the Treaty, State aid to facilitate the development of certain economic activities within the Union may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

37. In this Section, the Commission clarifies how it will assess the compatibility of risk finance aid measures which are subject to the notification obligation pursuant to Article 108(3) of the Treaty. More specifically, to assess whether a risk finance aid

[45] By way of derogation from point (c), enterprises formed through a merger between undertakings eligible for aid under these Guidelines shall also be considered eligible undertakings up to five years from the date of registration of the oldest enterprise participating in the merger.

measure can be considered to be compatible with the internal market, the Commission will determine whether the aid measure:

(a) facilitates the development of a certain economic activity (**first condition**); and

(b) does not adversely affect trading conditions to an extent contrary to the common interest (**second condition**).

38. When determining whether the first condition is fulfilled, namely that the aid facilitates the development of an economic activity, the Commission will consider the following aspects:

(a) identification of the supported economic activity (see Section 3.1.1),

(b) *incentive effect*: the aid must change the behaviour of the undertakings concerned in such a way that such undertakings engage in additional activities which they would not carry out without the aid or would carry out in a more restrictive or different manner or location (see Section 3.1.2).

39. When considering whether the second condition is fulfilled, namely that the aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission will consider the following aspects:

(a) *need for State intervention*: the aid measure must bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or another relevant obstacle to the provision of risk finance including for instance regional inequalities in access to finance (see Section 3.2.2),

(b) *appropriateness of the aid measure*: the proposed aid measure must be an appropriate policy instrument to meet its objective (see Section 3.2.3),

(c) *proportionality of the aid (aid limited to the minimum)*: the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertakings concerned (see Section 3.2.4),

(d) *avoidance of undue negative effects of the aid on competition and trade*: any negative effects must be limited and not outweigh the positive effects of the aid (see Section 3.2.5),

(e) *transparency of the aid*: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and pertinent information about the aid awarded thereunder (see Section 3.2.6).

40. The overall balance (see Section 3.2.5.3) of certain categories of aid schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4. In such cases, the Commission may limit the duration of the schemes, with a possibility to re-notify their subsequent prolongation.

41. If a State aid measure, the conditions attached to it (including its financing method where the financing method forms an integral part of the State aid measure), or the activity it finances entails a violation of a relevant provision of Union law, the aid

cannot be considered compatible with the internal market[46]. Such violations include but are not limited to:

(a) making the aid subject to the obligation to use nationally produced goods or national services;

(b) making the aid subject to the obligation for financial intermediaries, their managers or final beneficiaries to have their headquarters in the territory of the Member State concerned, or to move them to the territory of that Member State, in violation of Article 49 of the Treaty pertaining to the freedom of establishment;[47]

(c) imposing conditions which violate Article 63 of the Treaty pertaining to the free movement of capital.

3.1. First condition: aid facilitates the development of an economic activity

3.1.1. Identification of the supported economic activity

42. In most cases, risk finance aid measures cover companies from a wide range of economic sectors. Those measures help to ensure that certain SMEs and mid-caps have access to the necessary amount and form of finance to perform or further develop their respective economic activities. The Commission will therefore identify the type of companies (SMEs, small mid-caps or innovative mid-caps) and the sectors covered by the risk finance aid measure.

3.1.2. Incentive effect

43. Risk finance aid can only be found compatible with the internal market if it has an incentive effect. The Commission considers that aid without an incentive effect does not facilitate the development of the economic activity concerned.

44. An incentive effect occurs where the aid induces the aid beneficiary to change its behaviour by undertaking activities which it would not carry out without the aid or would carry out in a more restrictive manner due to the existence of a market failure. At the level of the eligible undertakings, an incentive effect is present where the aid enables the final beneficiary to raise finance that would not otherwise be available in terms of form, amount or timing.

45. Risk finance measures must incentivise market investors to provide funding to potentially viable eligible undertakings above the levels of funding provided in the absence of such incentives or to assume extra risk, or both. A risk finance measure is considered to have an incentive effect if it mobilises investments from market sources so that the total financing provided to the eligible undertakings exceeds the budget of the measure. Hence, a key element in selecting the financial intermediaries and fund managers should be their ability to mobilise additional private investment.

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[46] See the Court judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94 to 116; of 15 April 2008, *Nuova Agricast*, Case C-390/06 EU:C:2008:224, paragraphs 50 and 51; and of 22 September 2020, *Austria v Commission*, Case C-594/18 P, EU:C:2020:742, paragraph 44.

[47] This is without prejudice to the requirement for financial intermediaries or their managers to have the necessary licence to carry out investment and management activities in the Member State concerned or for final beneficiaries to have an establishment and carry out economic activities in its territory.

46. If funded debt instruments are used to refinance existing loans, they are not considered to have an incentive effect and any aid element in such instruments cannot be regarded as compatible under these Guidelines.

47. The assessment of the incentive effect is closely linked to the assessment of the need for State intervention discussed in Section 3.2.2. Furthermore, the suitability of a measure to leverage private resources ultimately depends on the design of that measure as regards the balance of risks and rewards between public and private finance-providers, which is also closely related to the question as to whether the design of the risk finance State aid measure is appropriate (see Section 3.2.3). Therefore, once the need for State intervention has been properly identified and the measure has an appropriate design, it can be assumed that an incentive effect is present.

3.2. Second condition: Avoidance of adverse effects on trading conditions to an extent contrary to the common interest

48. Article 107(3), point (c), of the Treaty allows the Commission to consider aid to facilitate the development of certain economic activities or of certain economic areas compatible, but only '*where such aid does not adversely affect trading conditions to an extent contrary to the common interest*'.

49. The assessment of the negative effects on the internal market involves complex economic and social assessments. The Commission will explain in this Section how it intends to exercise its discretion in that respect.

50. By its very nature, any State aid measure results in distortions of competition and has an effect on trade between Member States. However, in order to establish if the distortive effects of the aid are limited to the minimum, the Commission will verify whether the aid is necessary (see Section 3.2.2), appropriate (see Section 3.2.3), and proportionate (see Section 3.2.4). To enable it to carry out that verification, the Commission requires that Member States submit evidence in the form of an *ex ante* assessment as described in Section 3.2.1.

51. The Commission will then assess the negative effects of the risk finance aid in question on competition and trading conditions. More specifically, aid in the field of risk finance can lead to the crowding out of private investors, have distortive effects at the level of financial intermediaries, cause specific product market distortions and have delocalisation effects. The Commission will examine such negative effects of the aid on competition and trade and weigh them against the positive effects of the aid (see Section 3.2.5). If the positive effects outweigh the negative effects, the Commission will consider the aid compatible.

52. Finally, the Commission will ensure that the aid complies with its transparency requirements (see Section 3.2.6).

3.2.1. Basic elements of the ex ante assessment to be submitted by the Member State concerned to the Commission

53. State aid can only be justified if it can bring about a material development that the market cannot deliver itself, for example by remedying a market failure or another relevant obstacle to the provision of risk finance or investment.

54. State aid may be **necessary** to increase the provision of risk finance in a situation where the market, on its own, fails to deliver an efficient outcome or does not deliver in a timely manner. The Commission considers that there is no general market failure

as regards access to finance for start-ups, SMEs or mid-caps, but only a failure related to certain groups of start-ups, SMEs and some types of mid-caps, depending, in particular, on the specific economic context of the Member State concerned, as well as their field of activity (e.g. in some sectors risks may be overestimated).

55. Section 3 of the General Block Exemption Regulation sets out the conditions under which risk finance measures are presumed to address a market failure through appropriate and proportionate means, while having an incentive effect and minimising any distortions of competition. Measures that comply with those conditions do not have to be notified and are deemed compatible with the internal market.

56. Risk finance measures that do not meet the conditions laid down in Section 3 of the General Block Exemption Regulation need to be notified so that the Commission can, among other things, assess whether a market failure or another relevant obstacle to the provision of risk finance exists. Therefore, Member States are required to prove that a specific market failure or other relevant obstacle exists beyond the legal presumption on which the General Block Exemption Regulation is based. In addition, the proposed risk finance measure must meet the compatibility criteria set out in these Guidelines. For those purposes, the Member State should submit to the Commission an in-depth *ex ante* assessment or, where appropriate, a series of assessments.

57. The in-depth *ex ante* assessment must be based on objective and up-to-date evidence and on available best practices and methodologies (such as desk research, interviews, online surveys or appropriate quantitative methods). To the extent possible, the evidence then needs to be triangulated and used in a mutually reinforcing way to support the conclusions from the *ex ante* assessment. The *ex ante* assessment must date from less than three years preceding the notification of the risk finance measure and should preferably be conducted by an independent expert. The *ex ante* assessment should also take into account lessons learnt from similar instruments and past *ex ante* assessments carried out by the Member State. In the drafting of the ex-ante assessment, the Member States can use the existing body of evidence, to the extent it is relevant, to prove the market failure when undertaking the *ex ante* assessment. The *ex ante* assessment should focus on the specific type of risk finance (for example, equity or subordinated debt) for which an aid measure is proposed.

58. The proposed risk finance aid measure should be **appropriate** to achieve the intended objective of the aid. Therefore, the *ex ante* assessment must analyse the existing and, if possible, the envisaged actions targeting the same identified market failure or other relevant obstacle to the provision of risk finance, taking into account the effectiveness and efficiency of other policy tools. The Member State must demonstrate that the identified market failure or other relevant obstacle cannot be adequately addressed by other policy tools that do not entail State aid or by measures falling within the scope of the General Block Exemption Regulation.

59. State aid must be **proportionate** in relation to the market failure or to the other relevant obstacle which it is intended to address in order to achieve the relevant policy objectives. Aid to increase the provision of risk finance should therefore be limited to the strict minimum necessary to address the market failure or the other relevant obstacle identified in the *ex ante* assessment, without generating undue advantages for its beneficiaries. For risk finance investments exceeding the cap fixed per eligible undertaking in Article 21 of the General Block Exemption Regulation,

the *ex ante* assessment needs to demonstrate the proportionality of the aid measure in greater detail, as set out in paragraphs 64 and 65 of these Guidelines.

60. Where the risk finance measure is financed partially from the European Regional Development Fund, European Social Fund or the Cohesion Fund, the Member State may re-use (parts of) the *ex ante* assessment prepared in accordance with Article 37(2) of Regulation (EU) No 1303/2013 or Article 58(3) of Regulation (EU) 2021/1060. The Commission will then assess whether the evidence provided meets the requirements in these Guidelines. Where the risk finance measure is used, partially or entirely, to support undertakings that have recently been awarded a Seal of Excellence quality label by the EIC[48], to co-invest with the EIC Fund, or to provide follow-on investment with respect to the Accelerator Programme[49], or for undertakings that either have participated to any CASSINI action (CASSINI Business Accelerator or Matchmaking) meeting the evaluation thresholds set therein or have received investment from CASSINI Seed and Growth Funding Facility, or have been awarded a CASSINI Prize, or have been supported by space-related projects funded by Horizon Europe which has resulted in the creation of a start-up, the Commission will accept that the quality label and other evidence from the due diligence procedure carried out by the EIC respectively from the competitive selection processes embedded in CASSINI actions are used as part of the *ex ante* assessment.

61. For risk finance measures that fall outside the scope of the General Block Exemption Regulation, the *ex ante* assessment must describe the nature of the market failure or other relevant obstacle and demonstrate its presence in as far as it affects one or more of the following:

(a) specific categories of target undertakings that do not fulfil all the eligibility requirements under the General Block Exemption Regulation (see paragraph 32, points (a) to (d));

(b) alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation (see paragraph 32, point (e));

(c) financial instruments with design parameters deviating from those described in the General Block Exemption Regulation (see paragraph 33, points (a), (b) and (c));

(d) fiscal incentives to corporate investors, including financial intermediaries or their managers acting as co-investors (see paragraph 33, point (d)).

62. The *ex ante* assessment should identify the type of undertakings affected, in particular, in terms of age or development stage, economic sector, and geographic area of activity and demonstrate that such undertakings are affected by the presence of a specific market failure or another relevant obstacle.

63. For risk finance measures that concern financial instruments with independent private investor participation below the ratios provided for in Article 21 of the General Block Exemption Regulation (see paragraph 33, point (a) of these Guidelines), the *ex ante* assessment should furthermore provide a sufficiently

[48] In accordance with the Horizon 2020 work programme 2018-2020 (see footnote 24) or with Articles 2(23) and 15(2) of Regulation (EU) 2021/695 (see footnote 26).

[49] In accordance with Article 48 of Regulation (EU) 2021/695 (see footnote 26).

detailed assessment of the level and structure of supply of private funding for the type of eligible undertaking in the relevant geographic area and demonstrate that the identified market failure or other relevant obstacle cannot be addressed with measures which fulfil all the requirements set out in the General Block Exemption Regulation concerning private participation.

64. In addition, for risk finance investments of an amount exceeding the cap fixed per eligible undertaking in Article 21 the General Block Exemption Regulation (see paragraph 32, point (e) of these Guidelines) the *ex ante* assessment should also quantify the funding gap (that is to say, the level of currently unmet demand for finance from eligible undertakings) due to the identified market failure or other relevant obstacle. The assessment must demonstrate that the funding gap at the level of the eligible undertakings exceeds the cap fixed in the General Block Exemption Regulation. Such quantification should be based on available best practices and methodologies allowing for the estimation of the extent to which there is an unmet demand for finance, from the targeted undertakings.

65. For the quantification of the funding gap, both the structural and cyclical (that is to say, crisis-related) problems leading to suboptimal levels of private funding must be analysed. In particular, the *ex ante* assessment must provide a comprehensive analysis of the supply side by assessing sources of financing available to the eligible undertakings, taking into account the number of existing financial intermediaries that operate in the target geographic area regardless of the Member State where the intermediary is incorporated, their public or private nature, and the investment volumes targeted to the relevant market segment. The assessment of the demand side should take into account the number of potentially eligible undertakings and average values of required financing. That analysis should be based on data covering the five years preceding the notification of the risk finance measure and, where possible, triangulate findings by comparing alternative data sources.

66. For schemes targeting exclusively start-ups and SMEs before first commercial sale, the Commission will apply the requirements regarding the *ex ante* assessment in a proportionate manner, particularly in terms of the evidence requested.

3.2.2. Need for State intervention

67. State aid should be targeted towards situations where it can bring about a material development that the market cannot deliver on its own. In order to assess whether State aid is effective in reaching the intended outcome, it is first necessary to identify the problem to be addressed. Member States should explain how the aid measure can effectively mitigate the identified obstacle, and in particular any market failure that hinders the provision of sufficient risk finance by the market on its own.

68. The risk finance measure can only be justified if it is targeted at the specific market failure or other relevant obstacle demonstrated in the *ex ante* assessment. The Commission considers that such market failures or obstacles may exist in particular, but not exclusively, for SMEs in their early stages which, despite their growth prospects, are unable to demonstrate their creditworthiness or the soundness of their business plans to investors. The scope of such market failure or obstacle, both in terms of the affected companies and their capital requirement, may vary depending on the sector in which they operate. Sectors that may be particularly affected by such market failures and obstacles are high-tech, innovative green or digital technologies. Due to information asymmetries, the market may find it difficult to assess the risk/return profile of such start-ups and SMEs and their ability to generate risk-

adjusted returns. The difficulties those SMEs experience in sharing information about the quality of their projects, their perceived riskiness and weak creditworthiness lead to high transaction and agency costs and may exacerbate investor risk-aversion. Small mid-caps and innovative mid-caps may face similar difficulties and therefore be affected by the same market failure or obstacle.

69. Therefore, the risk finance measure must be designed in such a way as to address the specific market failure or other relevant obstacle identified in the *ex ante* assessment, in particular as regards the eligible undertakings in the targeted development stage, geographic area, and, if applicable, economic sector.

70. To ensure that the financial intermediaries involved in the measure target the identified market failures, a due diligence process must take place to ensure a commercially sound investment strategy focusing on the identified policy objective and respecting the defined eligibility requirements and funding restrictions. In particular, Member States must select financial intermediaries which can demonstrate that their proposed investment strategy is commercially sound and includes an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the investments.

3.2.2.1. Measures targeted at categories of undertakings outside the scope of the General Block Exemption Regulation

71. As regards aid for access to finance, the scope of the General Block Exemption Regulation is restricted to SMEs. However, certain undertakings which are not covered by the definition of SME, in terms of headcount, or financial thresholds, or both, may face similar financing constraints.

(a) Small mid-caps

72. Extending the scope of eligible undertakings under a risk finance measure to include small mid-caps alongside SMEs may be justified in so far as it provides an incentive to private investors to invest in a more diversified portfolio with enhanced entry and exit possibilities. Including small mid-caps in the portfolio is likely to decrease the riskiness at a portfolio level and hence to increase the return on the investments. Therefore, it may be a particularly effective way to attract institutional investors to the riskier early stage companies.

73. For those reasons, and provided the *ex ante* assessment contains adequate economic evidence to that effect, support to small mid-caps may be justified. In its assessment, the Commission will take into account the labour- and capital-intensity of the targeted undertakings, as well as other criteria reflecting specific financing constraints affecting small mid-caps (for example, sufficient collateral for a large loan or the need for significant external capital for development and deployment).

(b) Innovative mid-caps

74. In certain circumstances, mid-caps could also face financing constraints comparable to those affecting SMEs. That may, for example, be the case for mid-caps carrying out R&D and innovation activities alongside initial investment in production facilities, including market replication, and whose track record does not enable potential investors to make relevant assumptions as regards the future market prospects of the results of such activities, as these markets are being developed or contain an advanced technological element of which the risk is difficult to assess

(e.g. aerospace and defence). In such cases, risk finance State aid may be necessary for innovative mid-caps to increase their production capacities to a sustainable scale where they are able to attract private financing on their own. In addition, the observation in Section 3.2.2.1., point (a), is also valid for innovative mid-caps: including them in an investment portfolio can be an effective way for a financial intermediary to offer a more diversified set of investment opportunities appealing to a wider range of potential investors.

(c) SMEs receiving the initial risk finance investment while they have been operating in any market for longer than the eligibility period fixed in the General Block Exemption Regulation

75. Certain types of undertakings may be regarded as still being in their expansion/early growth stages if, even though they have been in existence for a considerable amount of time, they have not yet sufficiently proven their potential to generate returns or do not have a sufficiently robust track record and collateral. This may be the case in high-risk sectors, such as the biotech, aerospace, defence, cultural and creative industries, and potentially more generally for innovative SMEs, including those that focus on green or digital technologies or SMEs that pursue social innovation[50]. Moreover, undertakings that have sufficient internal equity to finance their initial activities may require external financing only at a later stage, for instance to increase their capacity from a small-scale to a larger scale business. This may require a higher amount of investment than they can meet from their own resources.

76. Therefore, it may be possible to allow measures whereby the initial investment is carried out after the eligibility period fixed in Article 21 of the General Block Exemption Regulation. In such circumstances, the Commission may require that the measure clearly defines the eligible categories of undertakings, in the light of evidence provided in the *ex ante* assessment regarding the existence of a specific market failure affecting such undertakings.

(d) Start-ups and SMEs requiring a risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation

77. Article 21 of the General Block Exemption Regulation sets a maximum total amount of risk finance per eligible undertaking, including follow-on investments. However, in certain industries where the upfront research or investment costs are relatively high, for example in aerospace, defence, life sciences or green technology or energy, that amount may not be sufficient to achieve all the necessary investment rounds and set the start-up or SME on a sustainable growth path. It may therefore be justified, under certain conditions, to allow for a higher amount of overall investment to eligible undertakings.

78. More specifically, risk finance measures may provide support above the maximum total amount specified in the General Block Exemption Regulation provided the envisaged amount of funding reflects the size and nature of the funding gap identified and quantified in the *ex ante* assessment with respect to the target sectors or territories. In such cases, the Commission will take into account the capital-

50 See footnote 7 for examples of social innovation. The innovative character of an SME is to be appraised in the light of the definition set out in Article 2 of the General Block Exemption Regulation.

intensive nature of the targeted sectors and/or the higher costs of investments in certain geographic areas.

(e) Alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation

79. The Commission recognises that alternative trading platforms are an important part of the SME financing market because they both attract fresh capital into SMEs and facilitate the exit of earlier investors[51]. The General Block Exemption Regulation recognises their importance by facilitating their activity either through fiscal incentives targeted at natural persons investing in companies listed on those platforms, or by allowing for start-up aid to the platform operator, subject to the condition that the platform operator qualifies as a small enterprise and up to certain thresholds.

80. However, operators of alternative trading platforms may not necessarily be small enterprises when they are established. Equally, the maximum amount of aid permissible as start-up aid under the General Block Exemption Regulation may not be sufficient to support the establishment of the platform. Moreover, in order to attract sufficient resources for the establishment and the roll-out of new platforms, it may be necessary to provide fiscal incentives to corporate investors. Finally, the platform may not only list SMEs, but also undertakings which exceed the thresholds in the definition of SMEs.

81. Therefore, it may be justified, under certain conditions, to allow fiscal incentives to corporate investors, to support platform operators that are not small enterprises, to allow investments for the establishment of alternative trading platforms the amount of which exceeds the limits provided for start-up aid under the General Block Exemption Regulation, or to allow aid to alternative trading platforms where the majority of the financial instruments admitted to trading are issued by SMEs. In such cases, the *ex ante* assessment must demonstrate the existence of a specific market failure or other relevant obstacle affecting such platforms in the relevant geographic market.

3.2.2.2. Measures with design parameters not complying with the General Block Exemption Regulation

(a) Financial instruments with independent private investor participation below the ratios provided for in the General Block Exemption Regulation

82. The market failures or other relevant obstacles affecting enterprises in particular regions or Member States may be more pronounced due to the relative underdevelopment of the SME finance market within such areas in comparison to other regions in the same Member State, other Member States or globally. This may

[51] The Commission recognises the growing importance of crowd-funding platforms in attracting funding for start-up companies. Therefore, if there is an established market failure and in case a crowd-funding platform has an operator which is a separate legal entity, the Commission may apply, by analogy, the rules applicable to alternative trading platforms. This applies equally to fiscal incentives to invest via such crowd-funding platforms. On 10 November 2020, Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1), entered into force. It is the expectation that it will increase the availability of crowd-funding as an innovative form of finance.

particularly be the case in Member States without a well-established presence of formal venture capital investors, private equity funds or business angels. In the case of measures aimed at overcoming such structural barriers, the Commission may accept an independent private investor participation below the ratios provided for in Article 21 of the General Block Exemption Regulation subject to the condition in paragraph 25 of these Guidelines.

83. Moreover, the Commission may also accept risk finance measures with independent private investor participation below the ratios set out in Article 21 of the General Block Exemption Regulation in the event of a more pronounced market failure or another relevant obstacle as demonstrated by the Member State, in particular, where such measures specifically target SMEs before their first commercial sale or at the proof-of-concept stage, provided that an appreciable part of the risks of the investment are effectively borne by the participating private investors.

(b) <u>Financial instruments with design parameters above the ceilings provided for in the General Block Exemption Regulation</u>

84. The benefit of the General Block Exemption Regulation is reserved for measures whereby non-*pari passu* loss-sharing between public and private investors is so designed as to limit the first loss assumed by the public investor. Similarly, in the case of guarantees, the block exemption sets limits on the guarantee rate and the total losses assumed by the public investor.

85. However, in certain circumstances, by taking a riskier financing position, public funding may allow private investors or lenders to provide additional financing. In assessing measures with financial design parameters exceeding the ceilings in the General Block Exemption Regulation, the Commission will take into account a number of factors as outlined in Section 3.2.3.2 of these Guidelines.

(c) <u>Financial instruments other than guarantees where investors, financial intermediaries and their managers are selected by giving preference to downside protection over asymmetric profit-sharing</u>

86. In accordance with Article 21 of the General Block Exemption Regulation, the selection of financial intermediaries, as well as investors or fund managers, must be based on an open, transparent and non-discriminatory process setting out clearly the policy objectives pursued by the measure and the type of financial parameters designed to achieve such objectives. This means that the financial intermediaries or their managers have to be selected via a procedure compliant with Directive 2014/24/EU. If that Directive is not applicable, the selection procedure must be such as to ensure the widest possible choice amongst qualified financial intermediaries or fund managers. In particular, such a procedure must enable the Member State concerned to compare the terms and conditions negotiated between the financial intermediaries or the fund managers and potential private investors so as to ensure that the risk finance measure attract private investors with the minimum State aid possible, or the minimum divergence from *pari passu* conditions, in the light of a realistic investment strategy.

87. Pursuant to Article 21 of the General Block Exemption Regulation, the applicable criteria for the selection of managers must include a requirement whereby, for instruments other than guarantees, '*profit-sharing shall be given preference over downside protection*' in order to limit a bias towards excessive risk-taking by the

manager selecting the undertakings in which the investment is made. This is meant to ensure that whatever the form of the financial instrument set out by the measure, any preferential treatment granted to private investors or lenders has to be weighed against the public interest which consists of ensuring the revolving nature of the public capital committed and the long-term financial sustainability of the measure.

88. In certain cases, however, it may prove necessary to give preference to downside protection, namely where the measure targets start-ups or certain sectors in which the default rate of SMEs is high. This may be the case for measures targeting sectors faced with important technological barriers, or sectors where the companies have a high dependence on single projects requiring large upfront investment and entailing high risk-exposure, such as the aerospace and defence ecosystem, and the cultural and creative industries. A preference for downside protection mechanisms may also be justified for measures operating via a fund of funds and aimed at attracting private investors at that level or for measures targeting SMEs before their first commercial sale or at the proof-of-concept stage.

(d) <u>Fiscal incentives to corporate investors including financial intermediaries or their managers acting as co-investors</u>

89. While the General Block Exemption Regulation covers fiscal incentives granted to independent private investors who are natural persons within the meaning of Article 2 thereof providing risk finance directly or indirectly to eligible start-ups and SMEs, Member States may find it appropriate to put in place measures applying similar incentives to independent private investors who are corporate investors. The difference lies in the fact that corporate investors are undertakings within the meaning of Article 107 of the Treaty. The measure must therefore be subject to specific restrictions (as set out in Sections 3.2.3.3 and 3.2.4.2) in order to ensure that aid at the level of the corporate investors remains proportionate and has a real incentive effect.

90. Financial intermediaries and their managers may benefit from a fiscal incentive only insofar as they act as co-investors or co-lenders. No fiscal incentive can be granted in respect of the services rendered by the financial intermediary or its managers for the implementation of the measure.

3.2.3. Appropriateness of the aid measure

91. The proposed aid measure must be an appropriate policy instrument to achieve the intended objective of the aid, that is to say, there must not be a better placed and less distortive policy instrument or aid instrument capable of achieving the same outcome.

3.2.3.1. Appropriateness compared to other policy instruments and other aid instruments

92. In order to address the identified market failure or other relevant obstacle and to contribute to the achievement of the policy objectives pursued by the measure, the proposed risk finance measure must be an appropriate instrument. The choice of the specific form of the risk finance measure must be duly justified based on the evidence provided by the Member State in the *ex ante* assessment.

93. As a first step, the Commission will consider whether and to what extent the risk finance measure can be considered as an appropriate instrument compared to other policy instruments aimed at encouraging the provision of risk finance to eligible undertakings. State aid is not the only policy instrument available to Member States

to facilitate the provision of risk finance to eligible undertakings. Member States can use other complementary policy tools both on the supply and demand side, such as regulatory measures to facilitate the functioning of financial markets, measures to improve the business environment, advisory services for investment-readiness or public investments that comply with the market economy operator test.

94. As a second step, the Commission will consider whether the proposed measure is more appropriate than alternative State aid instruments addressing the same market failure or other relevant obstacle. In that respect, financial instruments are generally considered to be less distortive than direct grants and therefore constitute a more appropriate instrument. However, State aid to facilitate the provision of risk finance can be granted in various forms, such as selective fiscal instruments or sub-commercial financial instruments, including a range of equity, debt or guarantee instruments with different risk-return characteristics, as well as various delivery modes and funding structures, the appropriateness of which depends on the nature of the targeted undertakings and the funding gap. Therefore, the Commission will assess whether the design of the measure provides for an efficient funding structure, taking into account the investment strategy of the fund, so as to ensure sustainable operations.

95. In that respect, the Commission will look positively at measures which involve sufficiently large funds in terms of portfolio size, geographic coverage, in particular if they operate across several Member States, and diversification of the portfolio, as such funds may be more efficient and therefore more attractive for private investors, compared to smaller funds. Certain fund of funds structures may meet those conditions provided that the overall management costs resulting from the different levels of intermediation are offset by substantial efficiency gains.

3.2.3.2. Conditions for determining the appropriateness of financial instruments

96. To determine the appropriateness of financial instruments whose design parameters fall outside the scope of the General Block Exemption Regulation, the Commission will consider the conditions set out in paragraphs 97 to 121 of these Guidelines.

97. Firstly, the measure must mobilise additional funding from market participants. Minimum independent private investment ratios below those set out in Article 21 of the General Block Exemption Regulation may only be justified in the light of a more pronounced market failure or another relevant obstacle established in the *ex ante* assessment (see Section 3.2.1). In that regard, the *ex ante* assessment should, furthermore, provide a sufficiently detailed assessment of the level and structure of the supply of private funding for the type of eligible undertaking in the relevant geographic area (see paragraph 63). Furthermore, it must be demonstrated that the measure leverages additional private resources that would not have otherwise been provided or would have been provided in different forms or amounts or on different terms.

98. In the case of risk finance measures targeting specifically start-ups and SMEs that have not been operating in any market[52], the Commission may accept that the level of independent private participation is lower than the required ratios. Alternatively, for such investment targets, the Commission may accept that the private participation

[52] This includes all start-ups and SMEs that have not yet made their first commercial sale (as defined in paragraph 35 point 12 of these Guidelines).

is non-independent in nature, that is to say, provided, for instance, by the owner of the beneficiary undertaking. In duly justified cases, the Commission may also accept levels of private participation lower than those established in the General Block Exemption Regulation in respect of eligible undertakings that have been operating on a market for no longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation, in the light of the economic evidence provided in the *ex ante* assessment regarding the relevant market failure or other relevant obstacle.

99. A risk finance measure targeting eligible undertakings that have been operating on any market for longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation at the time of the first risk finance investment must contain adequate restrictions, whether in terms of time limits or other objective criteria of a qualitative nature, relating to the development stage of the target undertakings. For such investment targets the Commission would normally require a minimum private participation ratio of 60 %.

100. Secondly, together with the proposed level of private participation, the Commission will also take into account the balance of risks and rewards between the public and private investors. In that regard, the Commission will consider positively measures whereby the losses are shared *pari passu* between the investors, and private investors only receive upside incentives. The Commission will take due account that loss-sharing on a non-*pari passu* basis may however be required in view of more severe market failures In principle, the closer the risk and reward sharing is to actual commercial practices, the more likely it is that the Commission will accept a lower level of private participation.

101. Thirdly, the Commission will consider the level of the funding structure at which the measure aims to leverage private investment. At the level of the fund of funds, the ability to attract private funding may depend on a more extensive use of downside protection mechanisms. Conversely, an excessive reliance on such mechanisms may distort the selection of eligible undertakings and lead to inefficient outcomes where private investors intervene at the level of the investment into the undertakings and on a transaction-by-transaction basis.

102. In assessing the appropriateness of the specific design of the measure, the Commission may take into account the importance of the residual risk retained by the selected private investors relative to the expected and unexpected losses assumed by the public investor, as well as the balance of expected returns between the public investor and the private investors. Thus a different risk and reward profile could be accepted if it maximises the amount of private investment, without undermining the genuine profit-driven character of the investment decisions.

103. Fourthly, the exact nature of incentives must be determined through an open, transparent and non-discriminatory process for selecting financial intermediaries, as well as fund managers or investors. By the same token, the managers of the fund of funds should be required to legally commit as part of their investment mandate to determine, via a competitive process for the selection of eligible financial intermediaries, fund managers or investors, the preferential conditions which could apply at the level of the sub-funds.

104. To prove the necessity of the specific financial conditions underpinning the design of the measure, Member States may be required to produce evidence demonstrating that, in the process of selecting private investors, all participants in the process were

seeking conditions that would not be covered by the General Block Exemption Regulation, or that the tender was inconclusive.

105. Fifthly, the financial intermediary or the fund manager may co-invest alongside the Member State, so long as the terms and conditions of such a co-investment are such as to exclude any potential conflict of interests. The financial intermediary must take at least 10 % of the first loss piece. Such co-investment could contribute to ensuring that investment decisions are aligned with the relevant policy targets. The ability of the manager to provide investment from its own resources can be one of the selection criteria.

106. Sixthly, risk finance measures making use of debt instruments must provide for a mechanism ensuring that the financial intermediary passes on the advantage it receives from the State to the final beneficiary undertakings, for instance in the form of lower interest rates, reduced collateral requirements or a combination of the two. The financial intermediary may also pass on the advantage by investing in undertakings that, although potentially viable according to the financial intermediary's internal rating criteria, would be in a risk class where the intermediary would not invest in the absence of the risk finance measure. The pass-on mechanism must include adequate monitoring arrangements, as well as a claw-back mechanism[53] or an equivalent contractual mechanism.

107. Finally, to ensure that financial intermediaries involved in the risk finance measure deliver the relevant objectives, the investment strategy of the financial intermediary must be aligned with the objectives of the measure. As part of the selection process, financial intermediaries must demonstrate how their proposed investment strategy may contribute to the achievement of the objectives and targets. Furthermore, the Member State must ensure that the investment strategy of the intermediaries remains at all times aligned with the agreed targets, for instance via appropriate monitoring and reporting mechanisms and the participation of representatives of the public investors in the representation bodies of the financial intermediary, such as the supervisory board or the advisory board. An appropriate governance structure must ensure that material changes to the investment strategy require the prior consent of the Member State. For the avoidance of doubt, the Member State may not participate directly in individual investment and divestment decisions.

108. Member States can deploy a range of financial instruments as part of the risk finance measure, such as equity and quasi-equity investment instruments, loan instruments or guarantees on a non-*pari passu* basis. Paragraphs 109 to 121 set out the elements that the Commission will take into account in its assessment of such specific financial instruments.

[53] A claw-back mechanism or equivalent contractual mechanism means an arrangement under which an intermediary must return an advantage obtained from the State that it failed to pass on to the final beneficiary as required.

(a) Equity investments

109. Equity investment instruments may take the form of equity or quasi-equity investments into an undertaking, by which the investor buys (part of) the ownership of that undertaking.[54]

110. Equity instruments can have various asymmetric features, providing a differentiated treatment of investors as some may participate to a larger extent in the risks and rewards than others. To mitigate private investors' risks, the measure may offer upside protection (the public investor giving up a part of the return) or protection against a part of the losses (limiting the losses for the private investor), or a combination of the two.

111. The Commission considers that upside incentives create a better alignment of interests between public and private investors. Conversely, downside protection whereby the public investor may be exposed to the risk of poor performance may lead to misalignment of interests and adverse selection by financial intermediaries or investors.

112. The Commission considers that equity instruments with capped return[55], call option[56] and asymmetric income cash split[57] offer good incentives, especially in situations characterised by a less severe market failure.

113. Equity instruments with non-*pari passu* loss-sharing features going beyond the limits set out in the General Block Exemption Regulation may only be justified for measures addressing severe market failures, for instance in high-tech sectors, or other relevant obstacles identified in the *ex ante* assessment, such as measures targeting predominantly start-ups and SMEs before their first commercial sale or at the proof-of-concept stage. To prevent extensive downside risk protection, the first loss piece borne by the public investor must be capped.

(b) Funded debt instruments: loans

114. A risk finance measure may cover the provision of loans at the level of either the financial intermediaries or the final beneficiaries.

115. Funded debt instruments may take different forms, including subordinated loans and portfolio risk-sharing loans. Subordinated loans may be granted to financial intermediaries to strengthen their capital structure, with a view to providing additional financing to eligible undertakings. Portfolio risk-sharing loans are designed to provide loans to financial intermediaries who commit to co-finance a portfolio of new loans or leases to eligible undertakings up to a certain co-financing rate in combination with credit risk-sharing of the portfolio on a loan-by-loan (or lease–by-lease) basis. In both cases, the financial intermediary acts as a co-investor

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[54] For the avoidance of doubt and in line with Article 21 of the General Block Exemption Regulation, for equity and quasi-equity investments, no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

[55] Capped return for the public investor at a certain pre-defined hurdle rate: if the pre-defined rate of return is exceeded, all returns above are distributed to the private investors only.

[56] Call options on public shares: private investors are given the right to exercise a call option to buy out the public investment share at a pre-agreed strike price.

[57] Asymmetric income cash split: cash is drawn from both public and private investors on a *pari passu* basis, but returns are shared, whenever they arise, in an asymmetric way. Private investors receive a larger share of the distribution proceeds than they should receive pro rata their respective holdings, up to the pre-defined hurdle rate.

in the eligible undertakings but enjoys preferential treatment compared to the public investor or lender as the instrument mitigates its own exposure to credit risks resulting from the underlying loan portfolio.

116. In general, where the risk mitigation characteristics of the instrument lead the public investor or lender to assume, with respect to the underlying loan portfolio, a first loss position exceeding the cap set out by the General Block Exemption Regulation, the measure may only be justified in case of measures targeting exclusively start-ups and SMEs before their first commercial sale or at the proof-of-concept stage or in the event of a severe market failure or other relevant obstacle which must be clearly identified in the *ex ante* assessment. The Commission will consider positively measures which provide for an explicit cap on the first losses assumed by the public investor, notably where such a cap does not exceed 35 %.

117. Portfolio risk sharing loan instruments should ensure a substantial co-investment rate by the selected financial intermediary. This is presumed to be the case if that rate is not lower than 30 % of the value of the underlying loan portfolio.

(c) Unfunded debt instruments: guarantees

118. A risk finance measure may cover the provision of guarantees or counter-guarantees to the financial intermediaries, or guarantees to the final beneficiaries, or a combination of the two. Eligible transactions covered by the guarantee must be newly originated eligible risk finance loan transactions, including lease instruments, as well as quasi-equity investment instruments, but not equity instruments.

119. Guarantees should be provided on a portfolio basis. Financial intermediaries may select the transactions they wish to include in the portfolio covered by the guarantee, so long as the included transactions meet the eligibility criteria as defined by the risk finance measure. Guarantees should be offered at a rate ensuring an appropriate level of risk and reward sharing with the financial intermediaries. In particular, in duly justified cases and subject to the results of the *ex ante* assessment, the guarantee rate may be higher than the maximum rate provided for in Article 21 of the General Block Exemption Regulation, but must not exceed 90 %. This could be the case for guarantees on loans or quasi-equity investments in start-ups or in SMEs before their first commercial sale or at the proof-of-concept stage.

120. In the case of capped guarantees, the cap rate should, in principle, only cover the expected losses. Should it also cover the unexpected losses, the latter should be priced at a level that reflects the additional risk coverage. In general, the cap rate should not exceed 35 %. Uncapped guarantees (guarantees with a guarantee rate, but with no cap rate) may be provided in duly justified cases and be priced to reflect the additional risk coverage provided by the guarantee.

121. The duration of the guarantee should be limited in time, normally up to a maximum of ten years, without prejudice to the maturity of individual debt instruments covered by the guarantee, which can be longer. The guarantee must be reduced if the financial intermediary does not include a minimum amount of investment in the portfolio during a specific period. Commitment fees must be required for unused amounts. Methods such as the use of commitment fees, trigger events or milestones can be used in order to incentivise the intermediaries to achieve the agreed volumes.

3.2.3.3. Conditions for determining the appropriateness of fiscal incentives

122. As pointed out in Section 3.2.2.2, point (d), Section 3 of the General Block Exemption Regulation is limited to fiscal incentives targeted at investors who are natural persons. Therefore, measures using fiscal incentives to encourage corporate investors to provide finance to eligible undertakings, either directly or indirectly through the acquisition of shares in a dedicated fund or other types of investment vehicles that invest into such undertakings, are subject to notification to the Commission.

123. As a general rule, Member States have to base their fiscal aid measures on the findings of a market failure or other relevant obstacle in the *ex ante* assessment, and therefore target their instrument towards a well-defined category of eligible undertakings.

124. Fiscal incentives to corporate investors may take the form of income tax reliefs and/or tax reliefs on capital gains and dividends, including tax credits and deferrals. In its case practice, the Commission has generally considered as appropriate income tax reliefs that contain specific limits on the percentage of the invested amount that the investor can claim for the purposes of the tax relief, as well as on the tax break amount which can be deducted from the investor's tax liabilities. Moreover, capital gains tax liability on disposal of shares can be deferred if reinvested in eligible investments within a certain period, while losses arising upon disposal of such shares may be deducted from profits accruing from other shares subject to the same tax.

125. In general, the Commission considers that fiscal incentives to corporate investors appropriate if the Member State can produce evidence demonstrating that the selection of the eligible undertakings is based on a well-structured set of investment requirements, made public through appropriate publicity, and setting out the characteristics of the eligible undertakings which are subject to a market failure or other relevant obstacle.

126. Without prejudice to the possibility of prolonging a measure, fiscal schemes must have a maximum duration of ten years. If the Member State proposes to extend a measure to a total duration of more than ten years (including predecessor schemes, if any), it must carry out a new *ex ante* assessment, together with an evaluation of the effectiveness of the scheme during the entire period of its implementation.

127. In its analysis, the Commission will take into account the specific characteristics of the relevant national fiscal system and the fiscal incentives that already exist in the Member State, as well as the interplay between those incentives.

128. The fiscal advantage must be open to all investors fulfilling the applicable criteria, without discrimination as to their place of establishment. Member States should therefore ensure adequate publicity regarding the scope and the technical parameters of the measure. They should include the relevant ceilings and caps determining the maximum advantage that each individual investor may draw from the measure, as well as the amount of the maximum investment which can be made in individual eligible undertakings.

3.2.3.4. Conditions for measures supporting alternative trading platforms

129. As regards aid measures supporting alternative trading platforms beyond the limits set out in the General Block Exemption Regulation, the operator of the platform must provide a business plan demonstrating that the aided platform can become self-

sustainable in less than ten years. Moreover, plausible counterfactual scenarios must be provided in the notification, comparing the situations with which the tradable undertakings would be confronted if the platform did not exist, in terms of access to the necessary finance.

130. The Commission will look favourably at alternative trading platforms set up by and operating across several Member States, because they may be particularly efficient and attractive to private investors, in particular to institutional investors.

131. For existing platforms, the proposed business strategy of the platform must show that, due to a persistent shortage of listings, and therefore a shortage of liquidity, the platform concerned needs to be supported in the short-term, despite its long-term viability. The Commission will consider positively aid for the setting up of an alternative trading platform in Member States where no such platform exists. Where the alternative trading platform to be supported is a sub-platform or subsidiary of an existing stock exchange, the Commission will pay particular attention to the assessment regarding the lack of finance that such a sub-platform would face.

3.2.4. Proportionality of the aid

132. State aid must be proportionate to the market failure or other relevant obstacle which it is intended to address in order to achieve the relevant policy objectives. It must be designed in a cost-efficient manner, in accordance with the principles of sound financial management. Therefore, for any risk finance aid measure to be considered proportionate, the aid must be limited to the strict minimum necessary to attract funding from the market to overcome the market failure or the other relevant obstacle, without generating undue advantages.

133. As a general rule, at the level of the final beneficiaries, risk finance aid is considered to be proportionate if the risk finance investment per eligible beneficiary does not exceed the cap fixed in Article 21 of the General Block Exemption Regulation and complies with the conditions set out in this Section. For risk finance measures where the risk finance investment per eligible beneficiary exceeds the cap fixed in the General Block Exemption Regulation, the higher risk finance investment per beneficiary must, furthermore, be commensurate to the size of the funding gap quantified in the *ex ante* assessment (see paragraph 64).

134. At the level of the investors, aid must be limited to the minimum necessary to attract private capital in order to achieve the minimum leverage of private resources and address the market failure or other relevant obstacle.

3.2.4.1. Conditions for financial instruments

135. Financial intermediaries have to select the eligible final beneficiaries on the basis of a commercially sound investment strategy (see paragraph 70) and a viable business plan that justifies the amount of risk finance that is to be provided. Those elements are a further safeguard to ensure that the aid is necessary and proportionate.

136. The measure must ensure a balance between the preferential conditions offered by a financial instrument in order to maximise the leverage of private resources while addressing the identified market failure or other relevant obstacle and the need for the instrument to generate sufficient financial returns to remain operationally viable.

137. The exact nature and value of the incentives must be determined through an open, transparent and non-discriminatory selection process in the context of which

financial intermediaries, as well as fund managers or investors, are called to present competing bids.

Fair rate of return

138. The Commission considers that where any asymmetric risk-adjusted returns or loss-sharing is established through such a process, the financial instrument is to be regarded as proportionate and to reflect a fair rate of return. Where the fund managers are selected through an open, transparent, and non-discriminatory process requiring the applicants to present their investor base as part of the selection process, the private investors are considered to be duly selected.

139. In the case of co-investment by a public fund with private investors participating on a deal-by-deal basis, the latter should be selected through a separate competitive process in respect of each transaction, which is the preferred way of establishing the fair rate of return.

140. Where private investors are not selected through a proper selection process (for instance because the selection procedure has proven to be ineffective or inconclusive) the fair rate of return must be established by an independent expert on the basis of an analysis of market benchmarks and market risk on the basis of a generally accepted, standard methodology such as the discounted cash flow valuation methodology in order to avoid over-compensation of investors. On that basis, the independent expert must calculate a minimum level of fair rate of return and add to that an appropriate margin to reflect the risks.

141. In the situations described in paragraph 140, there must be appropriate rules in place for the appointment of the independent expert. As a minimum, the expert must be licensed to provide such advice, be registered with the relevant professional associations, comply with deontological and professional rules issued by those associations, be independent and be liable for the accuracy of its expertise. In principle, independent experts are to be selected via an open, transparent and non-discriminatory selection process. The services of the same independent expert may not be used twice by the same aid granting authority within a period of three years for the determination of the fair rate of return in the context of risk finance aid measures.

142. In light of the above, the design of the measure may contain various asymmetric profit-sharing or asymmetrically timed public and private investments, as long as the expected risk-adjusted returns for the private investors are limited to the fair rate of return.

Selection and remuneration of the financial intermediaries or their managers

143. As a general principle, the Commission considers that economic alignment of interests between the Member State and the financial intermediaries or their managers, as appropriate, can minimise the aid. The interests must be aligned both as regards the achievement of the specific policy targets and the financial performance of the public investment into the instrument.

144. The financial intermediary or the fund manager may co-invest alongside the Member State, as long as the terms and conditions of such a co-investment are such as to exclude any possible conflict of interests. Such co-investment could incentivise the manager to align its investment decisions with the set policy targets. The ability of

the fund manager to provide investment from its own resources can be one of the selection criteria.

145. The remuneration of the financial intermediaries or the fund managers, depending on the type of risk finance measure, must include an annual management fee, as well as performance-based incentives, such as carried interest.

146. The performance-based component of the remuneration must be significant and designed to reward the financial performance, as well as the attainment of the specific policy targets set in advance. Policy-related incentives must be balanced with the financial performance incentives which are required to ensure an efficient selection of eligible undertakings in which investments will be made. In addition, the Commission will take into account possible penalties provided for in the funding agreement between the Member State and the financial intermediary, which apply if the defined policy targets are not met.

147. The level of performance-based remuneration should be justified based on the relevant market practice. The managers must be remunerated not only for the successful disbursement and the amount of private capital raised, but also for the successful returns on investment, such as income receipts and capital receipts above a certain minimum rate of return or hurdle rate.

148. The total management fees must not exceed operational and management costs necessary for the execution of the financial instrument concerned, plus a reasonable profit, in line with market practice. The fees must not include investment costs.

149. As financial intermediaries or their managers, as appropriate, must be selected through an open, transparent and non-discriminatory process, the overall fee structure can be evaluated as part of the scoring of that selection process and the maximum remuneration can be established as a result of such selection.

150. In case of direct appointment of an entrusted entity, the Commission considers that the annual management fee should always reflect comparable market practice and in principle not exceed 3 % of the capital to be contributed to that entity, excluding the performance-based incentives.

3.2.4.2. Conditions for fiscal incentives

151. The total investment for each beneficiary undertaking must not exceed the maximum amount fixed by Article 21 of the General Block Exemption Regulation unless a higher amount can be justified on the basis of the market failure identified in the *ex ante* assessment and a fiscal instrument is the most appropriate tool (see Section 3.2.3.3).

152. Irrespective of the type of tax relief, eligible shares must be full-risk, ordinary shares, newly issued by an eligible undertaking as defined in the *ex ante* assessment, and they must be held for at least three years. The relief can only be available to investors who are independent from the company invested in.

153. In the case of income tax relief, investors providing finance to eligible undertakings may receive relief of up to a reasonable percentage of the amount invested, provided the maximum income tax liability of the investor, as established prior to the fiscal measure, is not exceeded. The Commission considers it reasonable to cap the tax relief at 30 % of the invested amount. Losses arising upon disposal of the shares may be set against income tax.

154. In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be fully exempt from income tax.

155. Similarly, in the case of capital gains tax relief, any profit on the sale of qualifying shares may be fully exempt from capital gains tax. Moreover, capital gains tax liability on disposal of qualifying shares may be deferred if reinvested in new qualifying shares within one year.

3.2.4.3. Conditions for alternative trading platforms

156. In order to allow a proper analysis of the proportionality of the aid to the operator of an alternative trading platform, State aid can be granted in order to cover up to 50 % of the investment costs incurred for the establishment of such a platform.

157. In the case of fiscal incentives to corporate investors, the Commission will assess the proportionality of the measure against the conditions set out for fiscal incentives in Section 3.2.4.2.

3.2.4.4. Cumulation

158. Risk finance aid may be cumulated with any other State aid measure with identifiable eligible costs.

159. Risk finance aid may be cumulated with other State aid measures without identifiable eligible costs, or with *de minimis* aid, up to the highest relevant total financing ceiling fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission.

160. Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member States does not constitute State aid. Where such Union funding is combined with State aid, the total amount of public funding granted in relation to the same investment must not exceed the most favourable funding rate laid down in the applicable rules of Union law.

3.2.5. Avoiding undue negative effects of risk finance aid on competition and trade

161. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and must not outweigh the positive effects of the aid to an extent that would be contrary to the common interest.

3.2.5.1. Positive effects to be taken into account

162. As explained in Section 1, start-ups and SMEs continue to play a crucial role in Member States' economies, both in terms of creating jobs and of stimulating economic dynamism and growth. SMEs employ around 100 million people in the Union and account for more than half of the Union's GDP. They are also essential to the Union's competitiveness and prosperity, economic and technological sovereignty, and resilience to external shocks. However, to be able to fulfil their role, and to deliver those positive effects, SMEs need financing. Therefore, an efficient risk finance market for SMEs is crucial for entrepreneurial companies to be able to access the necessary funding at each stage of their development. Where there is a market failure or another relevant obstacle to the efficient operation of such finance, risk finance aid may be needed to improve the provision of risk finance to viable SMEs from their early-development up to their growth stages (and, in certain circumstances, to small mid-caps and innovative mid-caps) so as to develop a

competitive risk finance market in the longer run. Against this background, the main positive effect that risk finance aid aims to bring about is to improve access to finance for the undertakings concerned.

163. In addition, when assessing the positive effects of risk finance aid to be weighed against its negative effects on competition and trade, the Commission may take into account, where relevant, the circumstance that the aid produces other positive effects, in addition to its contribution to the provision of risk finance. That may be the case where it is established that, in addition to enabling companies to grow or to develop new activities, and generating economic growth, the risk finance investment contributes substantially in particular to the digital transition or transition towards environmentally sustainable activities, including low carbon, climate neutral or climate-resilient activities, to resilient value chains, or to the development of assisted areas. In the assessment of the positive effects to be taken into account, the Commission will where applicable pay particular attention to the criteria for environmentally sustainable economic activities set out in Article 3 of Regulation (EU) 2020/852, including the 'Do no significant harm' principle, or other comparable methodologies.[58]

164. To allow the Commission to duly assess the expected positive effects of the aid in terms of development of the activities concerned, the Member State should set out a clear and specific objective (or a series of objectives) addressing the market failure or other relevant obstacle identified by the *ex ante* assessment. The size and duration of the measure should be adequate for those objectives. Furthermore, the Member State must also define relevant performance indicators, based on the results of the *ex ante* assessment, to allow the Commission to measure the expected effects of the aid with regard to the objectives pursued. The performance indicators may include:

(a) the required or envisaged private sector investment;

(b) the expected number of final beneficiaries to be invested in, including the number of start-ups and new SMEs;

(c) the estimated number of new undertakings to be created during the implementation of the risk finance measure and as a result of the risk finance investments;

(d) the number of jobs to be created in the final beneficiary undertakings between the date of the first risk finance investment under the risk finance measure and the exit;

(e) where appropriate, the proportion of investments to be made in conformity with the market economy operator test;

(f) milestones and deadlines within which certain predefined amounts or percentage of the budget are to be invested;

(g) returns or yield expected to be generated from the investments;

(h) where appropriate, patent applications to be made by the final beneficiaries, during the implementation of the risk finance measure;

[58] For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, this condition is considered fulfilled, since their compliance with the 'Do no significant harm' principle has already been verified.

(i) where appropriate, strengthening resilience of critical supply chains (e.g. health, electronics, aerospace, dual use and defence sectors), and furthering technological development.

165. The indicators referred to in paragraph 164 are relevant to demonstrate that the risk finance aid is expected to deliver the positive effects in line with the objectives that have been set. In particular, the indicators allow assessment of the effectiveness of the measure and the validity of the investment strategies drawn up by the financial intermediary in the context of the selection process.

166. Where a risk finance measure is used, partially or entirely, to support undertakings that have recently been acknowledged/awarded for innovativeness in accordance with the criteria set in CASSINI activities or have been awarded a Seal of Excellence quality label by the EIC, or to co-invest with the EIC Fund or to provide follow-on investment with respect to the Accelerator Programme[59], the Commission may accept that the Member State uses the same Key Performance Indicators as respectively CASSINI or the EIC do.

3.2.5.2. Negative effects to be taken into account

167. The State aid measure must be designed in such a way that it limits distortions of competition and trade within the internal market. In the case of risk finance measures, the potential negative effects have to be assessed at each level where aid may be present: the investors, the financial intermediaries and their managers, and the final beneficiaries.

168. To enable the Commission to assess the likely negative effects of the measure on competition and trade, the Member State may submit any study or other relevant evidence at its disposal, such as *ex-post* evaluations carried out for similar schemes, in terms of the eligible undertakings, funding structures, design parameters and geographic area.

169. At the level of the market for the provision of risk finance, State aid may result in the crowding out of private investors. This might reduce the incentives for private investors to provide funding to eligible undertakings and encourage them to wait until the State provides aid for such investments. That risk becomes more relevant, the higher the amount of the total financing provided to the final beneficiaries, the larger the size of those beneficiary undertakings and the more advanced their development stage, as private financing becomes progressively available in those circumstances. Moreover, State aid should not replace the normal business risk of investments that investors would have undertaken even in the absence of State aid. However, to the extent that the market failure or the other relevant obstacle has been properly defined, it is less likely that the risk finance measure will result in such crowding out.

170. At the level of financial intermediaries, aid may have distortive effects in terms of increasing or maintaining an intermediary's market power, for example in the market of a particular region. Even where aid does not strengthen the financial intermediary's market power directly, it may do so indirectly, by discouraging the expansion of existing competitors, inducing their exit or discouraging the entry of new competitors.

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[59] In accordance with Article 48 of Regulation (EU) 2021/695 (see footnote 26).

171. Risk finance measures must be targeted at growth-oriented undertakings which are unable to attract an adequate level of financing from private resources but may become viable with risk finance State aid. However, where a measure provides for the setting up of a public fund, but the investment strategy of that fund does not demonstrate sufficiently the potential viability of the eligible undertakings, the measure is unlikely to meet the balancing test (see Section 3.2.5.3), as in such a case the risk finance investment may amount to a grant.

172. The conditions relating to commercial management and profit-oriented decision-making set out in Article 21 of the General Block Exemption Regulation are essential to ensure that the selection of the final beneficiary undertakings is based on a commercial logic. Therefore, the Commission will take those conditions into account when assessing risk finance measures under these Guidelines, including where the measure involves public financial intermediaries.

173. Investment funds of a small scale, with limited regional focus and without adequate governance arrangements will be analysed with a view to avoiding the risk of maintaining inefficient market structures. Regional risk finance schemes may not always have sufficient scale and scope due to a lack of diversification linked to the possibly low number of eligible undertakings as investment targets, which could reduce the efficiency of such funds and result in the granting of aid to less viable companies. In such cases, investments could potentially distort competition and provide undue advantages to certain undertakings.

174. At the level of the final beneficiaries the measure could have distortive effects on the product markets where those undertakings compete. For instance, the measure may distort competition if it targets companies in underperforming sectors. A substantial capacity expansion induced by State aid in an underperforming market might, in particular, unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors' investments or even their exit from the market. It may also prevent companies from entering the market. This results in inefficient market structures which are also harmful to consumers in the long run. Where the market in the targeted sectors is growing, there is normally less reason to fear that the aid will negatively affect dynamic incentives or will unduly impede exit or entry. The Commission considers that the risk of such distortions is substantial when the risk finance measure is sector-specific, or gives preference to certain sectors over others. In such cases, the Commission will analyse the level of production capacities in the given sector, in the light of the potential demand. In order to enable the Commission to carry out such an assessment, the Member State must indicate in its notification whether the risk finance measure is sector-specific, or gives preference to certain sectors over others.

175. The Commission will also assess any potential negative delocalisation effects as they might affect competition and trade between Member States. In that regard, the Commission will analyse whether regional funds are likely to incentivise delocalisation within the internal market. Where the financial intermediary's activities are focused on a non-assisted region bordering assisted regions, or a region with higher regional aid intensity than the target region, the risk of such distortion is more pronounced. A regional risk finance measure focusing only on certain sectors might also have negative delocalisation effects.

176. Finally, as part of the assessment of negative effects on competition and trade, the Commission may take into account, where relevant, negative externalities of the

aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies[60].

3.2.5.3. Balancing of the positive effects against the negative effects of the aid

177. As a final step of its analysis, the Commission will balance the identified negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the positive effects of the aid, and will conclude that the aid measure is compatible with the internal market only if the positive effects outweigh the negative ones.

178. The overall balance of certain categories of aid schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4. In such cases, the Commission may limit the duration of the schemes, with a possibility to re-notify their prolongation afterwards.

3.2.6. Transparency

179. As a further safeguard against undue distortions of competition, Member States, the Commission, economic operators, and the public must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder.

180. Member States must publish the following information in the Commission's transparency award module[61] or on a comprehensive State aid website, at national or regional level:

(a) the full text of the individual aid granting decision or the approved aid scheme and its implementing provisions, or a link to it;

(b) information on each individual aid award exceeding EUR 100 000, as set out in the Annex to these Guidelines.

181. Member States must organise their comprehensive State aid websites, as referred to in paragraph 180, in such a way as to allow easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The general public must be allowed to access the website without any restrictions, including prior user registration.

182. For schemes in the form of fiscal incentives, the conditions set out in paragraph 180, point (b), will be considered to be fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

0.1-0.5;

0.5-1;

1-2;

2-5;

60 This could also be the case where the aid distorts the operation of economic instruments put in place to internalise such negative externalities (e.g. by affecting price signals given by the Union Emissions Trading System or a similar instrument).

61 'State Aid Transparency Public Search', available at the following website: https://webgate.ec.europa.eu/competition/transparency/public?lang=en.

5-10;

10-30;

30-60;

60-100;

100-250;

250 and over.

183. The information referred to in paragraph 180, point (b), must be published within six months from the date of award of the aid or, for aid in the form of fiscal incentives, within one year from the date the tax declaration is due[62]. For aid that is unlawful but subsequently found to be compatible, Member States must publish the information within six months from the date of the Commission's decision declaring the aid compatible. To enable the enforcement of State aid rules under the Treaty, the information must be available for at least ten years from the date on which the aid is granted.

184. The Commission will publish on its website the link to the State aid websites referred to in paragraph 180.

4. EVALUATION

185. To further ensure that distortion of competition and trade is limited, the Commission may require that certain aid schemes are subject to an *ex post* evaluation. Evaluations will be required for schemes where the potential distortion of competition and trade is particularly high, that is to say, that may risk significantly restricting or distorting competition if implementation is not reviewed in due time.

186. *Ex post* evaluation may be required for the following aid schemes:

(a) schemes with large aid budgets;

(b) schemes with a regional focus;

(c) schemes with a narrow sectoral focus;

(d) schemes which are modified, where the modification affects the eligibility criteria, the amount of investment or the financial design parameters;

(e) schemes containing novel characteristics;

(f) schemes in respect of which the Commission so requests, in the light of the scheme's potential negative effects on competition and trade.

187. In any case, *ex post* evaluation will be required for schemes with a State aid budget or accounted expenditure over EUR 150 million in any given year or EUR 750 million over their total duration, that is to say, the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area, starting from 1 January 2022. Given the objectives of the evaluation, and to avoid putting a disproportionate burden on Member States, *ex post* evaluations will only be

[62] If there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

required for aid schemes whose total duration exceeds three years, starting from 1 January 2022.

188. The *ex post* evaluation requirement may be waived for aid schemes that are an immediate successor of a scheme covering a similar objective and geographical area that has been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and has not generated any negative findings. Where the final evaluation report of a scheme does not comply with the approved evaluation plan, that scheme must be suspended with immediate effect.

189. The aim of the evaluation should be to verify whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its objectives. It should also assess the impact of the risk finance measure on competition and trade.

190. For aid schemes in respect of which an evaluation must be carried out (see paragraphs 186 and 187), the total duration of which exceeds three years, starting from 1 January 2022, Member States must notify a draft evaluation plan, which will form an integral part of the Commission's assessment of the scheme, as follows:

(a) together with the aid scheme, if its State aid budget exceeds EUR 150 million in any given year or EUR 750 million over its total duration;

(b) within 30 working days following a significant change that increases the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme;

(c) within 30 working days following the recording in official accounts of expenditure in excess of EUR 150 million in any year;

(d) following a request by the Commission, and in any case prior to the approval of the scheme, if the scheme falls within one of the categories listed in paragraph 186, irrespective of the State aid budget of the scheme.

191. The draft evaluation plan must be in accordance with the common methodological principles provided by the Commission[63]. Member States must publish the evaluation plan approved by the Commission.

192. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Member States must publish both reports.

193. The final evaluation report must be submitted to the Commission in due time to assess any prolongation of the aid scheme and at the latest nine months before its expiry. That period may be reduced for schemes triggering the evaluation requirement in their last two years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. The notification of any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

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63 Commission staff working document, Common methodology for State aid evaluation, SWD(2014) 179 final of 28.5.2014.

5. FINAL PROVISIONS

5.1. Applicability

194. The Commission will apply the principles set out in these Guidelines for the compatibility assessment of all notifiable risk finance aid awarded or intended to be awarded from 1 January 2022.

195. Risk finance aid unlawfully awarded before 1 January 2022 will be assessed in accordance with the rules in force at the date on which the aid was awarded.

196. In order to preserve the legitimate expectations of private investors, in the case of risk finance schemes that provide for public funding to support risk finance, the date of the commitment of the public funding to the financial intermediaries, which is the date of signature of the funding agreement, determines the applicability of the rules to the risk finance measure.

5.2. Appropriate measures

197. The Commission considers that the implementation of these Guidelines will lead to certain changes in the assessment principles for risk finance aid in the Union. For those reasons, the Commission proposes the following appropriate measures to Member States pursuant to Article 108(1) of the Treaty:

(a) Member States should amend, where necessary, their existing risk finance aid schemes, in order to bring them into line with these Guidelines, within six months after the date of the publication of the Guidelines;

(b) Member States are invited to give their explicit unconditional agreement to the proposed measures within two months from the date of publication of these Guidelines. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

198. In order to preserve the legitimate expectations of private investors, Member States do not have to take appropriate measures with respect to risk finance aid schemes in favour of SMEs where the commitment of the public funding to the financial intermediaries, which is the date of signature of the funding agreement, was made before the date of publication of these Guidelines and all the conditions provided for in the funding agreement remain unchanged. Those financial intermediaries may continue to operate and invest in accordance with their original investment strategy until the end of the duration set out in the funding agreement.

5.3. Reporting and monitoring

199. In accordance with Council Regulation (EU) 2015/1589[64], and Commission Regulation (EC) No 794/2004[65], Member States must submit annual reports to the Commission.

200. Member States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligibility and maximum investment amounts have been fulfilled. Those

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[64] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

[65] Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

records must be maintained for ten years from the date of award of the aid and must be provided to the Commission upon request. In the case of aid measures that provide fiscal incentives, under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no *ex ante* verification that all compatibility conditions are met for each beneficiary, Member States must regularly verify, at least *ex post* and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States must maintain detailed records of the verifications for at least ten years from the date of the controls.

5.4. Revision

201. The Commission may decide to review or change these Guidelines at any time if this should be necessary for reasons associated with the competition policy of the Union or in order to take account of other Union policies and international commitments, developments in the markets, or for any other justified reason.

Annex – Transparency information

The information on individual awards referred to in paragraph 180, point (b) is the following:

- Identity of the individual aid beneficiary [66]:
  - Name
  - Aid beneficiary's identifier
- Type of aid beneficiary undertaking at the time of application:
  - SME
  - Large enterprise
- Region in which the aid beneficiary is located, at NUTS level II or below
- The main sector or activity of the aid beneficiary for the given aid, identified by the NACE group (three-digit numerical code) [67]
- Aid element expressed in full in the national currency
- Where different from the aid element, the nominal amount of aid, expressed as full amount in national currency [68]
- Aid instrument [69]:
  - Grant/interest rate subsidy/debt write-off
  - Loan/repayable advances/reimbursable grant
  - Guarantee
  - Tax advantage or tax exemption
  - Risk finance
  - Other (please specify)
- Date of award and date of publication
- Objective of the aid
- Identity of the granting authority or authorities
- Where applicable, name of the entrusted entity, and the names of the selected financial intermediaries
- Reference of the aid measure [70]

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66 With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

67 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, 30.12.2006, p. 1).

68 Gross grant equivalent, or where applicable, the amount of the investment. For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes this amount can be provided by the ranges set out in paragraph 182. The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

69 If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

70 As provided by the Commission under the notification procedure referred to in Section 2.2.