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Subject: State aid SA.33535 (2011/N) – Denmark
Share scheme for firms providing employment

Dear Sir,

1. PROCEDURE

(1) By letter dated 23 August 2011, the Danish authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union[1] ("TFEU"), the above-mentioned measure to be assessed on the basis of the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises[2] ("RCG").

(2) The Commission asked for supplementary information by letters dated 20 October 2011 and 23 January 2012, to which the Danish authorities replied on 23 November 2011 and 20 February 2012 respectively. The Danish authorities provided additional information on 27 March 2012.

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1 OJ C 115, 9.5.2008, p. 47.
2 OJ C 194, 18.8.2006, p. 2-21.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective

(3) In order to address an equity gap for small and medium-sized enterprises ("SMEs") in Denmark, the measure provides tax incentives to corporate investors who invest equity directly or indirectly, through a distributive investment association ("*udloddende investeringsforening*"), in SMEs established in Denmark.

2.2. Legal basis, granting authority, duration and budget

(4) The legal basis of the measure is Act No 624 of 14 June 2011 – Act amending the Taxation of Capital Gains on Sale of Shares Act, the Gains (Bonds and other Claims) Act, the Assessment Act, and the Corporation Tax Act.

(5) The aid granting authority is the Ministry of Taxation of Denmark. Aid is accorded automatically once the qualifying objective criteria are fulfilled. There is no discretion available to the awarding authority.

(6) The duration of the measure is ten years, i.e. it will remain in force until 31 December 2021. The Danish authorities will not put the measure into effect until the Commission has taken a decision authorising it. According to the Danish authorities, the timeframe of ten years will allow to achieve the objective of the measure by providing the investors with a sufficiently long investment horizon to the benefit of target SMEs' early growth phase.

(7) The total budget in the form of tax revenues forgone is estimated at DKK 405 million (approx. EUR 54 million[3]) and the annual budget is estimated to be DKK 5 million in year 2015, DKK 10 million in year 2016, DKK 30 million in year 2017, DKK 55 million in year 2018, DKK 85 million in year 2019, DKK 100 million in year 2020, and DKK 120 million in year 2021.

2.3. Eligible investments and form of aid

(8) Investments eligible under the measure are investments in the form of equity through the acquisition of newly issued shares *(iværksætteraktier)* ("the business creator shares") in target SMEs. The eligible investments are limited to DKK 18.7 million (approx. EUR 2.5 million) per SME over a period of 12 months and must fulfil all requirements set out in the present decision.

2.3.1. Current legal framework in Denmark

(9) According to current Danish legislation, a company investing in equity capital of less than 10 % of the portfolio of another company (portfolio shareholding) is liable to ordinary corporate income tax[4] on the yield. That company is also eligible for a deduction for any loss. If the investment constitutes 10 % or more of the portfolio of another company (subsidiary shareholding), the yield from these shares is tax-exempted; accordingly, there is no deduction for losses.

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3 ECB exchange rate of 23.08.2011: EUR 1 = DKK 7.4498.

4 Danish corporate tax rate is 25 %.

2.3.2. Tax exemption

(10) Under the measure, investors holding business creator shares for at least three years can benefit from full tax exemption from corporate income tax, i.e. any capital gain or dividend arising from business creator shares will not be taxed. Investors will therefore be entitled to tax exemption for the income generated from their investment in portfolio shareholdings qualifying as business creator shares. Should the investor dispose of the business creator shares within the three-year period, the shares will be subject to tax.

(11) If the investor has other unlisted portfolio shares (e.g. in the same target SME) which are not eligible under the measure (i.e. which are not business creator shares), the shares will be taxed according to the normal rules.

2.3.3. Loss deduction

(12) Should the investor suffer a loss on its business creator shares, that loss can be deducted regardless of the length of time that those shares have been held. The loss is limited by source and can be deducted only from other profits accruing from shares subject to tax on the realisation of the investments, i.e. profits on portfolio shares and not from any other income[5].

(13) According to the Danish authorities, should the investor hold portfolio shares and business creator shares in the same SME, loss deduction, as defined in recital (**12**) above, will prevent tax avoidance based on the different taxation of business creator shares and portfolio shares. Any gain from the business creator shares shall not be tax-exempt if the investor has had deductible losses on shares in the same SME during the period in which it held the business creator shares.

2.4. Eligible investors

(14) According to the Danish authorities, investors eligible for the tax incentives under the measure are corporate entities subject to the Danish Corporation Tax Act[6].

(15) The Danish Corporation Tax Act applies to limited liability companies ("*anpartsselskaber*"), joint stock companies ("*aktieselskaber*") and other entities in which none of the participants is personally liable for the company's obligations and where the company divides the profits in proportion to the participants' capital contribution.

(16) However, entities subject to the Corporation Tax Act in which public authorities (i.e. the Danish State, regions or municipalities) have a controlling influence over the

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5 Example: An investor subscribes, under the measure, for 500 business creator shares in SME 1 at a price of 100, and for 100 unlisted portfolio shares in SME 2 at a price of 100. After an ownership period of five years, the investor sells the business creator shares in SME 1 at a price of 80, and the shares in SME 2 at a price of 320. The investor incurs a loss of DKK 10,000 on the shares in SME 1, but at the same time makes a gain of DKK 22,000 on the shares in SME 2. Gains on unlisted portfolio shares are taxable. The loss from the investments in the business creator shares are deductible from the gains on the unlisted portfolio shares, which means that the investor will only be taxed on DKK 12,000.

6 According to § 1(1)(1) or (2) of the Corporation Tax Act.

management of financial and operational decisions are excluded from the scope of the measure[7].

(17) According to the Danish authorities, eligible investors can also be foreign entities falling within the definition of a "company of a Member State" as stipulated in Article 2 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States[8].

(18) Eligible investors can invest in target SMEs directly or indirectly through a distributing investment association ("*udloddende investeringsforening*") provided that all members of the investment association are eligible investors within the meaning of the present decision. Moreover, eligible investors must be able to demonstrate that their investments are profit-oriented and managed on a commercial basis[9].

(19) Finally, eligible investors shall be independent from the target SME.

2.5. Investee enterprises

(20) The measure is aimed exclusively at SMEs falling within the Community SME-definition[10] and subject to the Corporation Tax Act[11] in Denmark.

(21) Foreign companies with a permanent establishment in Denmark are also eligible under the measure.

(22) The eligible SMEs must be unquoted, i.e. they must not be listed on the official list of a stock exchange or on an unlisted securities market of a stock exchange.

(23) According to the Danish authorities, the measure is not sector specific. The target SMEs should not, however, be predominately engaged in the rental of immovable property or the holding of cash, securities, etc. Investments in enterprises in the shipbuilding[12], coal[13] and steel industry[14] are excluded. The Danish authorities confirmed that investments under the measure will not support export related activities and investments will not be contingent upon the use of domestic preference to imported goods. SMEs in financial difficulties within the meaning of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty[15] are also not eligible for investments under the measure.

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7 As defined in § 31C of the Corporation Tax Act.

8 OJ L 345, 29.12.2011, p.8.

9 In accordance with § 4 C.3 (5) of the Taxation of Capital Gains from Sale of Shares Act.

10 The beneficiaries are undertakings qualifying as SMEs within the meaning of the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation); OJ L 214, 9.8.2008, p.3 and the applicable Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36-41.

11 I.e. those which remain within the scope of § 1(1)(1) or (2) or § 2(1)(a) of the Corporation Tax Act.

12 As defined in the Framework on State aid to Shipbuilding, OJ C 317, 30.12.2003 p. 11-14.

13 High, medium and low grade category A and B within the meaning of the internal codification system for coal laid down by the UN Economic Commission for Europe.

14 As defined in Annex I of the Guidelines on National Regional Aid for 2007-2013, OJ C 54, 4.3.2006, p. 13-45.

15 OJ C 244, 1.10.2004, p. 2

(24) The measure excludes financing to medium-sized companies beyond their start-up stage located in non-assisted areas qualifying under Article 107(3)(a) and (c) of the TFEU[16]. The Danish authorities confirmed that the definition of seed, start-up and expansion capital for the purposes of the measure will be in accordance with the Commission's definition, as set out in section 2.2 (e), (f) and (h) of the RCG, namely:

- Seed stage financing refers to financing provided to study, assess and develop an initial concept, preceding the start-up phase.
- Start-up capital refers to financing provided to companies which have not sold their product or service commercially, and are not yet generating a profit, for product development and initial marketing.
- Expansion capital refers to financing provided for the growth and expansion of a company, which may or may not break even or trade profitably, for the purposes of increasing production capacity, market or product development, or the provision of additional working capital.

(25) According to the Danish authorities, the Danish Business Authority (previously the Commerce and Companies Agency) will ensure that a detailed business plan and clear exit strategy exists for each investment in target SMEs. The business plan shall contain details of the product, sales and profitability development and establish the *ex ante* viability of the product; it shall be verified by the auditor of the target SME.

2.6. Distributing investment funds

(26) The distributing investment associations ("*udloddende investeringsforening*") eligible under the measure are collective investment funds investing in target SMEs on behalf of their members. The eligible distributing investment associations are entities with legal personality incorporated exclusively by eligible corporate investors as defined in section 2.4 above. In line with recital (**16**) above, corporate investors in which public authorities have a controlling influence on their financial and operational decisions are not eligible to become members of distributing investment associations for the purposes of the present measure.

(27) The eligible distributing investment associations will invest in the business creator shares in target SMEs. In exchange for the contributions of their members, the distributing investment associations will issue tradable certificates. The value of these certificates reflects the value of the distribution investment association's investments. The certificates will give each member of the distributing investment association the same proportional share of the return.

(28) Distributing investment associations are tax transparent in the sense that their members are taxed directly either when selling the investment association certificates or through the annual taxation of the certificate[17]. The above mirrors the taxation that would have

[16] Non-assisted areas are defined in the Regional aid map for Denmark 2007-2013, approved by Commission decision N 693/06, OJ C 141, 26.6.2007, p. 6-7.

[17] For companies, annual taxation takes place on the basis of the market-value principle, cf. section 20 A of the Danish Taxation of Capital Gains on Sale of Shares Act. This means that taxation takes place depending on whether the value of the investment association's portfolio rises or falls.

taken place if the members of the distributing investment association had invested themselves directly in target SMEs.

(29) According to the Danish authorities, at least 70% of the distributing investment association's total budget concerning investments under the measure must take the form of equity or quasi-equity investments.

(30) According to the Danish authorities, distributing investment associations are an existing form of a collective investment in Denmark. It cannot therefore be excluded that they already carry out types of investment activities other than those subject to the present decision. The Danish authorities confirmed that, where the distributing investment associations were not or will not be set up exclusively for the purpose of making investments under the measure, a clear separation of activities and accounts between different types of investments will be introduced in order to avoid any possible cross-subsidization.

(31) The Danish authorities confirmed that non-resident distributing investment associations or similar undertakings for collective investment in transferable securities established in another Member State or another EEA State are eligible under the measure and will be treated on equal terms with resident distributing investment associations.

2.6.1. Profit-driven investment decisions

(32) According to the Danish authorities, the distributing investment associations must be able to demonstrate that their investments are profit-oriented and managed on a commercial basis[18]. Moreover, as indicated in recital (**26**) above, the members of the distributing investment associations cannot be corporate investors under the dominant influence of the public authorities; the distributing investment association therefore retains at all times the predominant involvement of private investors.

(33) As indicated in recital (**25**) above, a business plan for each investment containing details of the product, sales and profitability development, establishing the *ex ante* viability of the product and a clear and realistic exit strategy will be prepared for each investment into a target SME.

2.6.2. Management

(34) According to the Danish authorities, distributing investment associations are managed by professionals from the private sector, chosen in line with standard commercial practice. The board of directors of the distributing investment association, which represents the members of the association, appoints a management board to be in charge of the day-to-day management of the association or, as the case might be, delegates the responsibility for the day-to-day management to a management company. The management company must then be approved by the Danish Financial Supervisory Authority[19]. The Danish government does not intervene in the selection of the management of the distributing investment associations.

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18 In accordance with § 4 C.3 (5) of the Taxation of Capital Gains from Sale of Shares Act.

19 The Financial Supervisory Authority is part of the Danish Ministry of Business and Growth, which supervises financial institutions, including investment associations.

(35) The distributing investment association concludes a management agreement with the management company which includes, among others, remuneration rules. According to standard commercial practice, the remuneration of the management company reflects the return on the investments made by the management company on behalf of the distributing investment association.

(36) Considering that that total amount of the distributing investment association's capital is provided by private corporate investors, the decision-making process of the association lies ultimately with them.

(37) Distributing investment associations are subject to supervision pursuant to Act No 456 of 18 May 2011 on investment associations. The Financial Supervisory Authority approves, in particular, the Articles of association of distributing investment associations and ensures that they are respected. Supervision by the Financial Supervisory Authority is carried out on the basis of physical inspections and reports prepared by the distributing investment associations.

2.7. Cumulation with other aid

(38) The Danish authorities undertake to reduce the relevant aid ceilings or maximum eligible amounts by 50 % in general and by 20 % for target SMEs located in assisted areas during the first three years of the first risk capital investment and up to the total amount received, where the capital provided to a target SME under this measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents.

(39) This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development[20] or any successor framework or block exemption regulation in this field.

2.8. Monitoring and reporting

(40) The Danish authorities undertake to comply with the reporting and monitoring provisions set out in point 7.1 of the RCG, and in particular to submit to the Commission annual reports containing a summary table with a breakdown of the investments made by distributing investment associations or under the measure, including a list of all the beneficiaries of risk capital measures. The report must also give a brief description of the activity of the investment associations with details of scrutinised potential deals.

(41) The measure will not be applied before its full text has been published on the internet. The Danish authorities will communicate an internet address where the measure will be published.

(42) The Danish authorities undertake to maintain for at least ten years detailed records regarding the granting of aid for the risk capital measure, containing all information necessary to establish that the conditions laid down in the RCG have been observed, notably as regards the size of the tranche, the size of the company (small or medium-sized), the development stage of the company (seed, start-up or expansion), its sector of

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20 OJ C 323, 30.12.2006, p. 1

activity (preferably at four digit level of the NACE classification), as well as information on the management of the funds and on the other criteria mentioned in these guidelines.

3. ASSESSMENT OF PRESENCE OF STATE AID

(43) The Commission has assessed the notified measure in the light of Article 107(1) TFEU and, in particular, on the basis of the RCG which provide for the specific requirements in the area of State aid to promote risk capital investments in SME's.

(44) In order for a risk capital measure to fall within the scope of Article 107(1) TFEU, four cumulative criteria must be met:

- the measure must involve the use of State resources;
- the measure must distort or threaten to distort competition by conferring an advantage on certain undertakings;
- the advantage must be selective in that it is limited to certain undertakings;
- the measure must be likely to affect trade between Member States.

(45) In line with section 3.2 of the RGC, in its assessment of whether risk capital measures constitute State aid, the Commission will consider the possibility that the measure may confer aid on at least three different levels:

- aid to investors;
- aid to an investment fund, investment vehicle and/or its manager;
- aid to the enterprises in which investment is made.

3.1. State aid to investors

(46) In accordance with section 3.2 of the RCG, where private investors make investments on terms more favourable than public investors, or than if they had undertaken such investments in the absence of the measure, then those private investors will be considered to receive an advantage.

(47) In the present case, the eligible investors, i.e. private corporate investors, with the exception of corporate investors under a controlling influence by the Danish public authorities (see recitals (**16**) and (**26**) above), will receive tax incentives as described in section 2.3. above. Those tax incentives constitute tax revenue forgone by the Danish State and constitute a derogation from the Danish taxation rules normally applicable, which cannot be justified by the logic of the Danish tax system as such. The measure therefore provides for a selective advantage to certain undertakings financed from State resources. Moreover, it cannot be excluded that the eligible investors are engaged in activities which may affect trade between Member States.

(48) In light of the above, the Commission concludes that the measure under assessment constitutes State aid within the meaning of Article 107(1) TFEU at the level of investors.

3.2. State aid to an investment fund or investment vehicle

(49) As regards the distributing investment associations operating within the framework of the notified measure, the Commission tends to take the view that an investment fund is a vehicle for the transfer of aid to investors and/or enterprises in which the investment is made, rather than being an aid beneficiary itself (see section 3.2 of the RCG). However, measures such as fiscal measures or other measures involving direct transfer in favour of an investment vehicle or an existing fund with numerous and diverse investors with the character of an independent enterprise may constitute aid, unless the investment is made on terms which would be acceptable to a normal economic operator in a market economy and therefore provide no advantage to the beneficiary.

(50) The measure under assessment provides tax incentives to the eligible investors who are members of distributing investment associations and not to the distributing investment associations as such (see recital (**28**) above). However, following settled case law[21], the Commission has already considered that "*even if specialised investment vehicles do not benefit directly from the tax reduction granted to their investors, they nonetheless receive an indirect economic benefit in so far as the tax reduction on investments in specialised vehicles prompts investors to buy shares* [participate] *in such vehicles*"[22]. The tax incentives in question provide for derogation from the tax rules normally applicable in Denmark and constitute revenue forgone by the Danish State, i.e. State resources. The distributing investment associations are undertakings since they have a corporate form and compete on investment markets. The measure concerns only distributive investment associations, as described in section 2.6. above, undertaking eligible investments to the detriment of other undertakings offering alternative forms of similar kinds of investment. The measure is therefore considered as selective. Moreover, it cannot be excluded that the distributing investment associations are engaged in activities which may affect trade between Member States.

(51) In light of the above, the Commission concludes that the measure under assessment constitutes State aid within the meaning of Article 107(1) TFEU at the level of the distributing investment associations.

3.3. State aid to the management

(52) As regards the fund's managers or the management company, aid will be considered to be present with reference to them if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantage granted by the State (see section 3.2 of the RCG).

(53) According to the notified measure, the State does not interfere in the selection of the distributing investment associations' management or the management company, nor

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21 See Case T-93/02 *Confédération nationale du Crédit mutuel v Commission* [2005] ECR II-143, paragraph 95: "*(...)the fact that a Member State renounces tax revenue may involve an indirect transfer of State resources, capable of being treated as aid to economic operators other than those to which the tax advantage is accorded directly.*"

22 Commission decision 2006/638/EC of 6.9.2005, OJ L 268 of 27.9.2006, p.1, recital (39); see also Case T-424/05 *Italian Republic v Commission*, not reported, paragraph 112.

does it provide for any advantages to such management or Management Company (see recital (**34**) above). The remuneration of the management company will be defined in line with standard commercial practice by the private corporate investors (i.e. members) of the distributing investment association (see recital (**35**) above). Moreover, the management or the management company of the distributing investment associations will take commercial decisions on behalf of their members, i.e. private corporate investors.

(54) Considering that the distributing investment associations' management (or management company) selection and their remuneration is decided by the market, the Commission considers that there is no ground to believe that the remuneration does not reflect the current market remuneration in comparable situations.

(55) The Commission therefore concludes that there is no State aid, within the meaning of Article 107(1) TFEU, to distributing investment associations' management or management companies.

3.4. State aid to target SMEs

(56) According to section 3.2 of the RCG, in cases where the investment is made in terms which would be acceptable to a private investor in a market economy in the absence of any State intervention, the enterprises in which the investment is made will not be considered as aid recipients.

(57) It is consistent Commission practice (see in particular section 3.2 of the RCG) to consider that where aid is present at the level of the investors, the investment vehicle or the investment fund, it is at least partly passed on to the target SMEs and thus that it is also present at their level. This is the case even where investment decisions are being taken by the managers of the fund with a purely commercial logic.

(58) As stated in recital (**47**) above, the measure involves tax incentives for investments in target SMEs which constitute tax revenue forgone by the Danish State. The measure therefore facilitates, through the fiscal advantage provided to the private corporate investors, the provision of risk capital to SMEs, which would otherwise not be available, or at least not to the same extent, in the absence of the measure. The measure therefore confers an advantage on the investee SMEs. The measure is selective as only investments in certain qualifying SMEs are eligible under the measure. Since it cannot be excluded that the target enterprises are active in intra-EU trade, an impact on competition and trade cannot be excluded either.

(59) The Commission therefore concludes that there is State aid within the meaning of Article 107(1) TFEU at the level of SMEs in which eligible investments are made.

3.5. Lawfulness of the aid

(60) By notifying the measure before its implementation, the Danish authorities have respected the obligations under Article 108(3) TFEU.

4. Compatibility assessment

4.1. Criteria for assessing the compatibility of the measure

(61) Considering that the measure constitutes State aid at the level of the investors, the distributing investment associations and targeted SMEs, the Commission must examine whether this aid is compatible with the internal market. Article 107(3)(c) TFEU provides that aid 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. Since the measure concerns the provision of risk capital to SMEs, the RCG should be applied to this compatibility assessment.

(62) The Commission's compatibility assessment of risk capital measures will include whether they encourage market investors to provide risk capital to the target enterprises and are likely to result in investment decisions being taken on a commercial (that is, a profit-driven) basis. Section 4.2 of the RCG lists the types of risk capital measures the Commission believes are capable of producing this result, among which point 4.2(d) mentions fiscal incentives to investment funds and/or their managers, or to investors to undertake risk capital investment. Given that the measure provides a fiscal advantage to private corporate investors investing directly or indirectly through distributing investment associations into the targeted SMEs, the measure falls within the scope of the RCG.

(63) Section 2.1 of the RCG requires the exclusion of aid to enterprises in difficulty, and to enterprises in the shipbuilding, coal and steel industry. Furthermore, the RCG do not apply to aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods.

(64) The measure complies with section 2.1 of the RCG in that it excludes aid to enterprises in difficulty and in the shipbuilding, coal and steel industry. Furthermore, the requirements concerning eligible investments do not include any provision that the aid would be conditioned upon export activities of the targeted SMEs or their use of domestic in preference to imported goods (see recital (**23**) above).

(65) The measure also complies with point 2.2(b) of the RCG which defines private equity investments as investments in companies not listed on a stock market. According to the Danish authorities, business creator shares must be issued by unquoted SMEs, i.e. they must not be listed on the official list of a stock exchange or on an unlisted securities market of a stock exchange (see recital (**22**) above).

(66) The investments made under the measure concern newly issued shares exclusively, which excludes replacement capital (see recital (**8**) above). Limiting investments to new shares by definition excludes management buy-outs. Given that replacement capital and buy-outs are excluded, the measure complies with the definition of venture capital under point 2.2(i) of the RCG and private equity under point 2.2(b) of the RCG.

4.2. Assessment under Section 4.3 of the RCG

(67) The Commission will declare a risk capital measure compatible under Article 107(3)(c) TFEU only if it concludes that the aid measure leads to an increased provision of risk capital without adversely affecting trading conditions to an extent contrary to the common interest. To determine this, the Commission applies a balancing test, set out in point 1.3 of the RCG, which examines the potential positive effects of the measure in reaching an objective of common interest against its potential negative effects in terms of distortion of competition and trade. The Commission will consider that the incentive effect, the necessity and proportionality of aid, required as part of this balancing test, are present in a risk capital measure and that the overall balance of the measure is positive where all the conditions of section 4.3 of the RCG are met.

4.2.1. Maximum level of investment tranches

(68) Point 4.3.1 of the RCG stipulates that tranches of finance, whether wholly or partially financed through State aid, must not exceed EUR 2.5 million per SME over each period of 12 months. As pointed out in recital (**8**) above, the maximum annual investment tranche per target SME will be DKK 18.7 million (approx. EUR 2.5 million). Hence, point 4.3.1 of the RCG is met.

4.2.2. Restriction to seed, start-up and expansion financing

(69) According to point 4.3.2 of the RCG, the risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. It must be restricted to provide financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.

(70) As pointed out in recital (**24**) above, SMEs located in assisted areas qualifying under the definition of Article 107(3)(a) or (c) TFEU and small companies located in non-assisted areas can receive investments in start-up and expansion capital. As for medium-sized companies located in non-assisted areas, investments up to the start-up stage are eligible, which is in line with point 4.3.2 of the RCG. The definition of seed, start-up and expansion capital complies with point 2.2 of the RCG.

(71) Therefore, the provisions of point 4.3.2 of the RCG are met.

4.2.3. Prevalence of equity and quasi-equity investment instruments

(72) Point 4.3.3 of the RCG requires that the risk capital measure must provide at least 70 % of its total budget in the form of equity and quasi-equity investment instruments into target SMEs. As pointed out in recital (**29**) above with reference to the distributing investment associations, the measure fulfils this requirement. As for direct investments by corporate investors in the target SMEs, 100 % of their investments will be made in the form of equity, which is in line with point 4.3.3 of the RCG.

(73) Therefore, point 4.3.3 of the RCG is fulfilled.

4.2.4. Participation by private investors

(74) Point 4.3.4 of the RCG stipulates that at least 30 % of the funding of the investments made inside assisted areas, and respectively 50 % in other areas, must be provided by private investors. Under the measure, the investments are made by private corporate

investors directly or indirectly through the distributing investment associations. Therefore, the total amount of funding of the investments is provided by private corporate investors as indicated in recitals (**16**) and (**26**) above.

(75) The conditions set out in point 4.3.4 of the RCG are met.

4.2.5. Profit-driven character of the investment decisions

(76) Point 4.3.5 of the RCG provides cumulative criteria to assess if investment decisions under the measure are profit-driven.

(77) Firstly, a significant involvement of private investors providing investments on a commercial basis, directly or indirectly, into the equity of the target SME's, must be present. As regards the measure under assessment, all of the capital delivered through the measure is provided by private investors investing directly or indirectly through the distributing investment associations (see recitals (**16**) and (**26**) above). The State is not involved in investment decision-making, apart from setting out the rules for the purpose of tax incentives under the measure. Therefore, point 4.3.5(a) of the RCG condition is met.

(78) Secondly, pursuant to point 4.3.5(b) of the RCG, a detailed business plan for each investment, establishing a project's ex-ante viability, must exist. The Commission notes that the corporate investors and the distributing investment associations are legally required to base their investments on a commercial basis (see recitals (**18**) and (**32**) above). As indicated in recital (**25**) above, each target SME is required to have a business plan, containing details of the product, sales and profitability development and establishing the *ex ante* viability of the project. Therefore, the condition of point 4.3.5(b) of the RCG is fulfilled.

(79) Thirdly, as set out in point 4.3.5(c) of the RCG, a clear and realistic exit strategy must exist for each investment. The Commission notes that, under the measure, there must be a clear and realistic exit strategy assessed individually for each investment (see recital (**25**) above). Hence, point 4.3.5(c) of the RCG is complied with.

(80) The Commission also acknowledges that the profit-driven character of investments is further demonstrated by the nature of the tax incentive itself. Given that the tax incentive under the measure depends on the profitability of the distributing investment associations as well as direct investments of the private corporate investors, it provides an additional motivation for investors to seek profitable investments with the best possible investment returns.

(81) The Commission therefore concludes that the measure is in line with point 4.3.5 of the RCG and investment decisions are profit-driven.

4.2.6. Commercial management

(82) The commercial management criterion is considered to be present where all the following conditions of point 4.3.6 of the RCG are fulfilled, ensuring that the management of the measure is effected on a commercial basis.

(83) Firstly, according to point 4.3.6(a) of the RCG, there should be an agreement between the fund management and the fund's participants, providing that the manager's

remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments. As indicated in recital (**35**) above, the distributing investment associations conclude a management agreement with the management company which includes the framework for the remuneration of the management company. According to standard commercial practice, the remuneration of the management company reflects the return on the investments made by the management company on behalf of the distributing investment association, which ensures the commercial basis of the investment decisions. Given that there is a legal requirement to manage the distributing investment associations on a commercial basis, it is expected that the management agreement will define all the necessary conditions, including the objectives and the timing of the investments, to ensure that the funds are managed on a commercial basis. Hence, the conditions laid down in point 4.3.6(a) of the RCG are met.

(84) Secondly, pursuant to point 4.3.6(b) of the RCG, private market investors must be represented in decision-making of the distributing investment funds, such as through an investors' or advisory committee. The Commission notes that only private corporate investors can invest through the distributing investment associations and that that total amount of the distributing investment associations capital is provided by private corporate investors, as indicated in recital (**36**) above, which demonstrates that the decision making process of the distributing investment association ultimately relies on private corporate investors. Therefore, the requirement laid down in point 4.3.6(b) of the RCG is met.

(85) Lastly, point 4.3.6(c) of the RCG stipulates that best practices and regulatory supervision apply to the fund. Given that the distributing investment associations will be managed on a commercial basis, with an objective to realise profits, it should be in the interest of the commercial management to apply the best available practices. The Commission notes that the distributing investment associations are subject to regulatory supervision pursuant to Act No 456 of 18 May 2011 on investment funds, as indicated in recital (**37**) above. Hence, the conditions laid down in point 4.3.6(c) of the RCG are met.

(86) As concerns direct investments, there is no fund manager involved, as private investors will be responsible for their own investment decisions seeking to optimise investment returns. It would be in the interest of investors to apply best management practices, with the view of realisation of profits.

(87) The Commission concludes that the measure fulfils all the conditions laid down in point 4.3.6 of the RCG and concludes, in particular, that the distributing investment associations are considered to be managed on a commercial basis.

4.2.7. Sectoral focus

(88) According to point 4.3.7 of the RCG, the Commission may accept a sectoral focus for risk capital measures. This provision is not applicable, since the measure does not have a sectoral focus.

4.2.8. Conclusion

(89) In light of the above, the Commission concludes that the measure complies with the criteria set out in section 4.3 of the RCG.

4.3. Cumulation

(90) The measure complies with the cumulation rules of section 6 of the RCG. Where capital provided to the target enterprises under this measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development or any successor framework or block exemption regulation in this field.

4.4. Reporting and monitoring

(91) Section 7 of the RCG stipulates conditions for the provision of annual reports on risk capital measures and for publication and recording obligations of the Member States. The Danish authorities undertook to comply with the reporting and monitoring provisions of section 7 of the RCG.

4.5. Conclusion

(92) The Commission concludes that the notified measure fulfils the conditions set out in the Community Guidelines on State aid to promote risk capital investment in small and medium-sized enterprises. The Commission has therefore found the measure to be compatible with the internal market pursuant to Article 107(3)(c) of the TFEU.

5. DECISION

(93) On the basis of the foregoing assessment, the Commission concludes that the measure as described above is compatible with the internal market pursuant to Article 107(3)(c) of the TFEU. It has decided not to raise objections.

(94) The Commission reminds the Danish Government that, in accordance with Article 108(3) of the TFEU, all plans to refinance, alter or change this aid measure must be notified to the Commission.

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B – 1049 Brussels
Fax No.: +32 2 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President