EUROPEAN COMMISSION

Brussels, 14/12/2020
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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of 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, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]	PUBLIC VERSION This document is made available for information purposes only.

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Subject: **State Aid SA.58218, SA.58219, SA.58221, SA.58222, SA.58224-SA.58230, SA.58232, SA.58233, SA.58235-SA.58239, SA.58242-SA.58244 – Pan-European Guarantee Fund in response to COVID-19**

Excellencies,

1. PROCEDURE

(1) By electronic notifications during September to November 2020, Belgium, Bulgaria, Denmark, Germany, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Slovakia, Finland and Sweden ("the participating Member States") notified aid in the form of guarantees on debt instruments ("the measures") pursuant to Article 108(3) of the Treaty on the Functioning of the European Union[1] ("TFEU").

(2) The participating Member States agree that the Commission assesses their notifications jointly in the present decision.

(3) The participating Member States all exceptionally agree to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958[2] and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE FUND AND THE CONTEXT

(4) The participating Member States submit that it is now widely expected that the negative effects on the Union (and world) economy triggered by the COVID-19 pandemic will be much larger than those of the global financial crisis, while the recovery could be much slower and more gradual than initially anticipated. The participating Member States perceive an important uncertainty. According to the Commission's Autumn 2020 Economic Forecast, the Union economy is forecasted to contract by 7.4% in 2020 and grow by 4.1% in 2021, not yet taking into account the impact of the second wave of the COVID-19 pandemic on the economy. The contraction in 2020 is projected to be in line with the Spring Forecast and slightly less severe than the Summer Forecast. However, growth in 2021 will also be significantly less robust than projected in the spring and summer. Those projections point to an incomplete recovery as output at the end of 2021 is expected to be about 2% lower than before the crisis and about 4.5% below the GDP level forecast end-2019.[3] In the view of the participating Member States, this suggests an only gradual ('U-shaped') recovery.

[1] OJ C 115, 9.5.2008, p. 47.

[2] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

[3] European Economic Forecast, Autumn 2020, European Commission, Institutional Paper 136, November 2020, as available on: https://ec.europa.eu/info/sites/info/files/economy-finance/ip136_en_2.pdf.

(5) The European Investment Bank Group ("EIBG") has proposed to establish a Pan-European Guarantee Fund in response to COVID-19 ("the Fund") with the objective to respond to the economic impact of the COVID-19 pandemic by ensuring that SMEs and large companies in the participating Member States have sufficient liquidity available to weather the resulting crisis. The Fund was endorsed by the European Council on 23 April 2020 as a part of an overall EU Package of measures to respond to the economic impact of the COVID-19 outbreak[4]. The Board of Directors of the European Investment Bank ("EIB") approved the decision setting up the Fund on 26 May 2020[5].

(6) The participating Member States submit that there is an urgent need for a strong and coordinated response at Union level to the unprecedented economic challenges brought on by the COVID-19 pandemic, which is affecting all Member States.

(7) All Member States have the option to participate in the Fund. The participation of each Member State in the Fund is equal to an amount resulting from the application of the key used for the calculation of Member States' contribution to the capital of the EIB to the overall guarantee of EUR 25 billion. Participating Member States will contribute to the Fund through a contribution agreement. Contributions of participating Member States to the Fund will take the form of irrevocable, unconditional and first demand guarantees (unfunded obligation). Those guarantees will cover losses and related costs incurred in the implementation of operations supported by the Fund. Any claims will be borne collectively by all participating Member States, but each Member State's contribution will be capped at the level of that Member State's participation in the Fund. By pooling credit risk across all of the participating Member States, the overall impact of the Fund can be maximised whilst the average cost of the Fund will be significantly reduced compared to national schemes. The Fund serves as the mean to allow the participating Member States to provide such a joint guarantee. In addition, Member States may decide to make a complementary upfront payment in the amount equal to or lower than expected losses.

(8) According to the rules of the Fund, the Fund can be established provided that Member States accounting for at least 60% of the EIB capital have made appropriate commitments towards the Fund, and notably have signed the contribution agreement. That condition was fulfilled on 10 July 2020. The Fund is set up to be temporary in nature. The initial investment period for operation approvals will run until 31 December 2021.

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4 https://www.consilium.europa.eu/en/press/press-releases/2020/04/23/conclusions-by-president-charles-michel-following-the-video-conference-with-members-of-the-european-council-on-23-april-2020/.

5 See also the following press release: https://www.eib.org/en/press/all/2020-126-eib-board-approves-eur-25-billion-pan-european-guarantee-fund-to-respond-to-covid-19-crisis.

(9) The participating Member States submit that this longer timeframe, as compared to the timeframe of national schemes approved under the Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")[6], is justified by the significantly longer time needed to set up and operationalise the Fund, compared to national schemes. The Fund has both novel and unique features compared to national measures under the Temporary Framework: it is an initiative under which all Member States contributing to the Fund needed to coordinate and to which they all needed to agree (and need to continue to coordinate and agree on an ongoing basis). It is, in addition, an initiative in which all Member States have been invited to participate and in which the same products are offered to uniformly defined eligible beneficiaries across the participating Member States. Therefore, the Fund is an initiative that aims to be a balancing instrument at European level through the joint liability behind the guarantee, as well as the feature that it invests across all participating Member States, without pre-set allocation quotas. For all those circumstances, the design of the Fund and its products, as well as the coordination required to reach an agreement among Member States, required longer time than setting up a national crisis measures subject to the Temporary Framework.

(10) The rules establishing the Fund provide for the possibility of a prolongation of the initial investment period by 6 months if a qualified majority of contributing Member States agrees. With respect to the measures subject to the notification and this decision, any such prolongation is outside of the scope of the present decision and to the extent that it constitutes State aid, it needs to be notified separately to the Commission.

(11) The expected loss estimates of the Fund portfolio have been premised on certain assumptions with respect to the product mix of the portfolio. For the time being, the EIBG's assumed product mix estimate leads to an expected loss of up to 20%. The EIBG believes that the foreseen product mix will trigger mobilised financings into the European economy up to a multiplier of eight, representing EUR 200 billion of financing.

(12) Any residual cash flows will be distributed back to the participating Member States, after deduction of relevant costs or losses, pro rata to their contribution: this will not be distributed before the end of a period of ten years starting from the effective date of the first contribution agreement.

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[6] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I , 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the 4th Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 340I, 13.10.2020, p. 1.

(13) The Fund will be managed by the EIBG, in separate accounts, established exclusively for the purpose of the financing measures of the Fund. The Fund will not be a separate legal entity. The Fund will be governed by a Contributors' Committee for which each participating Member State will nominate a representative. The initial Fund description, including eligibility criteria, initial choice of products, pricing and risk levels, is approved by the participating Member States as part of their contribution agreements. Any significant changes to the Fund description will need to be approved by the Contributors' Committee. The Contributors' Committee will approve guarantees for individual operations presented by the EIB and/or the European Investment Fund ("EIF"). The Contributors' Committee may also decide to grant global authorisations to the EIB or the EIF for operations within certain parameters.

3. Description of the measures

(14) The compatibility assessment of the measures is based on Article 107(3)(b) TFEU, on the basis of which aid to remedy a serious disturbance in the economies of the participating Member States may be declared compatible with the internal market. The participating Member States submit that the measures are designed in close analogy to the principles set out in the Temporary Framework.

3.1. The nature and form of aid

(15) The measures provide aid in the form of guarantees or counter-guarantees on senior and subordinated debt instruments.

3.2. Legal basis

(16) The legal basis for the measures are the contribution agreements signed between the EIBG and each participating Member State.

(17) The participating Member States signed the Contribution Agreement on the following dates: Cyprus on 12 June 2020; Luxembourg on 19 June 2020; Finland on 15 June 2020; Denmark on 25 June 2020; Sweden on 30 June 2020; Italy on 1 July 2020; Spain on 1 July 2020; Germany on 6 July 2020; Lithuania on 7 July 2020; Bulgaria on 9 July 2020; Austria on 10 July 2020; Ireland and the Netherlands on 20 July 2020; Slovakia on 21 July 2020; Belgium on 22 July 2020; Portugal on 22 July 2020; Malta on 31 July 2020; France on 3 August 2020; Greece on 5 August 2020; Croatia on 17 August 2020; and Poland on 15 October 2020.

3.3. Administration of the measure

(18) As described in recital (13), the EIBG is responsible for administering the measures under the mandate agreed with the Contributors' Committee of the participating Member States.

3.4. Budget and duration of the measure

(19) The EIBG confirmed that the notional amount of the Fund used for guarantees on senior and subordinated debt instruments for the measures is currently estimated at EUR 15.7 billion[7]. The aid will be implemented through four measures (measures A-D as described in more detail in section 3.7). The EIBG currently estimates that the following nominal amounts will be guaranteed under each measure:

(i) EUR [0.5-5] billion for Measure A;

(ii) EUR [3-10] billion for Measures B and C;

(iii) EUR [3-10] billion for Measure D.

(20) The participating Member States submit that an exact split between Measures B and C cannot be provided[8]. Therefore, the participating Member States submit a prudent estimate of the maximum budget of Measures A and B (those that are designed by analogy to section 3.1 of the Temporary Framework) and Measure C as EUR [3.5-15] billion.

(21) The remaining share of the Fund's overall budget of up to EUR 25 billion will be used for the implementation of financing activities that have not been notified by the participating Member States to the Commission and that therefore are outside of the scope of this decision:

(i) Equity and quasi-equity investments: the EIBG submitted that it would implement those investments on a basis in line with the conduct of a market operator.

(ii) Securitisation products.

(iii) Financing provided in compliance with the *de minimis* Regulations[9], including via the same delivery modes and products as under Measures A, B and C.

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[7] Member States submitted that demand for the various products is not yet known, as well as other uncertainties. Therefore, it is necessary to maintain the possibility of a flexible allocation of budgets between the proposed products under the Fund. Therefore, the notifying Member States submit that it is prudent to consider EUR 25 billion as the overall maximum budget subject to this decision.

[8] Member States submitted that this will be subject to demand and other uncertain factors.

[9] 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 agriculture 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

(22) Aid may be granted under the measures as from their approval until no later than 31 December 2021. In particular, any contract between the final beneficiaries and financial intermediaries must be signed no later than 31 December 2021 and the respective guarantee must be granted no later than 31 December 2021.

3.5. Beneficiaries

(23) The final beneficiaries of the measures are undertakings active in the participating Member States. In particular, the eligible final beneficiaries are SMEs[10] and small mid-caps (defined by the EIBG as undertakings with up to 500 employees) under the Measures A, B and C. Under Measure D, larger undertakings are also eligible[11].

(24) Aid may not be granted under the measures to undertakings that were already in difficulty within the meaning of the GBER[12], the ABER[13], or the FIBER[14], respectively, on 31 December 2019. As an exception to that exclusion, aid may be granted to micro or small enterprises (within the meaning of Annex I to, respectively, the GBER, ABER and FIBER) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid[15] or restructuring aid[16].

(25) Aid is granted under the measures through credit institutions and other financial institutions as financial intermediaries selected by the EIBG to provide the financing that is guaranteed by the Fund, including national promotional banks or institutions ("NPBI"). The setup of the measures may involve several financial intermediaries where the first financial intermediary is a NPBI and the second financial intermediary is a commercial bank that grants the loan to the final

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[10] As defined in Annex I of General Block Exemption Regulation ("GBER", 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, 26.6.2014, p. 1.), the Agricultural Block Exemption Regulation ("ABER", Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p.1.) and Fisheries Block Exemption Regulation ("FIBER", Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37) respectively.

[11] This includes also public sector entities, and other types of entities, that are active in the area of health or health-research or providing essential services related to the health crisis.

[12] As defined in Article 2(18) of the GBER.

[13] As defined in Article 2(14) of the ABER.

[14] As defined in Article 3(5) of the FIBER.

[15] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under this decision.

[16] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under this decision.

beneficiaries. In such a case, the NPBIs receive a counter-guarantee from the Fund and in turn guarantee the exposures of the commercial banks.

(26) The EIB is selecting financial intermediaries on a 'financing request by the financial intermediary' basis. Such financial intermediaries are subject to a due diligence process by the EIB, which is focused, among other things, on the financial intermediary's operating policies and procedures (including loan origination, granting, risk management, restructuring, recovery and compliance/'Know your customer' functions), systems, models and corporate governance. The approach follows EIB's standard practice. The EIF is selecting financial intermediaries' applications to the Open Call for Expression of interest applicable to the Fund. The application process, among other things, includes a screening phase to assess the policy fit and expected performance of the financial intermediary. Following a positive outcome at this stage, the EIF will assess the financial intermediary's financial standing, operating principles, specific data on its SMEs lending practice and general implementation measures in a further due diligence phase before deciding whether to proceed with the application.

3.6. Sectoral and regional scope of the measure

(27) The measures are open to all sectors except the financial sector and activities or sectors excluded under EIB policies, as reviewed and amended from time to time by the EIB[17], and EIF policies[18]. It applies to the whole territories of the participating Member States.

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[17] "Excluded Activities" shall mean any of the following activities: 1. Production or activities involving harmful or exploitative forms of forced labour /harmful child labour (Forced labour means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty. Harmful child labour means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, moral or social development. In addition any labour that is performed by a person which has not yet reached the age of 15 is considered to be harmful, unless the local legislation specifies compulsory school attendance or the minimum age for working to be higher; in such cases, the higher age will be applied for defining harmful child labour.). 2. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements. 3. Any business relating to pornography or prostitution. 4. Production or trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species or Wild Fauna and Flora (CITES). 5. Production or use of or trade in hazardous materials such as radioactive materials, unbounded asbestos fibres and products containing PCBs. 6. Cross-border trade in waste and waste products unless compliant with the Basel Convention and the underlying national and Union regulations but for the avoidance of doubt, use of waste as a fuel in district heating is not excluded. 7. Unsustainable fishing methods (i.e. drift net fishing in the marine environment using nets in excess of 2.5 km in length and blast fishing). 8. Production or trade in pharmaceuticals, pesticides/herbicides, chemicals, ozone depleting substances and other hazardous substances subject to international phase-outs or bans (Ozone Depleting Substances: Chemical compounds, which react with and delete stratospheric ozone, resulting in "holes in the ozone layer". The Montreal Protocol lists ODs and their target reduction and phase-out dates.). 9. Destruction of Critical Habitats (Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value that meet the criteria of the World Conservation Union ("IUCN") classification, including habitat required for the survival of critically endangered or endangered species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Primary Forest or forests of

3.7. Basic elements of the measures

(28) As stated in recital (19), EIBG will implement four measures that are in the scope of the notification:

(i) Measure A is a capped[19] (counter-)guarantee scheme designed by analogy with section 3.1 of the Temporary Framework that is administered by the EIF.

(ii) Measure B is an uncapped[19] (counter-)guarantee scheme designed by analogy with section 3.1 of the Temporary Framework that is administered by the EIF.

(iii) Measure C is an uncapped[19] (counter-)guarantee scheme designed by analogy with section 3.2 of the Temporary Framework that is administered by the EIF.

(iv) Measure D (also called Portfolio Risk-Sharing Instrument) is a (counter-)guarantee scheme designed by analogy with section 3.2 of the Temporary Framework that is administered by the EIB.

High Conservation Value shall be considered Critical Habitats. For the purpose of this Agreement, the environment and social requirements attached hereto are understood and agreed to provide reasonable and satisfactory assurance of the avoidance of destruction of critical habitat.). 10. Production and distribution of racist, anti-democratic and/or neo-Nazi media. 11. Tobacco, if it forms a substantial part of a Project's primary financed business activities (A benchmark for substantial is 5-10% of the balance sheet or the financed volume or sales revenues of the promoter.). 12. Live animals for scientific and experimental purposes, including the breeding of those animals. 13. Ammunition and weapons, military/police equipment, infrastructure or correctional facilities, prisons (Such activities are fully excluded from EIB financing in all countries other than Member States. In the Union, excluded activities relating to defence, public order and safety are limited to production (or construction) of, distribution (or processing) of, and trade in weapons, ammunition, explosives, equipment or infrastructures specifically designed for military use, and equipment or infrastructure which result in limiting people's individual rights and freedom (i.e. prisons, detention centres of any form) or in violation of human rights.). 14. Gambling, casinos and equivalent enterprises or hotels hosting such facilities. 15. Commercial concessions over, and logging on, tropical natural forest; conversion of natural forest into a plantation. 16. Purchase of logging equipment for use in tropical natural forests or high nature value forest in all regions; and activities that lead to clear cutting and/or degradation of tropical natural forests or high nature value forest. 17. New palm oil plantations. Any business with a political or religious content.

[18] EIF restricted sectors, as amended from time to time, are available under: https://www.eif.org/attachments/publications/about/2010_Guidelines_on_restricted_sectors.pdf.

[19] The reference to a guarantee being capped or uncapped means that if the guarantee is capped, EIBG's exposure to a certain financial intermediary is capped at a maximum amount representing e.g. 30% of the maximum guaranteed portfolio of the financial intermediary. In general, the guarantee is still limited on a loan-by-loan basis for both uncapped and capped schemes. In particular, under Measure B, the amount guaranteed through the Fund is limited in compliance with the thresholds of recital (32) below (in analogy to section 3.1 of the Temporary Framework) and under Measure C the thresholds of section 3.2 of the Temporary Framework are respected. Therefore, the amount in an individual transaction is limited and there is no unlimited guarantee.

Common element for all measures

(29) The mobilisation of the guarantees under all measures is always contractually linked to specific conditions agreed between EIBG and the financial intermediaries when the guarantee is initially granted.

(30) Transactions that were originated prior to the adoption of this decision are not eligible. Eligible transactions originated prior to the signature of the guarantee agreement will comply with the conditions approved by this decision and other applicable eligibility requirements for the respective operation.

Description of common elements of Measures A and B

(31) Measures A and B provide for aid in the form of (counter-)guarantees on new senior loans[20], leasing products, revolving credit lines (including overdrafts), documentary finance (bank guarantees, letters of credit, bid bonds), factoring, subordinated loans and quasi-equity. The final beneficiary may use the financing (including refinancing of existing debts) for working capital purposes and investment purposes.

(32) The overall nominal value of the guarantees per undertaking will not exceed the following ceilings:

   (i) EUR 100 000 per undertaking active in the primary production of agricultural products;

   (ii) EUR 120 000 per undertaking active in the fishery and aquaculture sector;

   (iii) EUR 800 000 per undertaking active in other sectors.

(33) The duration of the guarantees may be between 3 months and 15 years[21].

[20] The Commission notes that the term "loan" in the decision also encompasses instruments in the form of corporate bonds and promissory notes, which are sufficiently equivalent to a loan in their effects and characteristics.

[21] EIBG submitted that the measures under the Fund are designed to respond to the market needs across many regions, sectors and SME/small mid-cap types. Compared to more typical (non-emergency) initiatives EIF manages, the eligibility is far more focused on shorter term (e.g. allowing minimum 3 months maturity compared to a standard 12 months minimum) and liquidity needs financing (e.g. refinancing could be allowed). That type of financing need is expected to be the main focus of the Fund, which is also reflected in the estimated average maturity of 6.3 years. Further, EIBG estimates that around 70% of the financing under Measures A and B to be up to 6 years. Nevertheless, within the limits of the rules of the Temporary Framework (i.e. only under section 3.1 of the Temporary Framework) EIF would like to also allow the financial intermediaries to respond to market needs for longer term financing as well, while expecting it to be a lesser part of the portfolio to be built up. EIF products are serving primarily smaller borrowers (predominantly micro-enterprises, and up to small mid-cap size at most) and smaller loans, in particular under Measures A and B. Those companies need support also for their investment needs as well as liquidity financing, and have often more difficult access to finance during an economic crisis. EIBG considers this as an important part of their response package, to support the economy and job maintenance/creation through the crisis.

(34) Where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid is not conditional on being partly or entirely passed on to primary producers and its amount not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(35) For beneficiaries of the agricultural, fisheries and aquaculture sector:

(i) aid to undertakings active in the primary production of agricultural products[22] is not fixed on the basis of the price or quantity of products put on the market;

(ii) the aid to undertakings active in the fishery and aquaculture sector[23] does not concern any of the categories of aid referred to in subparagraphs (a) to (k) of Article 1(1) of Commission Regulation (EU) No 717/2014;

(iii) where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework as amended, it will be ensured, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the overall maximum amount of EUR 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework as amended, the overall maximum amount of EUR 120 000 is not exceeded per undertaking;

(iv) aid under the notified measures may be cumulated with other forms of Union financing as long as the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(36) Under the conditions of Measure A and B, the guarantee agreement between the EIF and the financial intermediary will contain specific contractual obligations for the financial intermediary to operate a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

(37) During the due diligence phase, EIF will analyse the financial intermediary's standard credit policies and risk appetite for the final beneficiaries/types of portfolios they propose to cover under the Fund's guarantee and the financial intermediary's proposal on the specific manner in which the benefit will be transferred. That assessment will encompass the credit risk of the expected guaranteed portfolio and also enable EIF to form a view as to the benchmark/standard lending conditions of the financial intermediary against which the proposals on the transfer of benefit will be assessed. The financial intermediary will be contractually obliged in the guarantee agreement to apply the transfer of benefit when originating the portfolio.

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[22] All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

[23] As defined in Commission Regulation (EU) No 717/2014.

(38) If the transfer of benefit occurs via a reduction in the credit risk premium compared to that in the financial intermediary's standard pricing applicable to the final beneficiaries, EIF will agree with the financial intermediary on a particular methodology for determining that credit risk premium. The financial intermediary can demonstrate the transfer of benefit as follows: transfer of benefit (e.g. interest rate reduction) is equal to the guarantee rate multiplied with the difference of a) the credit risk premium normally charged without the guarantee, and b) the guarantee fee minus any acceptable additional costs related to the guarantee.

(39) If the transfer of benefit occurs via reductions in collateral requirements, the terms of Measure A and B will require that the financial intermediary reduces the collateral requirements, either on a loan-by-loan or on a portfolio basis, compared to its standard collateral requirements applicable to the financial beneficiaries. For example, focusing on fully unsecured lending (where typically some security would have been required by the financial intermediary); or requiring that on each loan or on a portfolio basis, the financial intermediary does not obtain more than e.g. 50% of collateral coverage.

(40) Similar approaches will be applied to other forms of transfer of benefit, encompassing an analysis of each financial intermediary's current lending conditions for the relevant group of final beneficiaries and type of financing. One alternative is to achieve higher volumes of financing by launching a new product specifically designed for the final beneficiaries benefitting from the guarantee. In that case, the terms of Measure A and B will require the financial intermediary to contractually undertake to include in the guaranteed portfolio only the loans granted under the newly created product.

Description of specific elements of Measure A

(41) Measure A provides for guarantee coverage of a financial intermediary of up to 90% on each guaranteed transaction, while the overall exposure on a portfolio of loans is limited by a cap rate of up to 30% on the underlying portfolio exposure. The 90% guarantee coverage will only be provided in some cases and will not represent the norm, which is instead expected to be 70% or 80%. The financial intermediary shall retain at least 10% of the risk on each individual guaranteed transaction.

(42) The capped guarantee is provided free-of-charge. To ensure the sustainable implementation of the measure, the financial intermediaries may be required to pay an administration fee to the administrator of Measure A, the EIF.

Description of specific elements of Measure B

(43) In contrast to Measure A, Measure B provides instead for uncapped guarantee coverage of a financial intermediary of up to 70% on each guaranteed transaction. The financial intermediary will retain at least 30% of the risk on each individual guaranteed transaction.

Description of Measure C

(44) Measure C provides for aid in the form of (counter-)guarantees on new senior financing in the form of loans, financial leasing, revolving credit lines (including overdrafts), documentary finance (bank guarantees, bid or performance bonds, letters of credit) and supply chain finance (including reverse factoring and factoring). The final beneficiary may use the financing (including refinancing of existing debts) for working capital purposes and investment purposes.

(45) As regards documentary finance, the financial intermediary has a right of recourse towards the instructing undertaking that initiates the respective transaction.

(46) In particular, bank guarantees are irrevocable, autonomous obligations of a financial intermediary towards a payee, to cover for the failure of an instructing undertaking to perform an obligation. Under a bank guarantee, the financial intermediary has the obligation to transfer a stipulated sum to the payee on their written demand and has direct recourse to the defaulting instructing undertaking.

(47) Furthermore, bid bonds are irrevocable guarantees submitted by a financial intermediary towards a payee in the context of bid to vouch for the obligations of an instructing undertaking (e.g. contractor offering services in the context of a bid). Under a bid bond, upon acceptance of a bid by the payee and failure to perform by the instructing undertaking, the financial intermediary will pay the payee the difference between the instructing undertaking's bid and the next highest bidder up to a predefined limit. The guarantee measure will cover the amount paid by the financial intermediary to the payee, typically referred to as liquidated damages, which cannot exceed the amount of the bid bond.

(48) Similarly, performance bonds are issued by the financial intermediary to the payee as a guarantee (up to predefined limit) against the instructing undertaking's failure to meet its obligations under the contract, or to delivery on the level of performance specified in the agreement. Unlike a fidelity bond (not covered under the proposed guarantee measure), a bid or performance bond is not an insurance policy and the financial intermediary has recourse to the instructing undertaking upon default.

(49) Finally, a letter of credit is a written commitment, widely used in international trade, by a financial intermediary to effect payments for a predefined amount in an agreed currency to the payee (typically exporter), conditional to the payee providing required documents (including invoices, shipping documentation), within a defined timeframe. Under Measure C, upon execution of payment by the financial intermediary, the instructing undertaking has the obligation to repay the amount under the terms and conditions agreed with the financial intermediary. The proposed guarantee measure will cover letters of credit under which the financial intermediary has recourse to the instructing undertaking.

(50) As regards supply chain finance as notified under Measure C, a right of recourse by the factor (the financial intermediary) in this product exists only towards the buyer of a product or service. The transaction is fundamentally bilateral in nature as regards the legal obligations. The guarantee offers risk protection for the non-payment risk at the maturity of invoices (non-payment by the buyers). The good or service is delivered by the seller and the invoice issued. The account of the

buyer will be directly debited by the financial intermediary for the full amount of the (discounted) invoice on its due date.

(51) The duration of the guarantees on underlying eligible debt instruments may be between 3 months and 6 years.

(52) The guarantee coverage of a financial intermediary may be up to 70% on each guaranteed transaction.

(53) The pricing of Measure C is a flat guarantee premium of 70 basis points ("bps") per year for SMEs and of 141 bps per year for small mid-caps. That guarantee premium is charged on the outstanding guaranteed amount of each underlying transaction.

(54) When the size of the loan decreases over time, the guaranteed amount decreases proportionally. The overall amount of the eligible debt instruments per final beneficiary will not exceed one of the following thresholds:

(i) double the annual wage bill of the final beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

(ii) 25% of the final beneficiary's total turnover in 2019 or for the last year available; or

(iii) Based on a self-declaration by the final beneficiary, the final beneficiary's foreseen liquidity needs from the moment of granting for the coming 18 months for SMEs, or for the coming 12 months for small mid-caps. The liquidity plan to be submitted by the beneficiary may include both working capital and investment costs.

(55) Applying that methodology, i.e. that the maximum overall amount of the debt instrument under Measure C may be determined according to one of the two options set out in points 25(d) (i) or (ii) of the Temporary Framework or, alternatively, a third option relying on the beneficiary's justified liquidity needs based on self-declaration (see recital (54)), enables the Fund to adapt to different delivery modes on the ground. Measure C will be implemented in different countries, markets and via a large range of financial intermediaries, targeting different segments of final beneficiaries (from retail lending to corporate SMEs and small mid-caps). Accordingly, different financial intermediaries may opt to structure the rules of Measure C in different ways, using all three of the options or choosing to simplify the operational procedures and using only one or two of these thresholds.

(56) When implementing Measure C, the financial intermediaries will apply their standard credit and other policies, taking into account the guarantee provided by the Fund (for example for the transfer of benefit). The administrator of the scheme, the EIF, will assess the financial intermediary's relevant procedures. The financial intermediary will be bound to continue applying its standard credit assessment policy that it would be otherwise obliged to apply (either by banking

regulation or by other applicable rules), in order to assess the creditworthiness of the borrowers/final beneficiaries and their ability to repay as well as the amount of necessary financing.

(57) In case the financial intermediary provides a counter-guarantee to an underlying finance provider, the latter will perform the credit assessment.

(58) Under the conditions of Measure C, the guarantee agreement between the EIF and the financial intermediary will contain specific obligations for the financial intermediary to operate a mechanism that ensures that the advantages are passed on to the largest extent possible to the final recipients in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

(59) During the due diligence phase, EIF will analyse the financial intermediary's standard credit policies and risk appetite for the final beneficiaries/types of portfolios they propose to cover under the Fund's guarantee and the financial intermediary's proposal on the specific manner in which the benefit will be transferred. That assessment will encompass the credit risk of the expected guaranteed portfolio and also enable EIF to form a view as to the benchmark/standard lending conditions of the financial intermediary against which the proposals on the transfer of benefit will be assessed. The financial intermediary will be contractually obliged in the guarantee agreement to apply the transfer of benefit when originating the portfolio.

(60) If the transfer of benefit occurs via a reduction in the credit risk premium compared to that in the financial intermediary's standard pricing applicable to the final beneficiaries, EIF will agree with the financial intermediary on a particular methodology for determining that credit risk premium. The financial intermediary can establish the transfer of benefit as follows: transfer of benefit (e.g. interest rate reduction) is equal to the guarantee rate multiplied with the difference of a) the credit risk premium normally charged without the guarantee and b) the guarantee fee minus any acceptable additional costs related to the guarantee.

(61) If the transfer of benefit occurs via reductions in collateral requirements, the terms of Measure C will require that standard collateral requirements are reduced, either on a loan by loan or on a portfolio basis. For example, focusing on fully unsecured lending (where typically some security would have been required by the financial intermediary); or requiring that on each loan or on a portfolio basis, the financial intermediary does not obtain more than e.g. 50% of collateral coverage.

(62) Similar approaches will be applied to other forms of transfer of benefit, encompassing an analysis of each financial intermediary's current lending conditions for the relevant final recipient group and type of financing. One alternative is to achieve higher volumes of financing by launching of a new product specifically designed for final beneficiaries benefitting from the guarantee. In that case, the terms of Measure C will require the financial intermediary to contractually undertake to include in the guarantee portfolio only the loans granted under such a newly created product.

Description of Measure D

(63) Measure D provides for aid in the form of (counter-)guarantees on newly originated debt instruments. Revolving credit facilities that were granted previously by the financial intermediary can also be accepted, provided that they have either reached (i) their legal maturity, or (ii) a date when the financial intermediary retains contractually the right to renew or cancel the revolving facility (and provided that compliance is ensured with all other applicable criteria). Eligible debt instruments are senior or subordinated loans in the form of revolving facilities or term loans (including with bullet or balloon repayment profiles), financial leases as well as supply chain finance (in the form of reverse factoring) and bank guarantees[24]. The final beneficiary may use the financing for working capital purposes and investment purposes.

(64) The duration of the guarantees on underlying eligible debt instruments may be between 1 month and 6 years.

(65) The guarantee coverage of a financial intermediary may be up to 80% on each guaranteed transaction. Measure D may be implemented with and without a cap amount. In cases of a capped portfolio, the cap rate that is applied to a portfolio of loans of a financial intermediary will not exceed 35% on the underlying portfolio exposure. Any losses beyond that amount will be fully borne by the financial intermediary.

(66) The pricing of Measure D is based on the table included in point 25(a) of the Temporary Framework, but modulated in such a way that lower guarantee premiums are compensated with a lower guarantee coverage and a shorter duration, where applicable. Furthermore, flat guarantee premiums are used for the respective entire duration of the guarantee, from year 1. The premium will be calculated based on the respectively guaranteed amount and the minimum flat guarantee premiums applicable are (per annum):

- For a guarantee coverage of 50%:

	Duration of the guarantee					
Type of final beneficiaries	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years
SMEs [25]	15 bps	17 bps	17 bps	23 bps	25 bps	26 bps
Large enterprises including where publicly owned[26]	15 bps	23 bps	25 bps	62 bps	82 bps	95 bps

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24 See recitals (46) and (50).

25 The pricing applicable to SMEs for the different guarantee coverage rates can also be applied to public sector/health entities with less than 250 employees and which do not undertake, by nature, economic activities entities.

26 Large enterprises include: mid-caps (entities which meet both the of the following criteria: (i) up to 3000 employees and (ii) the entity does not fall under the definition of an SME), large corporates with more than 3000 employees, and public sector and other type of health entities with at least 250 employees, except for those which do not undertake economic activities, for which the pricing applicable is as for SMEs.

- For a guarantee coverage of 60%:

	Duration of the guarantee					
Type of final beneficiaries	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years
SMEs	15 bps	17 bps	17 bps	26 bps	30 bps	33 bps
Large enterprises including where publicly owned[26]	15 bps	29 bps	33 bps	72 bps	92 bps	106 bps

- For a guarantee coverage of 65%:

	Duration of the guarantee					
Type of final beneficiaries	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years
SMEs	15 bps	17 bps	17 bps	29 bps	34 bps	38 bps
Large enterprises including where publicly owned[26]	15 bps	33 bps	39 bps	79 bps	101 bps	115 bps

- For a guarantee coverage of 75%:

	Duration of the guarantee					
Type of final beneficiaries	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years
SMEs	15 bps	23 bps	25 bps	44 bps	53 bps	60 bps
Large enterprises including where publicly owned[26]	25 bps	55 bps	63 bps	109 bps	131 bps	146 bps

- For a guarantee coverage of 80%:

	Duration of the guarantee					
Type of final beneficiaries	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years
SMEs	15 bps	26 bps	29 bps	50 bps	61 bps	68 bps
Large enterprises including where publicly owned[26]	30 bps	63 bps	73 bps	119 bps	140 bps	155 bps

(67) With respect to the supply chain finance, the pricing is also based on the table included in point 25(a) of the Temporary Framework. The premium will be calculated based on the respectively guaranteed amount and the minimum flat guarantee premiums applicable (per annum), as follows:

Minimum guarantee fees applicable for guarantees on trade payables of buyers/obligors at a guarantee rate of	Duration of the guarantee (i.e.: final maturity)		
	Up to 1 year	Up to 2 years	Up to 3 years
50%	15 bps	23 bps	25 bps
60%	15 bps	29 bps	33 bps
65%	15 bps	33 bps	39 bps
75%	25 bps	55 bps	63 bps
80%	30 bps	63 bps	73 bps

(68) When the size of the loan decreases over time, the guaranteed amount decreases proportionally. The overall amount of the eligible debt instruments (including subordinated debt instruments) per final beneficiary shall not exceed one of the following thresholds, and will in any case not exceed EUR 250 million:

(i) double the annual wage bill of the final beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

(ii) 25% of the final beneficiary's total turnover in 2019 or for the last year available; or

(iii) Based on a self-declaration by the final beneficiary, the final beneficiary's foreseen liquidity needs from the moment of granting for the coming 18 months for SMEs[27] or for the coming 12 months for enterprises larger than SMEs. The liquidity plan to be submitted by the beneficiary may include both working capital and investment costs.

(69) Applying that methodology, i.e. that the maximum overall amount of the debt instrument under Measure D may be determined according to one of the two options set out in point 25(d) (i) or (ii) of the Temporary Framework or, alternatively, a third option relying on the beneficiary's justified liquidity needs based on self-declaration (see recital (68)) enables the Fund to adapt to different delivery modes on the ground. Measure D will be implemented in different countries, markets and via a large range of financial intermediaries, targeting different segments of final beneficiaries (from retail lending to corporates). Accordingly, different financial intermediaries may opt to structure the rules of Measure D in different ways, using all three of the options or choosing to simplify the operational procedures and using only one or two of those thresholds.

(70) When implementing Measure D, the financial intermediaries will apply their standard credit and other policies, taking into account the guarantee provided by the Fund (for example for the transfer of benefit). The administrator of the scheme, the EIB, will assess the financial intermediary's relevant procedures. The financial intermediary will be bound to continue applying its standard credit assessment policies that it would be otherwise obliged to apply (either by banking regulation or by other applicable rules), in order to assess the creditworthiness of the borrowers/final beneficiaries and their ability to repay as well as to assess the amount of necessary financing. In case if the financial intermediary provides a counter-guarantee to an underlying finance provider, the latter will perform the credit assessment.

27 The coverage of 18 months of liquidity/financing needs can also be applied to public sector/health entities with less than 250 employees and which do not undertake, by nature, economic activities.

(71) In case of subordinated debt instruments, the overall total amount of such debt instruments per final beneficiary will be below either:

(i) for large enterprises, including where publicly owned[26], one third of the amounts as defined in recital (68)(i) or (68)(ii), respectively; or

(ii) for SMEs[28], 50% of the amounts as defined in recital (68)(i) or (68)(ii), respectively.

(72) The flat guarantee premiums for subordinated debt instruments will equal the respective flat guarantee premiums as defined in recital (66) depending on guarantee coverage and duration plus an additional margin of 150 bps for SMEs[29], and 200 bps for large enterprises.

(73) The financial intermediary will be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final recipients in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates. In principle, the main advantage to be passed to final beneficiaries will be in the form of lower interest rates (or lower guarantee premiums). It will be measured as follows: for the portion of the loan to final beneficiaries covered by the guarantee, to the largest extent possible, the financial intermediary will have to pass on to the final beneficiary the difference between a) the risk margin usually charged by the financial intermediary, in line with its internal pricing policy, and b) the guarantee fee charged for the respective loan by the EIB.

(74) In circumstances where such a mechanism cannot be implemented (such as for supply chain finance), an alternative mechanism will be applied. EIB has explained that in absence of the support through the Fund, a significant amount of factoring limits could not be prolonged, or should have been decreased and/or repriced due to the increased perceived risk by financial intermediaries. The guarantee will cover new agreements between the financial intermediary and factoree. In addition, agreements that were concluded previously between the financial intermediary and the factoree can also be accepted, provided that they have either reached (i) their legal maturity, or (ii) a date when the financial intermediary retains contractually the right to renew or cancel the facility and provided that compliance is ensured with all other applicable inclusion criteria. EIB also stated that the specific benefits have to be defined in the factoring agreement and that the factor as financial intermediary is obliged to pass-on those benefits to the factoree based on the guarantee agreement between EIBG and the financial intermediary. In practice, the benefits may include the granting of new limits that would otherwise be withheld, offering longer payment periods or later moment in time for a recourse to the factoree, offering higher volume of the factoring limit, or offering better prices, or maintaining the pre-COVID-19 pricing.

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28 The higher maximum amount for SMEs can also be applied to public sector/health entities with less than 250 employees and which do not undertake, by nature, economic activities.

29 The lower additional margin for SMEs can also be applied to public sector/health entities with less than 250 employees and which do not undertake, by nature, economic activities.

3.8. Cumulation

(75) The participating Member States' authorities confirm that aid granted under the measures may be cumulated with aid under *de minimis* Regulations or the GBER, ABER or FIBER, provided the provisions and cumulation rules of those Regulations are respected.

(76) The participating Member States' authorities confirm that aid under the notified measures may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(77) The participating Member States' authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(78) The participating Member States confirm that, if the beneficiary receives aid on several occasions or in several forms under the Measures A and B under the Fund[30], the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of the Temporary Framework, will be respected. However, aid under the Measures A and B may be granted in addition to aid granted under measures implemented by the participating Member States outside the Fund under section 3.1 of the Temporary Framework.

(79) The participating Member States confirm that aid granted under Measures C and D will not be cumulated with aid granted for the same underlying loan principal under section 3.2 or section 3.3 of the Temporary Framework and vice versa. Aid granted under Measures C and D and under other measures implemented by the participating Member States outside the Fund under section 3.2 and section 3.3 may be cumulated for different debt instruments provided that the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.

(80) Aid granted in the form of subordinated debt instruments under Measures D and section 3.3 may be cumulated for different debt instruments provided the overall amount of subordinated debt instruments per beneficiary is below one of the ceilings set out in recital (71)(i) or (ii), respectively, in line with point 27bis of the Temporary Framework.

(81) A beneficiary may benefit in parallel from schemes under section 3.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) of the Temporary Framework.

3.9. Monitoring and reporting

(82) The participating Member States confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework, including the obligation to publish relevant information on each individual aid

[30] There would be no verification/cumulation with measures that are implemented by participating Member States with measures that are implemented outside the Fund.

granted above EUR 100 000[31], and above EUR 10 000[32] in the agriculture and fisheries sectors, under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting.

4. ASSESSMENT

4.1. Lawfulness of the measures

(83) By notifying the measures before putting it into effect, the participating Member States' authorities have respected their obligations under Article 108(3) TFEU.

4.2. Existence of State aid

(84) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(85) The measures notified by the participating Member States consist in the set-up of the Fund. The Fund will then provide financing to final beneficiaries through various financial intermediaries as described in section 3. Therefore, State aid may be present at several levels. The Commission will therefore need to assess whether State aid is present (i) at the level of the final beneficiaries, (ii) at the level of the financial intermediaries and (iii) at the level of the Fund.

4.2.1. Existence of State aid at the level of the final beneficiaries

(86) The measures are imputable to the participating Member States. The participating Member States decide whether to contribute to the Fund by signing a contribution agreement with the EIBG. Therefore, they decide on providing financing or guarantees to final beneficiaries in line with the objectives of the Fund (increasing the access to finance of predominantly SMEs that are affected by the COVID-19 outbreak). In addition, participating Member States are represented in the Contributors' Committee, which will approve the use of guarantees for individual operations presented by the EIB and/or the EIF. The measures are also financed through State resources. Indeed, the financing to the final beneficiaries is facilitated by the guarantees provided by the Fund, which is financed by guarantees from participating Member States that entail a concrete risk for the State budget to be burdened in case those guarantees are triggered. Moreover, by providing financing at terms better than those in the market, Member States forego part of their resources.

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[31] Referring to information required in Annex III to the GBER. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument will be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

[32] Referring to information required in Annex III to the ABER and Annex III to the FIBER. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument will be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

(87) The measures confer an advantage on its beneficiaries in the form of guarantees on debt instruments on terms that are not in line with what a market operator would require. This is illustrated by the expected loss of the Fund of 20%, which results from the guarantees being provided on terms that are not in line with what a market operator would require (recital (11)). The remuneration charged by the Fund to financial intermediaries is based on the provisions of the Temporary Framework, which is below the pricing market participants require for the same risk. That low remuneration included in the guarantees, results in advantageous financing conditions for the final beneficiaries. The measures thus relieve those beneficiaries of costs which they would have had to bear under normal market conditions. The Commission notes that the participating Member States have not notified other financing activities of the Fund, such as equity and quasi-equity investments, because they consider them to be implemented in line with market conditions. This decision therefore does not cover financing activities of the Fund other than the measures described in section 3.7 of this decision.

(88) The advantage granted by the measures is selective, since it is awarded only to certain undertakings, in particular most measures are limited to smaller companies (see recital (23)) and the measures exclude certain sectors/activities[33].

(89) The measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(90) In view of the above, the Commission concludes that the measures constitute aid within the meaning of Article 107(1) TFEU at the level of the final beneficiaries. The participating Member States' authorities do not contest that conclusion.

4.2.2. Existence of State aid at the level of the financial intermediaries

(91) The guarantees provided by the Fund to financial intermediaries are imputable to the participating Member States. The initial Fund description, including eligibility criteria and initial choice of products, will be approved by the participating Member States as part of their contribution agreements. Therefore, participating Member States decide on providing guarantees to certain intermediaries in line with the objectives of the Fund. In addition, the Contributors' Committee, which consists of representatives of participating Member States, will approve the use of guarantees for individual operations presented by the EIB and/or the EIF (recital (13)). As the Fund is financed through State resources, the guarantees provided by the Fund to the financial intermediaries also constitute State resources (recital (7)).

(92) The guarantees confer an advantage on the financial intermediaries, as the Fund provides guarantees on preferential terms, as the overall net expected loss of the Fund is expected to amount to 20% (recital (11)). The remuneration charged by the Fund to financial intermediaries is based on the provisions of the Temporary Framework, which is below the pricing market participants would charge for the

[33] See footnotes 17 and 18.

same risk. The financing or guarantees therefore provide an advantage to the financial intermediaries that would not exist under normal market conditions.

(93) The advantage granted by the measures is selective, since it is awarded only to certain financial intermediaries that are selected by the EIBG in implementing the measures, following a procedure that includes several phases, including a due diligence phase. While all financial intermediaries are allowed to apply, EIBG will exercise discretion when agreeing to conclude a guarantee agreement between the EIBG and the financial intermediary (recital (26)).

(94) The financing or guarantees are liable to distort competition, since they strengthen the competitive position of the financial intermediaries implementing the measures as compared to others. It also affects trade between Member States, since intra-Union trade exists in the financing sector.

(95) In view of the above, the Commission concludes that the measures constitute aid within the meaning of Article 107(1) TFEU at the level of the financial intermediaries. The participating Member States' authorities do not contest that conclusion.

4.2.3. Existence of State aid at the level of the Fund

(96) The financing provided to the Fund is imputable to the participating Member States, since each participating Member State decides whether to contribute to the Fund and thereby exercises discretion as to the use of State resources. The participating Member States are not under any obligation under Union law to contribute to the Fund. The Fund is financed through State resources, since it is financed by public funds from each participating Member State (recitals (7) and (13)).

(97) Any entity, regardless of its legal status and the way it is financed, carrying out an economic activity by offering goods or services on a market constitutes an undertaking in the meaning of Article 107(1) TFEU.[34] The Fund provides guarantees to the final beneficiaries through financial intermediaries and, therefore, offers a service in the market that competes with other market participants. It follows that the Fund is an undertaking.

(98) However, the Commission considers that the Fund is established in order to enable the provision of guarantees from the resources made available jointly by the participating Member States. Therefore, the Commission considers that the Fund is an intermediary vehicle for the transfer of resources of the aid measures to financial intermediaries and ultimately to the final beneficiaries. The Fund is therefore not the direct beneficiary of the aid measures subject to this decision.

(99) The contributions confer an advantage on the Fund, as the participating Member States provide financing to the Fund on preferential terms, i.e. without expecting a market remuneration on their contribution (recital (11)). The contributions therefore provide an advantage to the Fund that would not exist under normal

[34] Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU: C:2006:8, paragraph 107.

market conditions. The Commission notes that the accounts of the Fund, from which the guarantees will be provided to the financial intermediaries, are kept separately from other EIBG activities. Therefore, the Fund is a ring-fenced entity and the guarantees do not benefit the other activities of the EIBG.

(100) The advantage granted by the participating Member States is selective, since it is awarded only to the Fund.

(101) The contributions to the Fund are liable to distort competition, since they strengthen the competitive position of the Fund as compared to other financial intermediaries such as guarantee institutions. It also affects trade between Member States, since intra-Union trade exists in the financing sector.

(102) In view of the above, the Commission concludes that it cannot be excluded that the measures constitute aid within the meaning of Article 107(1) TFEU at the level of the Fund.

4.3. Compatibility

4.3.1. Compatibility of aid to the final beneficiaries

(103) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.

(104) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "to remedy a serious disturbance in the economy of a Member State".

(105) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (section 2) that "the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings". The Commission concluded that "State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs".

(106) The Temporary Framework contains sections 3.1 and 3.2 in which the Commission explains how it will assess aid in the form of limited amounts of aid and aid in the form of loan guarantees.

(107) The measures assessed in this decision have several similarities with loan guarantee schemes covered by the Temporary Framework under sections 3.1 or 3.2. The main difference is that the measures provide for a longer maximum timeframe within which the guaranteed transactions can be concluded, namely until 31 December 2021, whereas points 22(d) and 25(c) of the Temporary Framework in its version applicable at the date of adoption of this decision require the aid to be provided (or the loan contracts to be signed) at the latest by 30 June 2021 (recital (22)). In addition, the measures include different cumulation provisions than the ones included in the Temporary Framework: for measures designed by analogy with section 3.1 of the Temporary Framework, only measures of the Fund need to be taken into account for the assessment of whether the overall maximum cap per undertaking is not exceeded (recital (78)). It will not

take into account measures that are implemented by participating Member States under measures approved on the basis of section 3.1 of the Temporary Framework outside the Fund.

(108) The Commission will assess the measures based on the general criteria for compatibility under Article 107(3)(b) TFEU. In doing so, the Commission takes into account the particular nature of the notified measures, in particular the fact that a large number of Member States participate in the guarantee and that they share the risk stemming from the use of the Fund regardless of the level of their contributions to the Fund. The Commission recognises that the setting up of a Fund of this type bears higher administrative complexity than the setting up of pure national schemes, and that the timeframe provided for in the Temporary Framework (i.e. that aid must be granted no later than 30 June 2021) might, therefore, be too short. The set-up of the Fund nonetheless pursues similar objectives as the national schemes under the Temporary Framework, which in turn are based on the application of Article 107(3)(b) TFEU. The Commission therefore considers it appropriate to assess the measures directly under Article 107(3)(b) TFEU. The Temporary Framework can provide guidance and its principles can be applied in analogy *mutatis mutandis* as far as relevant.

(109) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member States concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

Appropriateness

(110) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the economy. This would not be the case if the disturbance would also disappear in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

(111) The measure aims at maintaining access to loans at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of the participating Member States.

(112) The measure is one of a series of measures conceived at national and Union level to remedy a serious disturbance in their economy. The Commission considers it important to stimulate lending by private credit institutions to eligible undertakings during the COVID-19 outbreak and the measures are of a scale, which can be reasonably anticipated to produce effects across the entire Union economy.

(113) The aid will be granted no later than 31 December 2021. Therefore, the measures do not meet the condition of point 22(d) and 25(c) of the Temporary Framework (recital (107)). However, the Commission notes that a large number of Member States participate in the Fund and they share the risk stemming from the use of the Fund. By sharing the risks and losses between Member States, this helps to remedy a serious disturbance in the economy of an individual Member State (high

losses in one Member State may otherwise affect more significantly the overall fiscal and economic situation of that Member State). The Commission also recognises that setting up of a Fund of this type bears higher administrative complexity than the setting up of pure national schemes, for which the timeframe in the Temporary Framework might be too short. Therefore, the Commission considers that this deviation from points 22(d) and 25(c) of the Temporary Framework does not affect the appropriateness of the measures.

(114) Therefore, the Commission considers that the measures are appropriate, as they address the current malfunctioning of the credit markets with its associated imminent and serious risks of a significant further damage to the real economy of the participating Member States.

Necessity

(115) In order to meet the compatibility criterion of necessity the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach that objective.

(116) The participating Member States have chosen to implement a guarantee scheme through the EIBG. This scheme encourages credit institutions to continue lending to the real economy, while ensuring that economic incentives are in place for the credit institutions to focus on viable companies, since qualifying loans are not granted automatically to customers but are subject to a case-by-case decision of the credit institutions. In this regard, the Commission takes positive note of the maximum guarantee coverage of predominantly 70% and 80%, respectively, with a guarantee coverage of 90% only existing in some cases for Measure A, not representing the norm (see recitals (41), (43), (52) and (65)). This ensures that the relevant loan decisions of credit institutions still have an important economic orientation.

(117) The Commission also notes that firms already in difficulty (situation as of 31 December 2019), within the meaning of the GBER, ABER or FIBER, respectively, are excluded from benefitting from the measures, except for micro and small enterprises which are not in insolvency proceedings and which have not received rescue aid or restructuring aid (see recital (24)). The measures therefore respect the objective of points 22(c), 22(c)bis, 25(h) and 25(h)bis of the Temporary Framework which aims at targeting the schemes to companies which only ended up in difficulties because of the COVID-19 outbreak.

(118) Based on the above, the Commission concludes that the measures are limited to the amount and form necessary to achieve the objective pursued to ensure continued lending to fundamentally sound enterprises, which should help to mitigate the serious disturbance of the economy of the participating Member States. Therefore, the Commission concludes that the measure is necessary to the objective of mitigating a serious disturbance of the economy of the participating Member States.

Proportionality

(119) For its proportionality assessment, the Commission will apply the conditions of the Temporary Framework mutatis mutandis[35]. The Commission will assess those conditions for each of the measures.

(120) In particular for Measures A and B:

(i) The aid takes the form of (counter)guarantees on various financial instruments such as senior loans, financial leasing products, revolving credit lines (including overdrafts), documentary finance (bank guarantees, letters of credit, bid bonds), factoring, subordinated loans and quasi-equity (see recital (31)). The overall nominal value of the (counter-)guarantees does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products or EUR 800 000 per undertaking active in other sectors (recital (32)). The Commission notes that the participating Member States only committed to ensure that the overall maximum cap per undertaking is not exceeded when measures are granted to undertakings with the backing of the Fund (recital (78)). The Member States will not take into account measures that are implemented by participating Member States under section 3.1 outside the Fund. Therefore, Measures A and B do not fully comply with point 22(a) and 23(a) of the Temporary Framework related to cumulation of aid. The Commission considers that monitoring the maximum cap across national schemes as well as Measures A and B would create a significantly higher degree of administrative complexity due to the large number of participating Member States. In addition, the share of each participating Member State in the nominal amount guaranteed is limited, since risks/losses are shared between participating Member States. Therefore, the aid per participating Member State provided to an undertaking under Measures A or B will also be limited. In light of the above, the Commission considers that this deviation from points 22(a) and 23(a) of the Temporary Framework does not affect the proportionality of the Measures A and B.

(ii) Aid is granted under the measures on the basis of a scheme with an estimated budget as indicated in recital (19). Measures A and B therefore meet the conditions of point 22(b) of the Temporary Framework;

(iii) Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019, except for micro and small enterprises which are not in insolvency proceedings and which have not received rescue aid or restructuring aid (see recital (24)). Measures A and B therefore meet the conditions of point 22(c) and point 22(c)bis of the Temporary Framework;

[35] Except for points 22(d) and 25(c), which rather ensure that the aid is appropriate and does not relate to the proportionality of the aid. Those points are therefore mentioned in the relevant section.

(iv) Aid granted to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recital (35)). Measures A and B therefore meet the conditions of with point 22(e) of the Temporary Framework;

(v) Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (35)). Measures A and B therefore meet the conditions of with point 23(b) of the Temporary Framework;

(vi) Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in subparagraphs (a) to (k) of Article 1(1) of Commission Regulation (EU) No 717/2014 (recital (35)). Measures A and B therefore meet the conditions of point 23(c) of the Temporary Framework;

(vii) Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, participating Member States will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 120 000 is not exceeded per undertaking (recital (35)). Measures A and B therefore meet the conditions of point 23bis of the Temporary Framework.

(viii) Lastly, the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (29)).

(121) In particular for Measure C:

(i) Measure C sets minimum levels for guarantee premiums of 70 bps and 141 bps for guarantees with a maturity of 6 years granted to SMEs and large enterprises, respectively (recital (53)). The measure uses – by analogy – the flexibility granted by point 25(b) of the Temporary Framework by allowing a lower guarantee premium for guarantees with a lower guarantee coverage (70%). It also allows the flexibility granted by point 25(b) of the Temporary Framework by allowing a flat premium for the entire duration of the guarantee (where it is higher than the minimum premiums in the table of point 25(a) of the Temporary Framework). The measure therefore meets the conditions of point 25(a) and (b) of the Temporary Framework;

(ii) The maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (54)). As explained in recitals (55) and (56), the possibility to rely on the two options set out in points 25(d)(i) and (ii) of the Temporary Framework or, alternatively, a third option relying on the beneficiary's justified liquidity needs based on self-declaration enables the

Fund to adapt to different delivery modes on the ground. The Commission recognises that Measure C will be implemented in different Member States, markets and via a large range of financial intermediaries, targeting different segments of final beneficiaries (from retail lending to corporate SME and small mid-caps). Accordingly, different financial intermediaries may need to opt to structure the rules of Measure C in different ways, using all three of the above options or choosing to simplify the operational procedures and using only one or two of those thresholds. The Commission also recognises that setting up of a Fund of this type bears higher administrative complexity than the setting up of pure national schemes. Therefore, the Commission considers that the use of the third option is also justified for this measure;

(iii) The measure limits the duration of the guarantees to a maximum of six years (recital (51)). Those guarantees cover 70% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the Fund (recital (52)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (54)). The measure therefore meets the conditions of point 25(f) of the Temporary Framework;

(iv) Guarantees granted under the measure relate to investment and working capital loans (recital (44)). The Commission notes that the measure applies also to other business finance facilities such as factoring with recourse[36], financial leases and invoice finance. The Commission considers that those other facilities produce the same economic effects as taking a loan from a bank and can, therefore, be covered by the guarantees under the Fund. With regard to those facilities, the measure therefore meets the conditions of point 25(g) of the Temporary Framework;

(v) The Commission further notes that guarantees may also be granted for documentary finance products (bank guarantees, bid/performance bonds, letters of credit) (recitals (45) to (49)). In general, those products also facilitate the execution of economic activities by final beneficiaries. This subsequently enables liquidity to circulate within the economy, originated from the buyer of the product or service. Moreover, such documentary finance products may create liquidity themselves when called upon. Measure C will be implemented in a large number of Member States, with differing characteristics of their financial system, and through many financial intermediaries who may be specialised in providing financing in the form of such products rather than senior loans or products comparable to loans discussed in letter (iv) of this recital. In order to also reach those undertakings that rely on these types of financing to cover their financing

[36] The measure also consists of guarantees on factoring products with a recourse to the factoree. Those products have the immediate effect of providing liquidity in return for a repayment obligation of the factoree. The factoring contract specifies further elements, including a discount on the amount of liquidity provided, which is equivalent to an interest payment, and the payment period on the invoice, which is equivalent to a loan maturity. In essence, those products therefore entail the provision of credit by the factor to the factoree in return for an interest based fee. Those types of factoring products covered by this measure are thus equivalent to loans and the measure is therefore assessed under section 3.2 of the Temporary Framework.

needs, the inclusion of documentary finance products is needed. Therefore, the Commission considers that this deviation from point 25(g) of the Temporary Framework does not affect the proportionality of Measure C;

(vi) Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019, except for micro and small enterprises which are not in insolvency proceedings and which have not received rescue aid or restructuring aid (see recital (24)). Measure C therefore meets the conditions of point 25(h) and 25(h)bis of the Temporary Framework;

(vii) Lastly, the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (29)).

(122) In particular for Measure D:

(i) Measure D sets minimum levels for guarantee premiums as outlined in recital (66), for qualifying loans with a maturity of up to 6 years granted to SMEs and large enterprises, respectively (recital (23)). The measure uses – by analogy – the flexibility granted by point 25(b) of the Temporary Framework by allowing a lower guarantee premium for guarantees with a lower guarantee coverage (80% or lower) and a lower duration. The Commission considers that a shorter duration of the guarantees allows for a lower premium for the following reasons. In the case of a guarantee of up to four years, the loan recipient will not benefit from either the guarantee or the reduced interest rate obtained as a result of the guarantee on their loans in years 5 and 6, in comparison with a loan recipient who received a guarantee on a loan for the six years allowed under point 25(f). A shorter duration of the guaranteed loan will thus entail a reduced advantage for the recipient of the guaranteed loan in comparison to a loan of six years. A reduced premium for guarantees of shorter duration also reflects the incentive to repay the aided loan as soon as possible (similarly expressed in the approach of a premium increasing over time, as provided by point 25(a) of the Temporary Framework). To determine the discount on the guarantee fee taking into account this shorter duration, the Commission determined a market pricing for a guarantee of a six years loan, determined the level of advantage per year in comparison to that market pricing, and then compared the level of aid for a guarantee of six years and a guarantee of four years or less. On the basis of that comparison, the Commission concludes that the premiums put forward by the participating Member States for a guarantee with a shorter duration are proportionate to the reduced advantage in comparison with the minimum premiums set out in point 25(a) of the Temporary Framework for a guarantee of six years. The proposed premiums also include the flexibility granted by point 25(b) of the Temporary Framework by allowing a flat premium for the entire duration of the guarantee (where it is higher than the minimum premiums in the table of point 25(a) of the Temporary Framework). The measure therefore meets the conditions of point 25(a) and (b) of the Temporary Framework;

(ii) The maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (68)). As explained in recitals (69) and (70), the possibility to rely on the two options set out in points 25(d)(i) and (ii) of the Temporary Framework or, alternatively, a third option relying on the beneficiary's justified liquidity needs based on self-declaration enables the Fund to adapt to different delivery modes on the ground. The Commission recognises that Measure D will be implemented in different countries, markets and via a large range of financial intermediaries, targeting different segments of final beneficiaries (from retail lending to corporate SMEs and small mid-caps). Accordingly, different financial intermediaries may need to opt to structure the rules of Measure D in different ways, using all three of the above options or choosing to simplify the operational procedures and using only one or two of those thresholds. The Commission also recognises that setting up of a Fund of this type bears higher administrative complexity than the setting up of pure national schemes. Therefore, the Commission considers that the use of the third option is also justified for this measure;

(iii) The measure limits the duration of the guarantees to a maximum of six years (recital (64)). Those guarantees cover 80% of the loan principal and losses stemming from the loans are sustained proportionally[37] and under the same conditions by the credit institutions and the Fund (recital (65)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (68)). The measure therefore meets the conditions of point 25(f) of the Temporary Framework;

(iv) Guarantees granted under the measure relate to investment and working capital loans (recital (63)). The Commission notes that the measure applies also to other business finance facilities such as supply chain finance (in the form of reverse factoring)[38] and financial leases. The Commission considers that those other facilities produce the same economic effects as taking a loan from a bank and can, therefore, be covered by the guarantees under the Fund. The measure therefore meets the conditions of point 25(g) of the Temporary Framework;

(v) The Commission further notes that guarantees may also be granted under the measure for bank guarantees (recital (63)). In general, bank guarantees also facilitate the execution of economic activities by final beneficiaries. This subsequently enables liquidity to circulate within the economy, originated from the buyer of the product or service. Moreover, such guarantees may create liquidity themselves when called upon. Measure D will be implemented in a large number of Member States, with differing characteristics of their financial system, and through many financial

[37] While the overall losses for the Fund may also in certain cases be limited by a cap rate that is applied to a portfolio of loans of a financial intermediary (up to 35% on the underlying portfolio exposure).

[38] It consists of reverse factoring with a recourse to the factoree. Eligible reverse factoring products are limited to products that are used only after the seller has already provided his/her part of the transaction, i.e. the product or service has been delivered (recital (50)). Therefore, it is thus equivalent to loans and the measure is therefore assessed under section 3.2 of the Temporary Framework.

intermediaries who may be specialised in providing financing in the form of such products rather than loans. In order to also reach those undertakings that rely on these types of financing to cover their financing needs, the inclusion of bank guarantees is needed. Therefore, the Commission considers that this deviation from point 25(g) of the Temporary Framework does not affect the proportionality of Measure D;

(vi) Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019, except for micro and small enterprises which are not in insolvency proceedings and which have not received rescue aid or restructuring aid (see recital (24)). Measure D therefore meets the conditions of point 25(h) and point 25(h)bis of the Temporary Framework;

(vii) Lastly, the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (29)).

(123) Measure D also includes (counter-)guarantees on subordinated loans. The specific provisions on subordinated loans in point 27bis in section 3.3 (i.e. pricing and maximum amounts) of the Temporary Framework will be applied mutatis mutandis:

(i) The applicable guarantee premiums for subordinated debt are equal to the amounts mentioned for senior loans plus 150 bps for SMEs and 200 bps for large enterprises (recital (72)). The measure therefore is in line with the extra guarantee premium required for subordinated debt as included in point 27bis of the Temporary Framework;

(ii) The maximum amount of the subordinated debt per beneficiary is limited to:

(a) two thirds of the annual wage bill of the beneficiary for large enterprises and the annual wage bill of the beneficiary for SMEs, as defined in point 27(d)(i) of the Temporary Framework; or

(b) 8,4% of the beneficiary's total turnover in 2019 for large enterprises and 12,5% of the beneficiary's total turnover in 2019 for SMEs (recital (71)).

The measure therefore meets the conditions of point 27bis (i) and (ii) of the Temporary Framework.

(124) Based on the above, the Commission concludes that the features described above ensure that the measures are proportionate to the objective pursued.

(125) The participating Member States confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (82)). The participating Member States further confirm that the aid under the measure may only be cumulated with other aid (except for the cumulation provisions assessed in recital (120)), provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (75) to (81)). On this basis, the

Commission considers that the requirements of section 4 of the Temporary Framework are met.

Conclusion

(126) The Commission therefore considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU.

4.3.2. *Compatibility of aid to the financial intermediaries*

(127) The Temporary Framework notes that where aid is provided in the form of public guarantees pursuant to section 3.2 and section 3.1 through credit institutions or other financial institutions as financial intermediaries, it may also constitute an indirect advantage to those financial intermediaries. Where there are sufficient safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions, that indirect aid can also be considered compatible with the internal market under Article 107(3)(b) TFEU.

(128) The measures are designed in an appropriate manner to minimise the possible indirect aid to the credit institutions, which helps to limit undue distortions to competition. The proposed scheme introduces the following safeguards in relation to the possible indirect aid:

(i) The measures only apply to newly granted instruments[39], excluding the provision of State guarantees to legacy exposures (recitals (31), (44) and (63)), thereby limiting the probability that financial intermediaries benefit unduly;

(ii) The Fund is open to all financial intermediaries who wish to conclude a guarantee agreement with the administrator of the measures and therefore the Commission considers that competition between financial intermediaries will contribute to the aid being passed on to final beneficiaries to the maximum extent possible;

(iii) Under the measures A, B and C, the Commission notes that the guarantee agreement between the EIF as administrator and the financial intermediary will contain contractual specific obligations for the financial intermediary to operate a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries. The financial intermediary will demonstrate the transfer of the advantage either by reducing the credit risk or guarantee premium compared to its standard pricing applicable to the final beneficiaries or by other means, as described in recitals (36) to (40) and (58) to (62);

(iv) Similarly, under Measure D, the financial intermediary will have to pass on to the final beneficiary the difference (a-b) between (a) the risk margin usually charged by the financial intermediary, in line with its internal

[39] With the exception of qualifying loans granted from 1 April 2020 in order to prevent any possibility of arbitrage where participating credit institutions would have renewed existing loans at preferential terms immediately before the entry into force of the scheme.

pricing policy, and (b) the guarantee fee charged for the respective loan by the EIB (recital (73)). In circumstances where that mechanism cannot be implemented (such as for supply chain finance), alternative methods will be applied to demonstrate the transfer of the advantage (recital (74)).

(129) Therefore, the Commission considers that those safeguards ensure that the financial intermediaries, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries. The measure therefore meets the conditions – by analogy – of points 28 to 31 of the Temporary Framework.

Conclusion

(130) The aid to the financial intermediaries involved in the implementation of the Fund can therefore also be considered compatible with the internal market under Article 107(3)(b) TFEU.

4.3.3. Compatibility of potential aid to the Fund

(131) The Commission noted above that it cannot exclude the possibility that there is aid to the Fund. Therefore, the Commission needs to assess whether any such potential aid is compatible with the internal market.

(132) The Commission finds that the Temporary Framework is not applicable to any potential aid granted to the Fund. The Temporary Framework does not directly include conditions for fund structures, as a financial intermediary, by which any indirect potential aid to the Fund could be considered compatible. The Commission will therefore assess the compatibility of any potential aid to the Fund based on the general criteria for compatibility under Article 107(3)(b) TFEU. However, the objectives of the Temporary Framework can provide guidance as far as relevant.

(133) As for any derogation from the prohibition of State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member States concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

(134) The Commission concluded in the Temporary Framework that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*". The Commission notes that the objective of any potential aid to the Fund is to implement a structure, which enables that credit risk is pooled across all of the participating Member States. This enables that the average cost of the Fund can be significantly reduced compared to the situation where such schemes are implemented at national level (recital (7)).

(135) Through the Fund, the participating Member States implement measures that the Commission has assessed as necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State (see reasoning in sections

4.3.1 and 4.3.2 above). Any potential aid granted to the Fund is therefore necessary to attain the same objectives and is thus justified to remedy a serious disturbance in the economy of the participating Member States.

(136) In order to be appropriate, the aid has to be well-targeted to its objective, i.e. in this case to remedy a serious disturbance in the economy. This would not be the case if the disturbance also disappeared in the absence of the measures or if the measures were not appropriate to remedy the disturbance.

(137) Any potential aid to the Fund aims at enabling a structure at Union level, which can be used to restore the liquidity position of companies at a time when the normal functioning of credit and capital markets is severely disturbed by the COVID-19 outbreak. The Commission also notes that this outbreak is affecting the wider economy and is leading to severe disturbances of the real economy of Member States. On that basis, the Commission considers that the aid to the Fund is appropriate.

(138) In order to meet the compatibility criterion of necessity, the aid measure must in its amount and form, be necessary to achieve the objective. Moreover, in order to be proportionate, the measure must be limited to the minimum amount necessary to reach that objective.

(139) The structure of the Fund enables that credit risk is pooled across all of the participating Member States. This enables a significant reduction of the average cost of the Fund compared to the situation where such schemes are implemented at national level. The Commission considers that through such a structure, any potential aid to the Fund is to also be regarded as proportionate and to reflect the minimum aid necessary to enable the implementation of measures, which themselves are proportionate to remedy a serious disturbance in the economy of a Member State.

(140) Based on the above, the Commission concludes that any potential aid to the Fund under the measures is limited to the amount and form necessary to achieve the objective pursued to ensure continued lending to fundamentally sound enterprises, which are necessary to the objective of mitigating a serious disturbance of the economy.

(141) For the assessment of the proportionality of the aid, the Commission moreover notes that the Fund is set up to be temporary in nature. The initial investment period for operations approvals will be until 31 December 2021. The support provided to the Fund will only be used to implement measures, which in themselves are proportionate to the objective pursued. Any residual cash flows will be distributed back to each participating Member State, after deduction of relevant costs or losses, pro rata to their contribution (recitals (8) and (12)).

(142) Based on the above, the Commission concludes that the features described above ensure that any potential aid to the Fund under the measures is proportionate to the objective pursued.

Conclusion

(143) The Commission, therefore, considers that, if the Fund were to be considered as a beneficiary of aid, any potential aid at the level of the Fund is compatible with the internal market under Article 107(3)(b) TFEU.

5. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND, WHERE APPLICABLE, REGULATION (EU) 806/2014

(144) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"**BRRD**"**)[40] and, where applicable, of Regulation (EU) 806/2014 on the Single Resolution Mechanism (**"**SRMR**"**), [41] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD and, where applicable, the SRMR.

(145) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[42] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measures does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and, where applicable, Article 3(1)(29) SRMR.

(146) Moreover, as indicated in recital (128), the measures introduce safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(147) The Commission therefore concludes that the measures do not violate any intrinsically linked provisions of the BRRD and, where applicable, the SRMR.

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[40] OJ L 173, 12.6.2014, p. 190.

[41] OJ L 225, 30.7.2014, p. 1.

[42] Points 6 and 29 of the Temporary Framework.

6. Conclusion

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
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