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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.

Subject: State Aid SA.63422 – SA.63443 (2021/N)
Synthetic securitisation product under the Pan-European Guarantee Fund in response to the COVID-19 crisis

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Excellencies,

1. PROCEDURE

(1) By decision of 14 December 2020[1] ("the initial decision"), the Commission approved four aid measures to be implemented by the European Investment Bank Group ("the EIBG") under the Pan-European Guarantee Fund ("the Fund" or "EGF") established in response to the COVID-19 pandemic. The objective of the Fund is to help ensure that small and medium-sized enterprises ("SMEs") and large companies in the Member States participating in the Fund have sufficient liquidity available to withstand the economic impact of the pandemic. An overall description of the Fund can be found in section 2 of the initial decision.

(2) By electronic notification in 2021, Belgium (9 August), Bulgaria (30 June), Denmark (16 July), Germany (24 June), Ireland (15 June), Greece (15 July), Spain (24 June), France (17 June), Croatia (25 June), Italy (20 July), Cyprus (6 July), Lithuania (8 July), Luxembourg (9 July), Malta (3 August), the Netherlands (24 June), Austria (7 July), Poland (16 June), Portugal (9 July), Slovenia (15 July), Slovakia (13 July), Finland (22 June) and Sweden (24 June) ("the participating Member States") notified aid in the form of a guarantee on synthetic securitisation tranches ("the (EGF) synthetic securitisation product" or "the (aid) measure") pursuant to Article 108(3) of the Treaty on the Functioning of the European Union[2] ("TFEU").

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

(4) 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[3] and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. General description of the EGF synthetic securitisation product

(5) The participating Member States plan to let the EIBG implement the EGF synthetic securitisation product as a fifth aid measure under the Fund.

[1] 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, OJ C 84, 12.3.2021, p. 4.

[2] OJ C 202, 7.6.2016, p. 47.

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

(6) The purpose of the synthetic securitisation product is to help originate new, riskier lending by financial intermediaries to SMEs[4] ("the final beneficiaries"). That would be accomplished by freeing up lending capacity of financial intermediaries and as such preventing that intermediaries' resources are shifted towards lower-risk assets instead of SME loans. The participating Member States argue that the risk of such a shift exists given the COVID-19-related economic crisis, which is expected to lead to downgrades in intermediaries' existing loan books and therefore to increasing demands on those intermediaries' regulatory capital. By implementing the measure under the Fund characterised by a risk-sharing among the participating Member States, the participating Member States also argue that the EGF synthetic securitisation product will help level the playing field for financial intermediaries to facilitate SME financing irrespective of those financial intermediaries' location or regulatory status.

(7) Synthetic securitisation (in particular on-balance-sheet securitisation) is a financial technique whereby an originating entity (typically a financial intermediary) identifies a pool of existing assets (e.g. a portfolio of loans) which it holds on its balance sheet, creates tranches with different risk/reward profiles against that pool, and subsequently transfers a part of the risk stemming from the pool by buying protection from a protection seller. In return, the originating entity pays a premium to the protection seller.[5] The protection typically takes the form of a guarantee on one (or several) of the risk tranches, in which case the premium typically takes the form of a guarantee fee. When losses occur in the securitised pool of assets (e.g. upon the failure by a borrower to repay one of the loans in the securitised portfolio of loans), the guarantor will cover the part of those losses which are allocated to the risk tranche(s) which it guarantees. Losses are allocated to the risk tranches according to the ranking of the tranches in terms of loss absorption: the junior tranche absorbs losses first (therefore it is also called the first-loss piece and carries the most risk), followed by the mezzanine tranche (if any), and finally the senior tranche (which therefore carries the least risk). Each risk tranche is defined by an attachment point (i.e. the point from which the tranche will start absorbing losses) and a detachment point (i.e. the point at which the tranche will stop absorbing further losses), whereby both points are expressed in terms of percentage points of the securitised amount. Based on the quality of the assets in the securitised pool, the protection seller will estimate the expected loss for the guaranteed tranche(s), based on which it will determine the premium to be paid by the originating entity. The premium is calculated based on the amount of the protected risk tranche

[4] 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.

[5] Unlike in a cash securitisation transaction (also called true-sale or off-balance-sheet securitisation transaction), the legal ownership of the pool of assets remains with the originating entity: there is thus no transfer of assets or cash between the originating entity and the protection seller at the signing of the transaction.

outstanding in the moment when the premium is to be paid. For originating entities subject to regulatory capital requirements, the transfer of risk to the protection seller lowers the regulatory capital consumption of the securitised pool of assets and thereby frees up regulatory capital which the entity can redeploy for other purposes.

(8) Under the EGF synthetic securitisation product, a financial intermediary identifies a portfolio of existing loans which fulfils a set of pre-established requirements[6] ("the existing portfolio" or "the securitised portfolio") and seeks credit risk protection in the form of an unconditional and irrevocable EGF guarantee. The financial intermediary is then contractually obliged to use the regulatory capital relief obtained thanks to the EGF guarantee to build up a new portfolio of instruments which fulfils a set of pre-established requirements[7] ("the new portfolio") and which meets the liquidity needs of SMEs as the final beneficiaries. In addition, the financial intermediary will have to pay a guarantee fee to the EIBG which is set in line with the retrocession mechanism, which incentivises the financial intermediary to build up the new portfolio fulfilling the set of pre-established requirements.[8] A schematic overview of the EGF synthetic securitisation product can be found in Annex 1 to the present decision.

(9) The participating Member States have earmarked a budget of EUR 1.4 billion (out of the total EGF budget up to EUR 25 billion) for the EGF synthetic securitisation product, whereby the budget is expressed in terms of the notional amount of the risk tranches benefitting from an EGF guarantee. With this budget, the participating Member States expect the EGF synthetic securitisation product to originate at least EUR 13 billion in new lending to SMEs (out of the total EGF new lending target of EUR 200 billion). The EGF product mix can be recalibrated in response to market demand and the optimisation of key performance indicators.

(10) The participating Member States note that EGF synthetic securitisation product is a COVID-19 related crisis measure. Therefore, the EIBG can sign EGF synthetic securitisation transactions with financial intermediaries until 30 June 2022, in line with the approval obtained by the Contributors' Committee.

2.2. Eligible financial intermediaries

(11) Financial intermediaries eligible for the EGF synthetic securitisation product include commercial banks, financial institutions, leasing companies, special-purpose vehicles, private credit funds, alternative lenders, crowd lenders and micro-finance institutions.[9]

(12) A financial intermediary which is subject to resolution or liquidation or which is in the process of requesting a precautionary recapitalisation at the moment when the

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6 See section 2.4.2.

7 See section 2.6.

8 See section 2.8.

9 National promotional banks and institutions are not considered as eligible financial intermediaries for the EGF synthetic securitisation product.

EIBG would appraise an EGF synthetic securitisation transaction planned by that financial intermediary is not eligible for the EGF synthetic securitisation product.

(13) The EGF guarantee on an EGF synthetic securitisation transaction may be obtained by a different entity than the entity (or entities) which is (are) obliged to build up the new portfolio, but only if both (or all) entities belong to the prudential scope of consolidation[10] of the same financial intermediary.

2.3. Contractual relationships under the EGF synthetic securitisation product

(14) The signing of an EGF synthetic securitisation transaction by a financial intermediary entails the signature of at least the following key agreements governing the contractual relationship between the financial intermediary and the EIBG:

(a) a guarantee agreement;

(b) a retrocession agreement;

(c) a side letter clarifying the categorisation of final beneficiaries as SMEs.

(15) The contractual relationship between the financial intermediary and a final beneficiary is governed by a loan agreement[11] in which the financial intermediary has to incorporate certain clauses or which the financial intermediary must supplement with a separate agreement or side letter. The purpose of these clauses, separate agreement or side letter is, at least, to indicate to the final beneficiary that its loan benefits from the involvement of the EIBG through a discount on the market-conform interest rate which the financial intermediary would have charged if it had not entered into an EGF synthetic securitisation transaction.

2.4. The securitised portfolio

2.4.1. The EIBG's assessment of the existing portfolio to be securitised

(16) When a financial intermediary proposes an existing portfolio to be securitised under an EGF synthetic securitisation transaction, the EIBG will conduct a due diligence of the portfolio based on loan-by-loan information, including an analysis of historical default and recovery data. During this credit analysis, the EIBG will pay particular attention to the quality of the existing portfolio by assessing for instance the degree of diversification and granularity of the portfolio and the quality of the existing loans to be included (based on indicators such as the loans' probability of default, loss-given-default, level of seniority, secured/unsecured nature, restructuring history, etc.). The credit analysis yields amongst others the portfolio's cumulative default probability and the associated timing, the cumulative loss-

[10] Pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1.

[11] Or an equivalent agreement for financing leases and guarantees (see recital (30)).

given-default and the associated timing, correlation, amortisation profile and weighted average life[12] ("WAL").

(17) Once the due diligence of the proposed existing portfolio by the EIBG has been completed and the existing portfolio has been determined, a junior tranche, mezzanine tranche (if any) and senior tranche will be created against that portfolio. After this tranching process, the EIBG will conduct a cash flow assessment, which yields, amongst others, an estimate of the lifetime expected loss and the WAL of the risk tranche which the EGF would guarantee under the EGF synthetic securitisation transaction. The EIBG will use the assessment of the risk of the tranche to be guaranteed as input to determine the level of the guarantee fee to which the retrocession mechanism will apply.[13]

(18) If the EGF guarantee will be given on the mezzanine tranche, the EIBG will use the results of its credit analysis and cash flow assessment to assign an EIBG internal credit rating to that tranche. The junior tranche is not rated.

(19) The participating Member States note that the EIBG's methodologies for the credit analysis, cash flow assessment and internal rating assignment reflect the methodologies applied by well-established credit rating agencies. For securitisation transactions in which the EIBG participated in the past and which involved risk tranches, which received both an internal credit rating by the EIBG and a credit rating by an external credit rating agency, the participating Member States note that […](*). The participating Member States also note that these methodologies are both, internally and externally audited.

(20) The participating Member States note that the EIBG's assessment of the existing portfolio proposed by a financial intermediary for securitisation under the EGF synthetic securitisation product is based on the standard policies and procedures, which the EIBG also applies to similar transactions concluded under its own resources, albeit adjusted for and complemented by the specific features of the EGF setup.[14]

(21) Even though the EIBG will not (and cannot) invest under its own resources in the junior or mezzanine tranche in the context of an EGF synthetic securitisation transaction and will merely act as an agent for the participating Member States, the

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12 The weighted average life of a portfolio is equal to the average of the weighted average lives of the financial instruments in that portfolio, weighted by each individual financial instrument's principal amount. The weighted average life of a financial instrument (e.g. loan) is equal to the average of the times until the payment of the principal instalments of that financial instrument, weighted by the amount of the principal instalments at each repayment date. The weighted average life of a financial instrument (or of a portfolio of financial instruments) thus expresses the average time during which each euro of unpaid principal of the financial instrument (or the financial instruments in a portfolio) remains outstanding.

* Confidential information.

13 See recital (46).

14 It is recalled from the initial decision that the Fund will be managed by the EIBG in separate accounts, established exclusively for the purpose of the support measures facilitated by the Fund. The transactions which the EIBG enters into under the Fund are thus not done under the EIBG's own resources.

participating Member States note that it is adequately incentivised to conduct a prudent assessment of the risk of the EGF synthetic securitisation transactions because it only relies on the revenues stemming from the payment of the guarantee fees by the financial intermediaries to cover its costs of implementing the EGF. If the EIBG thus underestimates the risk of the EGF synthetic securitisation transactions, it becomes more likely that the guarantee fees which the EIBG receives under the EGF synthetic securitisation product fall short of the costs which the EIBG incurs to implement the EGF.[15] In addition, the participating Member States note that the risk profile of the EGF synthetic securitisation transactions would count towards the Fund's pre-set risk appetite corresponding to a target global expected loss of 20%.

2.4.2. The securitised portfolio: requirements

(22) The financial intermediary is only allowed to include exposures in the securitised portfolio which are performing at the moment of their inclusion.

(23) Refinanced loans are not eligible for inclusion in the securitised portfolio.

(24) The risk-weighted assets ("RWA") associated with the loans in the securitised portfolio at the moment of those loans' inclusion in the securitised portfolio and not taking into account the effect of the EGF guarantee shall not exceed any of the following two thresholds:

(a) EUR 1 250 million;

(b) the higher of:

– 15% of the financial intermediary's total RWA, measured at the moment when the EIBG appraises the planned EGF synthetic securitisation transaction;

– the lower of EUR 250 million and 20% of the financial intermediary's total RWA, measured at the moment when the EIBG appraises the planned EGF synthetic securitisation transaction.

According to the participating Member States, these limits do not disproportionally constrain the accessibility of the EGF synthetic securitisation product by financial intermediaries – in particular smaller financial intermediaries – while at the same time preventing that the use of the budget for the EGF synthetic securitisation product would be concentrated with a few large financial intermediaries.

(25) The financial intermediary is not allowed to replenish the securitised portfolio after signing an EGF synthetic securitisation transaction with the EIBG.

[15] As explained in recital (44), the guarantee fees, which the EIBG will receive are calculated by applying a rate to the notional amount of the guaranteed tranche, which is still outstanding in the quarter in question. That outstanding notional amount of the guaranteed tranche shrinks if losses occur in the securitised portfolio and those losses are subsequently allocated to the guaranteed tranche. That in turns lowers the guarantee fees which the EIBG will receive going forward.

2.5. Risk tranches eligible for the EGF guarantee and their characteristics

(26) Under the EGF synthetic securitisation product, the EGF guarantee is given on either the junior tranche or the mezzanine tranche against the securitised portfolio.[16] It is not allowed, however, to give an EGF guarantee on both the junior and the mezzanine tranche.

(27) To be eligible for an EGF guarantee, a mezzanine tranche should have a minimum credit rating of B- or B3, as assigned in accordance with the EIBG's internal rating methodology. There is no minimum credit rating set for junior tranches, as junior tranches are typically not rated.

(28) A junior tranche guaranteed by the EGF cannot exceed 20% of the securitised amount.

(29) The financial intermediary initiating an EGF synthetic securitisation transaction will retain a net economic interest in the securitised portfolio pursuant to the applicable provisions of the EU's regulatory framework for securitisations.[17]

2.6. The new portfolio: requirements

(30) The financial instruments which are eligible for inclusion in the new portfolio are loans, financial leases and guarantees ("the (eligible) loan instruments") which meet SMEs' liquidity needs for investment or working capital purposes (including operational expenditure). Loans could take the form of revolving facilities and term loans (including loans with bullet or balloon repayments).

(31) Loan instruments included in the new portfolio should not create exposures towards activities excluded by the EIBG, as reviewed and amended from time to time under the policies of the European Investment Bank ("EIB") and European Investment Fund ("EIF"), and as already defined[18] in the initial decision.

(32) Loan instruments included in the new portfolio should not benefit from any other State aid support (e.g. a State guarantee given on the basis of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[19] ("the Temporary Framework").

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[16] Given its higher exposure to an existing portfolio's credit risk, an EGF guarantee on a junior tranche creates more regulatory capital relief for a financial intermediary than an EGF guarantee on a mezzanine tranche, *ceteris paribus*.

[17] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35.

[18] See point 27 of the initial decision.

[19] 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

(33) The financial intermediary will build up the new portfolio by originating eligible loan instruments within 18 months from the date on which it has signed the EGF synthetic securitisation transaction with the EIBG ("the inclusion period").[20]

(34) To ensure a level playing field for financial intermediaries of all sizes, including smaller financial intermediaries (which have a correspondingly smaller capacity to structure an EGF synthetic securitisation transaction and subsequently originate the required new portfolio within the pre-established timeframe), the financial intermediary will be allowed to include eligible loan instruments in the new portfolio which have been originated up to six months before the date on which it signed the guarantee agreement with the EIBG.[21] In that case, the financial intermediary will have to amend the original agreement governing the loan instrument by incorporating certain clauses or supplement it with a separate agreement or a side letter related to the EGF guarantee.[22]

(35) At the end of the inclusion period, the total principal amount of the loan instruments, which the financial intermediary included in the new portfolio should have reached a certain level pre-established by the EIBG at the moment of signing the EGF synthetic securitisation transaction ("the target volume of the new portfolio"). The target volume of the new portfolio will be determined such that the following three cumulative requirements are fulfilled:

(a) The RWA associated with the target volume of the new portfolio equal at least 80%[23] of the average[24] regulatory capital relief[25] – expressed in RWA terms as well – which the financial intermediary obtained thanks to the EGF guarantee on a risk tranche of the securitised portfolio;

(b) The target volume of the new portfolio should be such that it complies with the following ranges for the ratio between the total principal amount of the

[20] Given that the EIBG can sign EGF synthetic securitisation transactions with financial intermediaries until 30 June 2022 (see recital (10)), a financial intermediary which signs an EGF synthetic securitisation transaction on the signature deadline (30 June 2022) will have until 31 December 2023 to build up the new portfolio.

[21] This means that the loan instruments included in the new portfolio must be originated within a period of 24 months.

[22] See recital (15).

[23] A buffer of maximum 20% is necessary for the financial intermediary to be able to cover the cost of the EGF guarantee, the fixed cost of setting up and managing the EGF synthetic securitisation transaction (e.g. monitoring compliance and reporting) and the possible volatility of the regulatory capital consumption by the new portfolio.

[24] The average regulatory capital relief obtained thanks to the EGF guarantee on a risk tranche of the securitised portfolio is, for this purpose, calculated as the regulatory capital relief, which the financial intermediary accumulated over a period equal to the WAL of the securitised portfolio thanks to the EGF guarantee, divided by the WAL of the securitised portfolio.

[25] Because an EGF guarantee on a junior tranche creates more regulatory capital relief for a financial intermediary than an EGF guarantee on a mezzanine tranche, an EGF guarantee on a junior tranche will entail the origination of a larger new portfolio, *ceteris paribus*.

loan instruments included in the new portfolio and the size of the EGF guarantee ("the leverage factor"):

– at least four times and up to six times the size of the EGF guarantee, if the EGF guarantee is given on the mezzanine tranche;

– at least six times and up to eight times the size of the EGF guarantee, if the EGF guarantee is given on the junior tranche;

(c) The leverage factor should be equal to or exceed a level pre-established by the EIBG at the moment that the EGF synthetic securitisation transaction is signed ("the target leverage factor of the new portfolio").

(36) At the end of the inclusion period, the WAL of the new portfolio should have reached a certain level pre-established by the EIBG at the moment of signing the EGF synthetic securitisation transaction ("the target WAL of the new portfolio").[26]

(37) The target leverage factor of the new portfolio and the target WAL of the new portfolio – pre-established by the EIBG at the moment that the EGF synthetic securitisation transaction is signed – will be set at respective levels such that the financial intermediary – according to the available information on the securitised portfolio and the new portfolio to be built up – will not be better off in regulatory capital terms by entering into an EGF synthetic securitisation transaction versus not entering into an EGF synthetic securitisation transaction with the EIBG. Operationally, this means that the target leverage factor of the new portfolio and the target WAL of the new portfolio will be determined such that the difference between:

(a) the average regulatory capital consumed by the existing portfolio excluding the regulatory capital relief thanks to the EGF guarantee (i.e. as if the EGF synthetic securitisation transaction had not taken place);

(b) the sum of the average regulatory capital consumed by the existing portfolio including the regulatory capital relief thanks to the EGF guarantee and the average regulatory capital consumed by the new portfolio which complies with all requirements set out in the present section 2.6 (in particular the target volume, the target leverage factor and the target WAL);

does not exceed zero. In sub-points (a) and (b) of the present recital (37), the term "average regulatory capital" equals the regulatory capital accumulated over a period equal to the sum of the inclusion period of 18 months and the WAL of the new portfolio, divided by that sum of the inclusion period of 18 months and the WAL of the new portfolio ("regulatory capital test assessment period").

(38) On all loan instruments originated and included in the new portfolio, the financial intermediary will be contractually obliged to grant a discount on the market-conform interest rate which it would have charged on those instruments if it had not entered into an EGF synthetic securitisation transaction with the EIBG ("the

[26] For WAL of a revolving facility included in the new portfolio is calculated on the basis of the term until the next renewal of the revolving facility.

contractually agreed interest rate discount").[27] The contractually agreed interest rate discount will amongst others be mentioned in the so-called "transparency clause" to be included in the respective loan agreements which underlie the loan instruments included in the new portfolio.[28]

(39) The financial intermediary can choose between:

(a) granting the same level of interest rate discount on all loan instruments included in the new portfolio;

(b) varying the level of interest rate discount granted on the loan instruments included in the new portfolio.

(40) The contractually agreed interest rate discount which the financial intermediary will have to grant on each loan instrument included in the new portfolio will fulfil the following two cumulative requirements:

(a) it should be at least 15 basis points ("the minimum interest rate discount");

(b) the total absolute amount (in euro) corresponding to the contractually agreed interest rate discounts granted on the loan instruments included in the new portfolio equals at least:

– the total absolute amount (in euro) corresponding to the maximum applicable retrocession[29] which the financial intermediary could be entitled to receive over the period in which the guaranteed tranche will be outstanding, if the tranche guaranteed by the EGF is the mezzanine tranche[30];

– the total absolute amount (in euro) corresponding to the minimum non-retained part of the maximum applicable retrocession[31] which the financial intermediary could be entitled to receive over the period in which the guaranteed tranche will be outstanding, if the tranche guaranteed by the EGF is the junior tranche[32].

(41) In addition to granting an interest rate discount on the loan instruments included in the new portfolio pursuant to recitals (38)-(40) above, the financial intermediary may discretionally offer other terms to the final beneficiaries which are more favourable than the terms which it would offer if it had not entered into an EGF

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[27] For eligible loan instruments included in the new portfolio which have been originated up to six months before the date on which the financial intermediary signed the guarantee agreement with the EIBG, the original agreement governing the loan instrument will have to be amended accordingly.

[28] See recital (15).

[29] See recital (48).

[30] See recital (53).

[31] See recital (60)(c).

[32] See recitals (54) and (57).

synthetic securitisation transaction with the EIBG (e.g. maturity extension, reduced collateral requirements). Such other more favourable terms would come on top of the interest rate discount which the financial intermediary is contractually obliged to grant on all loan instruments included in the new portfolio.

(42) The new portfolio will have to achieve a certain level of riskiness ("the target riskiness of the new portfolio").The moment the EGF synthetic securitisation transaction is signed, the EIBG will pre-establish the target riskiness of the new portfolio in comparison to the portfolio composed of loan instruments which the financial intermediary originated between 1 January 2017 and 31 December 2019 and which – at the time of their origination – had similar characteristics in terms of segments and products[33] ("the historical risk benchmark portfolio"). Operationally, this means that, on a like-for-like basis[34]:

(a) the risk weight density of the new portfolio should be at least 15% higher than the risk weight density of the historical risk benchmark portfolio; or

(b) the new portfolio should be characterised by an expected loss which is at least 30% higher than the expected loss of the historical risk benchmark portfolio, if the financial intermediary follows the standardised approach for credit risk.

(43) Before the signing of an EGF synthetic securitisation transaction with a financial intermediary, the EIBG will conduct a qualitative assessment of the ability of the financial intermediary to build up the new portfolio in line with all requirements set out in the present section 2.6 (in particular the target volume, the target leverage factor and the target WAL). A financial intermediary which the EIBG does not deem able to build up the new portfolio in line with all new portfolio requirements may be excluded from participating in the EGF synthetic securitisation product.

2.7. Pricing of the EGF guarantee

(44) In return for the EGF guarantee on a risk tranche of the securitised portfolio in the context of an EGF synthetic securitisation transaction, the financial intermediary will have to pay a guarantee fee to the EIBG on a quarterly basis. The guarantee fee is calculated by applying a rate ("the EGF guarantee rate") to the notional amount of the guaranteed tranche, which is still outstanding in the quarter in question.

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33 For instance, if the new portfolio will consist of new loans to SMEs, then the higher riskiness of the new portfolio will be assessed against a historical risk benchmark portfolio consisting of SME loans which the financial intermediary originated in the years 2017, 2018 and 2019, taking into account the credit risk parameters (e.g. probability of default, loss-given-default, maturity) at the time of origination of those loans.

34 The comparison of the riskiness of the new portfolio and the historical risk benchmark portfolio will take into account and control for regulatory changes (e.g. the early introduction of the SME supporting factor which lowers the risk-weighted assets associated with SME loans, following the Commission's banking package to facilitate lending to households and businesses in the EU proposed on 28 April 2020) which would otherwise distort the comparison.

(45) The EGF guarantee rate applied to calculate the guarantee fee in a given quarter is equal to:

(a) the EIBG rate[35]; plus

(b) a mark-up[36]; minus

(c) the retrocession to which the financial intermediary is entitled[37] ("the applicable retrocession").

A schematic overview of these EGF guarantee price components can be found in Annex 2 to the present decision.

(46) The EIBG rate is set in proportion to the EIBG's assessment of the riskiness of the guaranteed tranche.[38] More specifically, it takes into account the EIBG's assessment of the following four price components:

(a) the annualised expected loss of the guaranteed tranche;

(b) the annual return on capital allocated to cover unexpected losses;

(c) the annual return on capital allocated to cover operational risk;

(d) the annual administrative and transaction cost.

The participating Member States note that these four price components are also considered by financial intermediaries when they price exposures similar to those incurred by the EIBG under the EGF synthetic securitisation product. The participating Member States also note that the price components fluctuate in function of the market environment and available benchmarks.

(47) The mark-up is set at 30 basis points, but applies only if the EGF guarantee is given on the junior tranche.[39]

(48) The maximum level of the applicable retrocession ("the maximum applicable retrocession") will be pre-established by the EIBG at the moment of signing the EGF synthetic securitisation transaction and is equal to the difference of:

(a) the EIBG rate as determined on the basis of the four price components set out in recital (46) above;

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35 See recital (46).

36 See recital (47).

37 See section 2.7.

38 See recital (17). Consequently, given the higher riskiness of an EGF guarantee given on the junior tranche compared to an EGF guarantee given on the mezzanine tranche, the EIBG rate charged to the financial intermediary will be higher in case of an EGF guarantee on a junior tranche than in case of an EGF guarantee on a mezzanine tranche, *ceteris paribus*.

39 There is thus no mark-up if the EGF guarantee is given on the mezzanine tranche.

(b) the EIBG rate which would result from only taking into account the price components of recitals (46)(a), (46)(c) and (46)(d) above[40] ("the EGF rate").

(49) The maximum level of the applicable retrocession shall in any case not exceed 200 basis points per annum.

2.8. The retrocession mechanism

(50) The retrocession mechanism incentivises a financial intermediary participating in the EGF synthetic securitisation product to build up a new portfolio which fulfils all requirements set out in section 2.6 above ("the new portfolio requirements"). The participating Member States note that such an incentive mechanism is necessary because the EGF guarantee is unconditional and irrevocable to ensure that financial intermediaries participating in the EGF synthetic securitisation product are allowed to recognise the regulatory capital relief obtained thanks to the EGF guarantee.

(51) In general terms, the retrocession is a rebate on the EIBG rate,[41] which the financial intermediary is only entitled to receive if it fulfils the new portfolio requirements (in particular the composition criteria, the target volume, the target WAL, the target riskiness and the granting of the contractually agreed interest rate discounts) and if the financial intermediary has paid all the guarantee fees due and payable. The rebate is applied ex-post[42] to the sum of the EIBG rate and the mark-up (if applicable)[43] and therefore lowers the guarantee fee, which the financial intermediary has to pay to the EIBG in return for the EGF guarantee.

(52) The applicable retrocession, which the financial intermediary is entitled to receive varies between zero and the maximum applicable retrocession depending on the financial intermediary's degree of compliance with the new portfolio requirements.[44]

(53) If the EGF guarantee is given on the mezzanine tranche, the financial intermediary has to fully pass on the maximum applicable retrocession, which it is entitled to receive in case of full compliance with the new portfolio requirements, in the form of the contractually agreed interest rate discounts to the benefit of the final

[40] I.e. the price component corresponding to the annual return on capital allocated to covered unexpected losses (see recital (46)(b)) is set at zero. Consequently, the EGF rate is always lower than the EIBG rate so that the retrocession is always positive. The higher the riskiness of the guaranteed tranche, the higher the retrocession.

[41] Because the retrocession is part of the EGF guarantee rate, it only applies to the notional amount of the guaranteed tranche which is still outstanding in the quarter in question.

[42] See recital (56).

[43] See recital (45).

[44] See recitals (56)-(61).

beneficiaries ("target retrocession passed on").[45] [46] [47] This means that if the financial intermediary does not fully comply with the new portfolio requirements, it will at least partially be granting, at its own expense, the contractually agreed (and therefore locked in) interest rate discounts on the loan instruments, which it includes in the new portfolio.

(54) If the EGF guarantee is given on the junior tranche, the financial intermediary will be allowed to retain for itself an incentive of up to 45 basis points, composed of the mark-up of 30 basis points[48] and a part of the retrocession equal to 15 basis points ("the maximum applicable incentive").[49] [50] The financial intermediary is thus not obliged to pass on the retrocession component of this incentive in the form of the contractually agreed interest rate discounts to the benefit of the final beneficiaries. However, the financial intermediary has to fully pass on the minimum non-retained part of the maximum applicable retrocession[51], which it is entitled to receive in case of full compliance with the new portfolio requirements in the form of the contractually agreed interest rate discounts to the benefit of the final beneficiaries ("target retrocession passed on").[52] [53] [54] This means that if the financial intermediary does not fully comply with the new portfolio requirements, it will at least partially be granting, at its own expense, the contractually agreed (and

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[45] Stylised example: the maximum applicable retrocession is 150 basis points, the WAL of the existing portfolio is two years, the WAL target of the new portfolio is four years, and the target leverage factor of the new portfolio is five. Assuming that the financial intermediary chooses to grant the same level of interest rate discount on all loan instruments included in the new portfolio (see recital (39)(a)), then the contractually agreed interest rate discount consistent with a full pass-on of the maximum applicable retrocession equals 15 basis points (i.e. 150 basis points / [(4 years / 2 years) x 5]).

[46] See recital (40)(b), first indent.

[47] The term "target retrocession passed on" is used both in the context of an EGF guarantee on junior and on mezzanine tranches. Its precise definition depends on whether reference is made to the mezzanine or the junior tranche as risk tranche guaranteed by the EGF guarantee.

[48] See recital (47).

[49] See recital (60).

[50] A schematic overview of this setup can be found in Annex 2 to the present decision.

[51] See recital (60)(c).

[52] Stylised example: the maximum applicable retrocession is 200 basis points, the WAL of the existing portfolio is two years, the WAL target of the new portfolio is two and a half years, and the target leverage factor of the new portfolio is eight. Consequently, the minimum non-retained part of the maximum applicable retrocession is equal to 185 basis points (i.e. 200 basis points + mark-up of 30 basis points – maximum applicable incentive of 45 basis points). Assuming that the financial intermediary chooses to grant the same level of interest rate discount on all loan instruments included in the new portfolio (see recital (39)(a)), then the contractually agreed interest rate discount consistent with a full pass-on of the maximum applicable retrocession equals 18,5 basis points (i.e. (200 basis points – 15 basis points) / [(2,5 years / 2 years) x 8]).

[53] See recital (40)(b), second indent.

[54] The term "target retrocession passed on" is used both in the context of an EGF guarantee on junior and on mezzanine tranches. Its precise definition depends on whether reference is made to the mezzanine or the junior tranche as risk tranche guaranteed by the EGF guarantee.

therefore locked in) interest rate discounts on the loan instruments which it includes in the new portfolio.

(55) For every quarter in the inclusion period, the EIBG will set an intermediate target for the cumulative volume of the new portfolio, which the financial intermediary should have achieved since the start of the inclusion period by originating eligible loan instruments ("the quarterly allocation targets"). The quarterly allocation targets will be consistent with the target volume of the new portfolio to be achieved at the end of the inclusion period.

(56) If the financial intermediary in a given quarter has fulfilled the respective quarterly allocation target, then the applicable retrocession will equal the maximum applicable retrocession. If the financial intermediary in a given quarter has not fulfilled the respective quarterly allocation target, then the applicable retrocession will equal the maximum applicable retrocession adjusted downwards in proportion to the shortfall compared to the applicable quarterly allocation target. In a given quarter, the applicable retrocession is thus determined according to the following formula[55]:

$$applicable\ retrocession = maximum\ applicable\ retrocession\ \times \frac{new\ portfolio\ cumulative\ volume\ built\ up}{quarterly\ allocation\ milestone}$$

The maximum applicable retrocession cannot be adjusted upwards if the cumulative volume of the new portfolio build up exceeds the applicable quarterly allocation target.

(57) During the inclusion period, the EIBG will also verify on a quarterly basis:

(a) if the financial intermediary chose to grant the same level of interest rate discount on all loan instruments included in the new portfolio, whether the interest rate discounts granted on the loan instruments so far included in the new portfolio equal the contractually agreed interest rate discount;

(b) if the financial intermediary chose to vary the level of interest rate discount granted on the loan instruments included in the new portfolio, whether the interest rate discounts granted on the loan instruments so far included in the new portfolio equal at least the minimum interest rate discount of 15 basis points.

(58) Based on the quarterly verification described in recital (57) above, the financial intermediary will be obliged to exclude from the new portfolio:

(a) if the financial intermediary chose to grant the same level of interest rate discount on all loan instruments included in the new portfolio, the loan instruments which it included in the new portfolio but on which it granted

55 Stylised example: the maximum applicable retrocession is 100 basis points, the applicable quarterly allocation target is EUR 500 million, and the cumulative volume of the new portfolio built up is EUR 400 million. In that, the applicable retrocession to which the financial intermediary is entitled equals 80 basis points (i.e. 100 basis points x (EUR 400 million / EUR 500 million)).

an interest rate discount lower than the contractually agreed interest rate discount[56];

(b) if the financial intermediary chose to vary the level of interest rate discount granted on the loan instruments included in the new portfolio, the loan instruments which it included in the new portfolio but on which it granted an interest rate discount lower than the minimum interest rate discount of 15 basis points.

Consequently, loan instruments excluded on these bases do not contribute to meeting the applicable quarterly allocation target and the target volume of the new portfolio, thereby reducing the applicable retrocession which the financial intermediary is entitled to receive.

(59) If the financial intermediary chose to grant the same level of interest rate discount on all loan instruments included in the new portfolio, then the financial intermediary is allowed to replace loan instruments excluded on the basis of recital (58)(a) above with eligible loan instruments on which it has granted an interest rate discount equal the contractually agreed interest rate discount. A financial intermediary which chose to vary the level of interest rate discount granted on the loan instruments included in the new portfolio will not be allowed to do this.

(60) If the EGF guarantee is given on the junior tranche, the incentive varies between zero and 45 basis points (composed of the mark-up of 30 basis points and a part of the retrocession equal to 15 basis points) depending on the financial intermediary's progress towards achieving the target volume of the new portfolio. The incentive to which the financial intermediary is entitled ("applicable incentive") will equal 45 basis points adjusted downwards:

(a) in proportion to the shortfall compared to the target volume of the new portfolio[57];

(b) in proportion to the shortfall compared to the applicable quarterly allocation target (similar to the adjustment mechanism described in recital (56) above);

(c) to the extent necessary to ensure that the difference between the maximum applicable retrocession plus the mark-up of 30 basis points and the maximum applicable incentive ("the minimum non-retained part of the maximum applicable retrocession") is sufficient for the financial intermediary to grant the minimum interest rate discount of 15 basis points[58] on the loan instruments included in the new portfolio.

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56 If the interest rate discount granted on a loan instrument included in the new portfolio does not fulfil the minimum interest rate discount of 15 basis points, then it will by construction also not fulfil the contractually agreed interest rate discount.

57 This means that as soon as the financial intermediary has reached two thirds (66.66…%) of the target volume of the new portfolio, the applicable incentive will amount to 30 basis points, thereby offsetting the mark-up of 30 basis points (see recital (47), if the financial intermediary also complies with the quarterly allocation targets.

58 See recital (40)(a).

(61) At the end of the inclusion period when the financial intermediary has finished building up the new portfolio, the EIBG will verify whether the achieved WAL and the achieved riskiness of the new portfolio respectively fulfil the target WAL[59] and the target riskiness[60]. In addition, the EIBG will verify whether the financial intermediary:

(a) pursuant to recital (53) above, fully passes on the maximum applicable retrocession which it is entitled to receive in case of full compliance with the new portfolio requirements in the form of the contractually agreed interest rate discounts, if the EGF guarantee is given on the mezzanine tranche;

(b) pursuant to recital (54) above, fully passes on the minimum non-retained part of the maximum applicable retrocession which it is entitled to receive in case of full compliance with the new portfolio requirements in the form of the contractually agreed interest rate discounts, if the EGF guarantee is given on the junior tranche.

Based on the result of these verifications, the EIBG will claw back a part of the absolute amount (in euro) corresponding to the retrocession which the financial intermediary has received since the inclusion period. The clawback percentage – which cannot be lower than zero – is calculated according to the following formula ("the retrocession clawback formula"):

$$clawback\ percentage = 1 - \left[\left(\frac{actual\ WAL}{target\ WAL}\right) \times \left(\frac{actual\ riskiness}{target\ riskiness}\right) \times \left(\frac{actual\ retrocession\ passed\ on}{target\ retrocession\ passed\ on}\right)\right]$$

The clawback percentage cannot be lower than zero, and none of the three ratios contained in the retrocession clawback formula can exceed one.

(62) In addition, the EIBG can (discretionally) stop in full the granting of the retrocession to the financial intermediary in a number of situations (e.g. grave violations by the financial intermediary with regard to the granting of the interest rate discounts, breach by the financial intermediary of any of its obligations under the retrocession agreement, occurrence of an insolvency event, occurrence of any incorrect, incomplete or misleading representations, warranties or statements by the financial intermediary, etc.).

2.9. Monitoring and reporting

2.9.1. Reporting by financial intermediaries to the EIBG

(63) After the signing of the EGF synthetic securitisation transaction, the financial intermediary will submit to the EIBG allocation reports on a quarterly basis. For each of the loan instruments originated and included in the new portfolio, the financial intermediary will as a minimum include the following information in the quarterly allocation reports:

[59] See recital (36).

[60] See recital (42).

(a) the name of the final beneficiary;

(b) the country of the final beneficiary;

(c) the number of employees of the final beneficiary;

(d) the NACE code of the business activity of the final beneficiary;

(e) the NUTS 2 region of the final beneficiary;

(f) the national identifier number type and national identifier number of the final beneficiary;

(g) the principal amount of the loan instrument and the currency in which it is expressed (and the euro exchange rate if the currency is different from the euro);

(h) the date at which the loan instrument was signed;

(i) the term of the loan instrument;

(j) the interest rate discount granted on the loan instrument and confirmation that the final beneficiary has been informed hereof.

(64) At the end of the inclusion period, the financial intermediary will report to the EIBG on the average riskiness of the new portfolio (expressed in terms of the risk weight density or the expected loss compared to the historical benchmark portfolio).[61]

2.9.2. Reporting by the EIBG to the Commission

(65) For each EGF synthetic securitisation transaction, the EIBG will submit two reports to the Commission:

(a) a first report within three months from the signing of the EGF synthetic securitisation transaction;

(b) a second report within three months from the end of the inclusion period of the EGF synthetic securitisation transaction.

(66) The items to be reported and whether these have to be reported in the first and/or second report are set out in Annex 3 to the present decision.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

(67) 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:

(a) the measure must be imputable to the State and financed through State resources;

[61] See recital (42).

(b) it must confer an advantage on its recipients;

(c) that advantage must be selective in nature;

(d) the measure must distort or threaten to distort competition and affect trade between Member States.

(68) The measure notified by the participating Member States consists in the creation of the EGF synthetic securitisation product as an additional aid instrument under the Fund. Under this product, the Fund will provide a guarantee to the benefit of SMEs (as the final beneficiaries) through various financial intermediaries as described in section 2.1 above. Therefore, State aid may be present at several levels. As in the initial decision, the Commission will therefore need to assess whether State aid is present at the level of:

(a) the final beneficiaries;

(b) the financial intermediaries;

(c) the Fund.

3.1.1. Existence of aid at the level of the final beneficiaries

(69) The measure designed to originate new, riskier lending to SMEs is imputable to the participating Member States and is financed through State resources. As the EGF synthetic securitisation product will be implemented under the Fund, similarly to the four other aid measures which were assessed in the initial decision, the Commission refers to its reasoning in recital (86) of the initial decision.

(70) The measure confers an advantage on the final beneficiaries in the form of loan instruments with terms which the final beneficiaries would not have been obtained in the absence of the measure (i.e. under normal market conditions). This is illustrated by the fact that the loan instruments originated by a financial intermediary to the benefit of final beneficiaries – to be eligible for inclusion in the new portfolio – must come with a discount on the market-conform interest rate (see recital (38) above) and must on average be riskier than similar loans included in the historical risk benchmark portfolio which were originated on market terms (see recital (42) above). In other words, under the EGF synthetic securitisation product, it will be possible for final beneficiaries to obtain liquidity for riskier purposes and moreover at more favourable terms compared to a counterfactual scenario in which the measure would not have existed.

(71) The advantage granted by the measure is selective, since it is conferred only on certain undertakings, i.e. SMEs (see recital (5) above). Moreover, certain activities excluded by the EIBG are not eligible to obtain funding under the EGF synthetic securitisation product (see recital (31) above).

(72) The measure is liable to distort competition, since it strengthens the competitive position of the final beneficiaries. It also affects trade between Member States, as the final beneficiaries are active in sectors characterised by intra-Union trade.

(73) In view of the above, the Commission concludes that the measure constitutes 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.

3.1.2. Existence of aid at the level of the financial intermediaries

(74) The measure, under which the Fund provides a guarantee on a risk tranche against an existing portfolio securitised under the EGF synthetic securitisation product, is imputable to the participating Member States, and is financed through State resources. As the EGF synthetic securitisation product will be implemented under the Fund, similarly to the four other aid measures which were assessed in the initial decision, the Commission refers to its reasoning in recital (91) of the initial decision.

(75) The measure confers an advantage on the financial intermediaries for the following reasons:

(a) First, thanks to the EGF guarantee on a risk tranche against an existing portfolio, a financial intermediary enjoys regulatory capital relief due to the credit protection obtained (see recital (7) above). That regulatory capital relief results in higher regulatory capital ratios *ceteris paribus*, which are a key indicator of a financial intermediary's solvency and which could thereby improve that financial intermediary's competitive standing, for instance in terms of access to funding or its ability to attract deposits.

(b) Second, it cannot be excluded that under the EGF synthetic securitisation product the financial intermediary can obtain the credit risk protection at a premium (i.e. the EIBG rate) which is more favourable than the one available in the market. This is especially true if the EGF guarantee applies to the very risky junior tranche which will absorb credit losses on the existing portfolio first and which, unlike a guaranteed mezzanine tranche, should not comply with a minimum credit rating (see recital (27) above), and for which market price benchmarks are rare so that the appropriate guarantee premium is subject to a high degree of uncertainty.

(c) Third, the Commission notes that in practice a financial intermediary will be charged a lower premium (i.e. the EGF guarantee rate) for the EGF guarantee as it is entitled to the applicable retrocession as a rebate on the EIBG rate in function of its degree of compliance with the new portfolio requirements (see recitals (45), (51) and (52) above). However, if the EGF guarantee is given on the junior tranche, there is an exception to this general principle: the financial intermediary will in that case be allowed to retain for itself an incentive of up to 45 basis points which exceeds the mark-up of 30 basis points, implying that the financial intermediary will not be obliged to pass on up to 15 basis points of the retrocession (see recital (54) above) and thereby constituting an advantage.

(d) Finally, the existence of an advantage to financial intermediaries is illustrated by the fact that the risk profile of the EGF synthetic securitisation transactions which the EIBG would enter into counts towards the Fund's pre-set risk appetite corresponding to a target global expected loss of 20% (see recital (21) above), which is above what a market operator would normally tolerate.

(76) The advantage granted by the measure is selective, as it is conferred only on certain financial intermediaries which are selected by the EIBG to help implement the EGF synthetic securitisation product following a procedure consisting in several phases, including a due diligence of existing portfolios proposed by financial intermediaries (see section 2.4.1 above) and a qualitative assessment of financial intermediaries' ability to build up a new portfolio in line with the new portfolio requirements set out in section 2.6 above (see recital (43) above). While all financial intermediaries are allowed to apply, the EIBG will thus exercise discretion in admitting financial intermediaries to the EGF synthetic securitisation product.

(77) The measure is liable to distort competition, since it strengthens the competitive position of the financial intermediaries which help to implement the EGF synthetic securitisation product. It also affects trade between Member States, as the financial sector is characterised by intra-Union trade.

(78) In view of the above, the Commission concludes that the measure constitutes 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.

3.1.3. Existence of aid at the level of the Fund

(79) The implementation of the EGF synthetic securitisation product as a fifth aid measure under the Fund does not alter the characteristics, functioning and overall budget of the Fund. Therefore, there is no basis for the Commission to alter its conclusion – as stated in recital (102) of the initial decision – that it cannot be excluded that the measure constitutes aid within the meaning of Article 107(1) TFEU at the level of the Fund.

3.2. Compatibility of the aid

(80) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measure is compatible with the internal market.

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

(82) By adopting the Temporary Framework, the Commission acknowledged 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"*.[62]

(83) The EGF synthetic securitisation product aims at originating new, riskier lending by financial intermediaries to SMEs against the background of the COVID-19-related economic crisis. That crisis may negatively affect the provision of liquidity to undertakings, and to SMEs in particular. The measure thus pursues the same

[62] See point 18 of the Temporary Framework.

policy objective as the one pursued by the various types of aid measures included in the Temporary Framework.

(84) However, while the Commission has provided guidance in the Temporary Framework on when aid under Article 107(3)(b) TFEU can be considered compatible with the internal market given the COVID-19 shock to the economy, the Temporary Framework is not directly applicable to the measure proposed by the participating Member States, as it does not cover the guaranteeing of risk tranches in the context of synthetic securitisation transactions to trigger new lending.

(85) Still, given the policy objective of the measure, the Commission considers that the Temporary Framework can give general guidance and that its principles can be applied *mutatis mutandis* to the extent possible. Given that the EGF synthetic securitisation product involves a guarantee and is channelled through financial intermediaries, the Commission will derive key assessment criteria from section 3.4 of the Temporary Framework (*"Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions"*).

(86) The Commission notes that the EGF synthetic securitisation product is significantly different from the loan guarantee schemes described in section 3.2 of the Temporary Framework (*"Aid in the form of guarantees on loans"*). The most important difference is the fact that under the EGF synthetic securitisation product, the EGF guarantee does not directly benefit SMEs as final beneficiaries, as it is given on a risk tranche against a financial intermediary's existing portfolio and not on the loan instruments included in the new portfolio which the financial intermediary has to build up. The absence of a direct link between the aid (i.e. the EGF guarantee) and the new loan instruments to SMEs, has two key implications for the compatibility with the internal market of the aid entailed by the measure.

(87) First, safeguards are necessary to ensure that the loan instruments benefitting SMEs and included in a financial intermediary's new portfolio are additional, i.e. that they would not have been originated in the absence of the measure. Safeguards are needed to ensure a net beneficial effect for SMEs in need of financing. In the case of loan guarantee schemes under section 3.2 of the Temporary Framework, because the guarantee given on the new loans to SMEs directly reduces the riskiness of those loans, the guarantee positively affects a financial intermediary's incentives to grant such loans. In addition, if aid in the form of a guarantee is channelled through financial intermediaries, the Temporary Framework requires those financial intermediaries to demonstrate that they 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 than without such public guarantees or loans"*[63]. Apart from the need for safeguards to ensure additionality, given the unconditional and irrevocable nature of the EGF guarantee (see recital (8) above), a strong mechanism is needed to enforce the fulfilment of those safeguards.

[63] See point 31 of the Temporary Framework.

(88) Second, the fact that under the EGF synthetic securitisation product the EGF guarantee is given on a financial intermediary's portfolio of existing loans increases the risk of an undue indirect advantage to the financial intermediary[64], entailing undue competition distortions in the financial sector. Safeguards are necessary as to the composition of the securitised portfolio to exclude the risk of an adverse selection of high-risk or even impaired loans. Moreover, the EGF guarantee applies to the risky junior tranche for which market price benchmarks are rare so that the appropriate guarantee premium is subject to a high degree of uncertainty. By analogy with the Temporary Framework, the Commission considers that, if aid in the form of a guarantee is channelled through financial intermediaries, *"it is appropriate to introduce certain safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition"*[65] and requires that *"the credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantee [...] to the final beneficiaries"*[66]. Apart from the need for safeguards to avoid competition distortions in the financial sector, given the unconditional and irrevocable nature of the EGF guarantee (see recital (8) above), a strong mechanism is needed to enforce the fulfilment of those safeguards.

(89) The Commission will thus assess the measure based on general compatibility criteria under Article 107(3)(b) TFEU, as this is the basis for the application of the Temporary Framework with which the measure shares its policy objective of providing financing to SMEs in the context of the COVID-19-related economic crisis. However, in doing so, the Commission will take into account the specific nature of the notified measure, and pay particular attention to the availability of safeguards that ensure the additionality of loan instruments included in new portfolios under the EGF synthetic securitisation transactions (see recital (87) above) and which ensure the maximum possible pass-on of the advantage stemming from the EGF guarantee to the final beneficiaries (see recital (88) above), by analogy with key assessment criteria derived from sections 3.2 and 3.4 of the Temporary Framework. In addition, when considering the time window in which the aid under the EGF synthetic securitisation product should be granted, the Commission will take account of the fact that the design and implementation of EGF synthetic securitisation transactions is a complex and time-consuming process, *inter alia* involving the identification of an existing portfolio by a financial intermediary, the due diligence and synthetic securitisation of that portfolio by the EIBG, and the build-up by the financial intermediary of an additional portfolio fulfilling a set of pre-established requirements.

(90) 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

[64] The Commission recalls that under the EGF synthetic securitisation product, the advantage to financial intermediaries took the form of regulatory capital relief and a possibly favourable guarantee fee (see recital (75)).

[65] See point 30 of the Temporary Framework.

[66] See point 31 of the Temporary Framework.

appropriateness, necessity and proportionality of the aid to address it, on the other hand.

3.2.1. Compatibility of the aid at the level of the final beneficiaries

Appropriateness

(91) 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 (and the other measures taken in response to the COVID-19-related crisis), or if the measure (together with the other measures taken in response to the COVID-19-related crisis) not appropriate to remedy the disturbance.

(92) The measure aims at maintaining SMEs' access to funding 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.

(93) The measure requires the financial intermediaries to provide loan instruments to SMEs by complying with a target volume for the new portfolio (see recital (35) above) and this within 18 months from the transaction signature date (see recital (33) above). The measure also requires financial intermediaries to provide loan instruments that are riskier than the loan instruments in their historical risk benchmark portfolio (see recital (42) above) and at a contractually agreed interest rate discount which is made transparent to final beneficiaries in the respective loan agreements (see recitals (38) to (40) above). In addition to these requirements, the capital relief obtained through the measure removes any disincentives to grant new loans, stemming from any objective to preserve regulatory capital. The Commission considers that these features ensure that the EGF synthetic securitisation product will contribute to raising additional lending to SMEs in a period when SMEs still suffer under the COVID-19-related crisis (see recital (87) above).

(94) While the financial intermediary can decide whether the contractually agreed interest rate discount should be the same on all loan instruments or different per loan instrument, it has to respect the minimum interest rate discount of 15 basis points for each loan instrument (see recitals (39) and (40) above) compared to the otherwise applicable market rate, thereby ensuring that all final beneficiaries will enjoy a minimum advantage.

(95) The EIBG's qualitative assessment of a financial intermediary's ability to build a new portfolio in line with all requirements set out in section 2.6 above (see recital (43) above) provides a safeguard that the participating financial intermediaries will be capable of delivering new and riskier lending to SMEs.

(96) The measure features the retrocession mechanism (see section 2.8 above) that ensures that a financial intermediary only benefits from the maximum applicable retrocession (see recitals (44) to (46) above) if it builds a new portfolio in line with all requirements set out in section 2.6 above. The Commission has assessed the various elements of the retrocession mechanism in recitals (135) to (142) below and considers that the retrocession mechanism adequately ensures the effectiveness of the measure in generating new and riskier lending targeted at SMEs.

(97) The incentive mechanism applicable in case the EGF guarantee is given on the junior tranche, which consists of a mark-up on the EGF guarantee rate (see recitals (46) and (47) above) and the applicable incentive which can amount to up to 45 basis points (see recital (54) above), is an additional element ensuring the effectiveness of the measure. The Commission observes that the possibility for an intermediary to retain an incentive of up to 45 basis points – which goes beyond the mark-up of 30 basis points and includes 15 basis points of retrocession – provides a strong incentive for the financial intermediary to build up the new portfolio. At the same time, the mark-up of 30 basis points to the EIBG rate (see recital (45) above) lowers the probability that the EIBG rate is excessively advantageous for the financial intermediary in the absence of compliance with the new portfolio requirements and thus in the absence of the retrocession. The Commission concludes that, on balance, the special incentive framework applicable if the EGF guarantee is given on the junior tranche adequately encourages financial intermediaries to build up a new portfolio compliant with the requirements of section 2.6 above, thereby ensuring the effectiveness of the measure in that case.

(98) The measure imposes reporting requirements on the financial intermediaries to the EIBG (see recitals (63) and (64) above) and entails reporting by the EIBG to the Commission (see recitals (65) and (66) above). These reporting arrangements will allows the effective monitoring of the compliance of the new portfolios built by the financial intermediaries with the new portfolio requirements as laid down in section 2.6 above.

(99) Based on the above, the Commission considers that the measure will fulfil the objective of generating new and riskier lending targeted at SMEs and thereby will help to overcome SMEs' difficulties in accessing funding in the wake of the COVID-19 outbreak, which is still disturbing the functioning of credit markets.

Necessity

(100) 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.

(101) The Commission observes that the EGF synthetic securitisation product entails a leverage effect, in that the EGF guarantee on a risk tranche requires a financial intermediary to originate new loan instruments of which the volume is a multiple of the nominal amount of the guaranteed tranche (i.e. the leverage factor, as described in recitals (35)(b) and (35)(c) above). This leverage effect ensures a maximum impact for a minimum budget and thus contributes to the efficiency of the measure. At the same time, the Commission notes that synthetic securitisation also constitutes a sophisticated financial technique, which could be used by financial intermediaries to exploit information asymmetries relating to the quality of the securitised portfolio. However, the Commission observes that the EGF synthetic securitisation product features several safeguards mitigating such misuse of synthetic securitisation. In particular, the EIBG conducts a due diligence of the existing portfolio (see recital (16) above), conducts a cash flow assessment on the tranches created against the securitised portfolio, and uses the results of the credit analysis and cash flow assessment as input to determine the level of the EIBG rate (see recitals (17) and (46) above). The Commission also notes that the EIBG's methodologies for the credit analysis, cash flow assessment and internal rating

assignments reflect the methodologies applied by well-established credit rating agencies and are internally and externally audited (see recital (19) above).

(102) The maximum amount of losses covered by the EGF guarantee is limited to the guaranteed tranche (see recital (26) above). Furthermore, a mezzanine tranche eligible for the EGF guarantee should have a minimum credit rating of B- or B3 (see recital (27) above), whereas the size of a junior tranche under an EGF guarantee must be limited to 20% of the securitised amount (see recital (28) above). A further safeguard to limit losses on the guarantee is the requirement that the loans in the securitised portfolio are performing and are not refinanced (see recitals (22) and (23) above). The Commission considers that these safeguards limit the use of the EGF guarantee by limiting the riskiness of the securitised portfolio.

(103) The EGF guarantee rate (see recitals (44) to (46) above) is necessary to provide incentives to financial intermediaries to participate in the measure. At the same time, the EGF guarantee rate only differs from the EIBG rate in that it does not cover the annual return on capital to cover unexpected (i.e. unlikely) losses, which the EIBG thus gives up (see recital (48) above). This difference between the EIBG rate and the EGF guarantee rate – which equals the maximum applicable retrocession – is limited by a cap of 200 basis points (see recitals (48) and (49) above). The Commission considers that the EGF guarantee rate adequately remunerates a significant risk coverage by taking into account annualised expected losses, a return on capital to cover operational risks and annual administrative and operational costs (see recital (48) above). Moreover, the cap of 200 basis points constitutes an additional safeguard against an unduly low EGF guarantee rate. The Commission therefore considers that the advantage provided through the pricing of the EGF guarantee is limited to the minimum necessary.

(104) Under the EGF synthetic securitisation product, the EGF guarantee has to be given no later than 30 June 2022 (see recital (10) above), which is six months later than the current final date of application of the Temporary Framework (i.e. 31 December 2021). However, the Commission notes that a large number of Member States participate in the measure and they share the risk stemming from the use of the measure. The sharing of risks and losses between Member States helps to remedy a serious disturbance in the economy of the individual Member States (i.e. high losses in one Member State may otherwise affect more significantly the overall budgetary and economic situation of that Member State). The Commission also recognises that setting up synthetic securitisation transactions is a complex and time-consuming process. Therefore, the Commission considers that the possibility to grant aid under the EGF synthetic securitisation product for a longer period than currently allowed under the Temporary Framework does not affect negatively the necessity of the measure.

(105) Based on the above, the Commission concludes that the measure is limited to the amount and form necessary to achieve the objective of generating new and riskier lending targeted at SMEs, thereby helping to overcome SMEs' difficulties in accessing funding in the wake of the COVID-19 outbreak, which is still disturbing the functioning of credit markets. Therefore, the Commission concludes that the measure is necessary to meet the objective of mitigating a serious disturbance of the economy of the participating Member States.

Proportionality

(106) The positive effects of the measure must be properly balanced against the distortions of competition for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(107) As already considered in recital (89) above, the Temporary Framework – despite not being directly applicable to the measure proposed by the participating Member States – can, to some extent, serve as a reference point for principles to assess the proportionality of the measure.

(108) With regard to competition distortions at the level of SMEs (as possible final beneficiaries of the measure), the Commission notes that a financial intermediary participating in the EGF synthetic securitisation product remains fully exposed to the credit risk associated with the loan instruments originated to build up the new portfolio. This is due to the indirect link between the aid and the new loan instruments to SMEs, whereby the EGF guarantee only applies to a risk tranche against the financial intermediary's securitised existing portfolio. Hence, a commercial, merit-based logic will govern the financial intermediary's selection of the SMEs which will enjoy the advantage associated with the loan instruments included in the new portfolio (see recital (70) above). Only some of the new portfolio requirements – in particular the exclusion of certain activities (see recital (31) above) and the need for the new portfolio as a whole to reach a target volume (see recital (35) above), a target WAL (see recital (36) above) and a target riskiness (see recital (42) above) – constrain the type of loan instruments included in the new portfolio, and thereby indirectly the SMEs to which those loan instruments will be granted.

(109) The measure is characterised by a number of features lowering direct and indirect barriers to its accessibility by SMEs in various situations and with various funding needs. Notably, eligible loan instruments include several types of funding instruments (see recital (30) above), eligible financial intermediaries include various types of entities (see recital (11) above), the cap on the amount of RWA associated with the loans in the securitised portfolio under a EGF synthetic securitisation transaction (see recital (24) above) helps to ensure that the budget of the measure will not be allocated to a small number of large intermediaries, and the possibility for a financial intermediary to include loan instruments in the new portfolio up to six months before the date of signature of the guarantee agreement with the EIBG (see recital (34) above) enables the participation of smaller financial intermediaries in the EGF synthetic securitisation product, despite its complexity. Last but not least, just like the other aid measures under the Fund which were assessed in the initial decision, the EGF synthetic securitisation product will be accessible by SMEs located in any of the participating Member States, and the fact that the Fund is based on risk-sharing among those Member States (see recital (6) above) helps to level the playing field in terms of SMEs' access to funding due to the measure.

(110) Some new portfolio requirements contribute to mitigating the competition distortions between SMEs (as possible final beneficiaries of the measure) stemming from the measure. Notably, loan instruments included in the new portfolio should not benefit from any other State support (see recital (32) above) they should be originated within a limited time window (see recitals (33) to (34) above) and they

may only be used to meet SMEs' liquidity needs for investment or working capital purposes (see recital (30) above).

(111) With regard to competition distortions at the level of financial intermediaries, the Commission refers to the set of safeguards ensuring that financial intermediaries participating in the EGF synthetic securitisation product pass on, to the maximum extent possible, the advantage stemming from the EGF guarantee to the final beneficiaries, thereby minimising the indirect aid to them (see section 3.2.2 below).

(112) Based on the above, the Commission concludes that the features described above ensure that the measure is proportionate to the objective pursued.

Conclusion

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

3.2.2. Compatibility of the aid at the level of the financial intermediaries

(114) The Temporary Framework notes that where aid is provided in the form of public guarantees pursuant to sections 3.1 and 3.2 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.

(115) Furthermore, for the avoidance of doubt concerning the indirect aid to financial intermediaries described in section 3.1.2 above, the Commission refers to point 6 of the Temporary Framework, which clarifies that aid granted by Member States to undertakings under Article 107(3)(b) TFEU under the Temporary Framework and which is channelled through banks as financial intermediaries, benefits those undertakings directly. Such aid does not have the objective to preserve or restore the viability, liquidity or solvency of banks.

(116) However, as explained in recital (88) above, the fact that under the EGF synthetic securitisation product the EGF guarantee is given on a financial intermediary's portfolio of existing loans increases the risk of an undue indirect advantage to the financial intermediary, with a risk that the aid entailed by the measure may help to preserve or restore the viability, liquidity or solvency of banks, unless strong safeguards are present to ensure that financial intermediaries participating in the EGF synthetic securitisation product pass on, to the maximum extent possible, the advantage stemming from the EGF guarantee to the final beneficiaries, thereby minimising the indirect aid to themselves.

(117) To the extent that strong safeguards ensuring a pass-on – to the maximum extent possible – of the advantage to financial intermediaries stemming from the EGF guarantee to final beneficiaries are present, the reasoning in point 6 of the Temporary Framework also applies to the present measure, of which the objective is to help originate new, riskier lending by financial intermediaries to SMEs (see

recital (6) above). In that case, the Crisis Communications[67] detailing the compatibility assessment under Article 107(3)(b) TFEU for aid to financial institutions are not applicable to any of the indirect aid to financial intermediaries under the EGF synthetic securitisation product.

(118) Therefore, the Commission will now assess whether the measure is designed in an adequate manner – taking into account the specific characteristics of the EGF synthetic securitisation product – to minimise the indirect aid to the financial intermediaries, which helps to limit undue distortions of competition in the financial sector. Specifically, the Commission will verify whether strong safeguards are present to ensure that any advantage to the financial intermediaries is passed on to the maximum extent possible.

(119) Under the EGF synthetic securitisation product, the advantage to financial intermediaries takes the form of regulatory capital relief, a possibly favourable guarantee fee and the retrocession as a rebate on the EIBG rate (see recital (75) above). The safeguards should therefore:

(a) ensure that the financial intermediary's regulatory capital freed up due to the EGF guarantee under the EGF synthetic securitisation product is redeployed to the maximum extent possible through the origination of the new portfolio (see recital (75)(a) above);

(b) ensure that the financial intermediary does not benefit from an unduly low pricing for the EGF guarantee so that it would not be adequately incentivised to build up the new portfolio (see recital (75)(b) above);

(c) ensure that the maximum applicable retrocession is passed on to the maximum extent possible in the form of interest rate discounts when building up the new portfolio (see recital (75)(c) above).

[67] Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("2008 Banking Communication"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("Recapitalisation Communication"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("Impaired Assets Communication"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("Restructuring Communication"), OJ C 195, 19.8.2009, p. 9; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("2010 Prolongation Communication"), OJ C 329, 7.12.2010, p. 7; Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("2011 Prolongation Communication), OJ C 356, 6.12.2011, p. 7 and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("2013 Banking Communication") OJ C 216, 30.07.2013, p. 1.

Redeployment of regulatory capital relief

(120) The new portfolio requirements (see section 2.6 above) include the two conditions that:

(a) the RWA associated with the target volume of the new portfolio equal at least 80% of the average regulatory capital relief, which the financial intermediary obtained through the EGF synthetic securitisation product (see recital (35)(a) above); and

(b) the target leverage factor of the new portfolio and the target WAL of the new portfolio will be set such that the difference between:

(i) the average regulatory capital consumed by the existing portfolio excluding the regulatory capital relief due to the EGF guarantee and

(ii) the sum of the average regulatory capital consumed by the existing portfolio including the regulatory capital relief due to the EGF guarantee and the average regulatory capital consumed by the new portfolio which complies with all the new portfolio requirements

does not exceed zero (see recital (37) above).

These conditions will avoid that the participation of a financial intermediary in the EGF synthetic securitisation product will make that financial intermediary better off in regulatory capital terms compared to the counterfactual situation in which the financial intermediary would not have participated in the product.

(121) The Commission notes that the financial intermediary may retain at most 20% of the average capital relief (as initially assessed) to be able to cover the cost of the EGF guarantee, the fixed cost of setting up and managing the EGF synthetic securitisation transaction (e.g. monitoring compliance and reporting) and the possible volatility of the regulatory capital consumption by the new portfolio (see footnote 23 above). The Commission considers the presence of such a buffer warranted to compensate financial intermediaries for the overall cost of their participation in the EGF synthetic securitisation product and for the volatility of the projected capital consumption on new loans. Without such compensation, financial intermediaries may be discouraged from participating in the product.

(122) In addition, the Commission notes that the target volume of a new portfolio originated by a financial intermediary should not only comply with the condition in recital (35)(a) above, but also with the conditions in recitals (35)(b) and (35)(c) above on a cumulative basis. This means that, if one of the latter two conditions is the most demanding one, more than 80% of the capital released during the lifetime of the transaction could be redeployed through the build-up of the new portfolio.

(123) The Commission therefore considers that a financial intermediary participating in the EGF synthetic securitisation product will not enjoy undue regulatory capital relief, as the EGF synthetic securitisation product contains strong safeguards to ensure that the regulatory capital relief is redeployed through the origination of new portfolio loan instruments to the final beneficiaries.

Pricing of the EGF guarantee: the EIBG rate

(124) Financial intermediaries should not benefit from an undue advantage stemming from too favourable pricing of the EGF guarantee compared to the pricing for similar credit protection, which they would find in the market. If that were to be the case, a financial intermediary would have an incentive to participate in the EGF synthetic securitisation product, obtain the cheap EGF guarantee on a risk tranche against the existing portfolio and not build up a new portfolio complying with the requirements set out in section 2.6 above. The financial intermediary would then be the main beneficiary of the EGF synthetic securitisation transaction and the effectiveness of the EGF synthetic securitisation product would be undermined.

(125) The EGF guarantee rate is based on the EIBG rate, adjusted by the applicable retrocession and a mark-up (in case the EGF guarantee is given on the junior tranche).[68] In general, the Commission notes that the EIBG sets the EIBG rate in proportion to the riskiness of the guaranteed tranche against the securitised portfolio (see recitals (17) and (46) above) and according to generally accepted and unbiased methodologies. Specifically, following an application by a financial intermediary, the EIBG will conduct a due diligence of the existing portfolio and a cash flow assessment of the tranches before assigning ratings to the senior and mezzanine tranches (see recitals (16) and (18) above)[69]. These methodologies are similar to that of credit rating agencies and in the past, the EIBG has observed […]. The methodologies are internally and externally audited and are based on the EIBG's standard policies and procedures, which it also applies to similar transactions concluded under its own resources[70] (see recitals (19) and (20) above).

(126) Furthermore, the EIBG has adequate incentives to conduct a prudent assessment since it only relies on the revenues stemming from the payment of the guarantee fees by the financial intermediaries to cover its costs of implementing the EGF (see recital (21) above).

(127) While the Commission has not assessed the EIBG rate as market-conform, for the EGF guarantee on mezzanine tranches, the pricing as discussed in recitals (125) and (126) above offers sufficient comfort for the Commission to consider that financial intermediaries will not benefit from an undue advantage stemming from a too favourable pricing of the EGF guarantee when concluding EGF synthetic securitisation transactions, also thanks to the availability of market price benchmarks.

(128) Concerning the pricing of the EGF guarantee on junior tranches, the Commission recalls that the risk of an undue advantage for financial intermediaries based on a too favourable pricing of the EGF guarantee is higher (see recitals (75)(b) and (88) above). However, in case the EGF guarantee is given on the junior tranche, the Commission notes that the EIBG rate is initially increased by a mark-up of 30 basis

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68 See recitals (130) to (134) for the assessment of the retrocession.

69 Since, as a further safeguard, the financial intermediary cannot replenish the existing portfolio after the signing of its EGF synthetic securitisation (see recital (25)), the possibility that replenishments would affect the characteristics of the existing portfolio, and as a result the EIBG's assessment of that portfolio, is excluded.

70 These policies are only adjusted insofar it is necessary due to specific features of the EGF setup.

points (see recital (47) above). Given the higher degree of uncertainty on the appropriate pricing for junior tranche risk protection given the absence of market benchmarks, that mark-up lowers the risk of a too low initial pricing of the EGF guarantee and thus minimises any undue advantage to financial intermediaries.

(129) In conclusion, the Commission considers that the initial pricing of the EGF guarantee – based on the EIBG rate – is adequate to minimise an undue advantage to financial intermediaries and ensures that the aid at the level of the financial intermediaries remains proportionate.

Pass-on of the retrocession

(130) As part of the EGF synthetic securitisation product, a financial intermediary commits to grant the contractually agreed interest rate discount on all loan instruments included in the new portfolio. The level of the contractually agreed interest rate discount is set in relation to the maximum applicable retrocession (in terms of absolute amounts) (see recital(40)(b) above).

(131) If the EGF guarantee is given on the mezzanine tranche, the Commission notes that the financial intermediary has to fully pass on the maximum applicable retrocession (calculated as described in recital (48) above). This condition ensures that in such a case any retrocession amount received by the financial intermediary will always be fully channelled to the final beneficiaries in the form of interest rate discounts (see recital (53) above).

(132) If the EGF guarantee is given on the junior tranche, the Commission notes that the financial intermediary could be entitled to retain a certain part of the retrocession (see recital (54) above) – which it will thus not pass on in the form of the contractually agreed interest rate discount – in proportion to its compliance with the new portfolio target volume (provided that the minimum non-retained part of the maximum applicable retrocession is sufficient to grant the minimum interest rate discount of 15 basis points on each loan instrument in the new portfolio) (see recital (60) and footnote 57 above). Specifically, as long as the financial intermediary has achieved less than two thirds of the new portfolio target (and has met the applicable quarterly allocation targets), the applicable incentive will only be composed of (a part of) the mark-up of 30 basis points, which is not taken into account for the determination of the contractually agreed interest rate discount (see recital (40)(b) above). However, if the financial intermediary fulfils more than two thirds of the new portfolio target (and has met the applicable quarterly allocation targets), the applicable incentive will rise proportionally (up to the maximum applicable incentive equal to 45 basis points), whereby the last 15 basis points constitute a part of the retrocession which does not have to be passed on (i.e. the pass-on requirement only applies to the minimum non-retained part of the maximum applicable retrocession).

(133) The Commission considers that this exemption from the general principle that the retrocession amount needs to be fully passed on is warranted as a mechanism to incentivise financial intermediaries to build up a new portfolio which fulfils all requirements of section 2.6 above if the EGF guarantee is given on the junior tranche, given the addition of the mark-up of 30 basis points to the EIBG rate (see recital (97) above). This incentive mechanism therefore contributes to the objective of the measure to provide funding to SMEs as final beneficiaries in the current COVID-19-related economic crisis.

(134) The Commission therefore considers that the retrocession mechanism, under which financial intermediaries participating in the EGF synthetic securitisation product can obtain a rebate on the EIBG rate, does not entail an undue advantage to the financial intermediaries. The Commission considers that the aid to the financial intermediaries stemming from the incentive mechanism in case the EGF guarantee is given on the junior tranche is necessary to achieve the objectives of the measure.

Enforcement of the safeguards through the retrocession mechanism

(135) The Commission recalls that the EGF guarantee in the context of the EGF synthetic securitisation product must be unconditional and irrevocable for financial intermediaries participating in the EGF synthetic securitisation product to be allowed to recognise the regulatory capital relief obtained thanks to the EGF guarantee (see recital (50) above). Hence, a mechanism is required to sanction financial intermediaries participating in the EGF synthetic securitisation product in the event of non-respect of the safeguards ensuring the effectiveness of the measure in terms of the additionality of the loan instruments included in new portfolios (see recital (87) above) and in terms of the maximum possible pass-on of the advantage stemming from the EGF guarantee to SMEs as the final beneficiaries (see recital (88) above).

(136) The Commission notes that – if a financial intermediary fully complies with all new portfolio requirements as set out in section 2.6 above – it will be in a position to finance the contractually agreed interest rate discount to be granted on all new portfolio loan instruments from the absolute amount corresponding to the maximum applicable retrocession (if the EGF guarantee is given on the mezzanine tranche) or to the corresponding minimum non-retained part of the maximum applicable retrocession (if the EGF guarantee is given on the junior tranche) which it will receive as a reward for its compliance (see recital (40)(b) above). Conversely, in case of partial compliance or non-compliance, the financial intermediary will have to finance the contractually agreed interest rate discount – which it is in any case required to grant – partially or fully at its own expense as it will receive a lower rebate on the EIBG rate and thus pay more for the EGF guarantee.

(137) The Commission notes that the applicable retrocession, to which a financial intermediary participating in the EGF synthetic securitisation product will ultimately be entitled, varies in function of:

(a) the financial intermediary's fulfilment of the quarterly allocation targets which in turn ensure the fulfilment of the new portfolio's target volume (see recitals (54) to (58) above);

(b) the financial intermediary's achievement of the new portfolio's target WAL and target riskiness, and its full pass-on of the maximum applicable retrocession (if the EGF guarantee is given on the mezzanine tranche) or the minimum non-retained part of the maximum applicable retrocession (if the EGF guarantee is given on the junior tranche) (see recital (60) above).

The scope of the retrocession mechanism thus includes all key safeguards ensuring the additionality of the loan instruments included in the new portfolio and the maximum possible pass-on of the advantage stemming from the EGF guarantee (in terms of the redeployment of the regulatory capital relief and the pass-on of the retrocession) to SMEs as the final beneficiaries.

(138) The Commission notes that the retrocession mechanism makes a lack of compliance with any of these key safeguards costly to the financial intermediary, and thus entails strong incentives for the financial intermediary to build a new portfolio in line with all requirements set out in section 2.6 above. The retrocession mechanism thus fosters the effectiveness of the EGF synthetic securitisation product, irrespective of the unconditional and irrevocable nature of the EGF guarantee.

(139) The Commission notes that the incentive mechanism applicable if the EGF guarantee is given on the junior tranche (see recital (60) above) – which allows a financial intermediary to retain up to 45 basis points – is properly calibrated to encourage a financial intermediary to quickly build up the new portfolio. This is because the applicable incentive increases in proportion to the financial intermediary's degree of compliance with the target volume of the new portfolio and the quarterly allocation targets. A shortfall vis-à-vis these new portfolio build-up targets means a lower applicable incentive, and thus a more costly EGF guarantee on the junior tranche.

(140) The Commission also notes that the EIBG reserves itself the right to stop the granting of the retrocession in full in certain circumstances (see recital (62) above). This is another feature which will sanction financial intermediaries in case of non-compliance.

(141) To ensure the proper application of the retrocession mechanism, the EBG will closely monitor the financial intermediary's compliance with the new portfolio requirements of section 2.6 above. In particular, the EIBG will check on a quarterly basis the financial intermediary's compliance with the quarterly allocation targets and with the obligation to grant the contractually agreed interest rate discount on the loan instruments already included in the new portfolio, whereby it will adjust the applicable retrocession downward when necessary (see recitals (56) to (58) above). Furthermore, at the end of the inclusion period, the EIBG will verify whether the financial intermediary has achieved the target WAL and the target riskiness for the new portfolio and whether it has passed on the required amount of retrocession to the final beneficiaries in the form of interest rate discounts granted to the final beneficiaries on the new portfolio loan instruments. If the financial intermediary has not complied fully with all the requirements, the EIBG will require the financial intermediary to reimburse a part of the retrocession based on the retrocession clawback formula (see recital (61) above).

(142) On the basis of the reasoning described in recitals (135) to (141) above, the Commission considers that the retrocession mechanism is a balanced solution to ensure that financial intermediaries are adequately incentivised to build up the new portfolio while also adequately addressing any risks that could arise in cases of non-compliance with the new portfolio requirements. The retrocession mechanism also ensures that the aid to the financial intermediaries stemming from the incentive mechanism in case the EGF guarantee is given on the junior tranche remains proportionate.

Additional safeguards

(143) Additional safeguards give the Commission further comfort that the aid at the level of the financial intermediaries is minimised, and that such aid will not help to preserve or restore the viability, liquidity or solvency of financial intermediaries.

(144) Financial intermediaries that are subject to resolution or liquidation or which are in the process of requesting a precautionary recapitalisation are not eligible as counterparts under the measure (see recital (12) above). This ensures that only sound financial intermediaries, which will be able to generate the new portfolio, are allowed to participate in the measure. Furthermore, the entities receiving the EGF guarantee and the entity building up the new portfolio have to belong to the prudential scope of consolidation of the same financial intermediary (see recital (13) above), which ensures that the safeguards can be implemented without any further complexity or that their effectiveness will not be jeopardised due to the involvement of several entities not belonging to the same financial intermediary.

(145) Only performing exposures, which moreover are not refinanced loans, are eligible to be included in the securitised portfolio (see recitals (22) and (23) above). These conditions minimise the risk of adverse selection of existing loans to be included in the securitised portfolio.

(146) The securitised portfolio is limited in size based on a cap on the RWA associated with the loans in the securitised portfolio (see recital (24) above). This condition prevents that an excessive part of a financial intermediary's existing loan portfolio would be covered by the EGF guarantee, while also ensuring that the use of the budget for the EGF synthetic securitisation product will not be concentrated with a few large financial intermediaries.

(147) The loan instruments included in the new portfolio will not benefit from any other State aid support, which excludes any duplication in terms of public support that would unduly benefit financial intermediaries (see recital (32) above).

(148) The inclusion period is limited to 18 months after the signing of the EGF synthetic securitisation transaction, which limits the risk that the financial intermediary would have originated these loans also in absence of the transaction (33).

(149) For a mezzanine tranche to be eligible for the EGF guarantee, it must have a minimum credit rating of B- or B3 (see recital (27) above), as determined by the EIBG, thereby setting an upper threshold concerning the riskiness for such tranches. For a junior tranche to be eligible for the EGF guarantee, it cannot exceed 20% of the securitised amount (see recital (28) above). These conditions limit the riskiness of the guaranteed tranches and subsequently also prevent the securitised portfolio from becoming excessively risky. This is further ensured by the fact that the financial intermediary must retain an economic interest in the securitised portfolio (see recital (29) above).

(150) The financial intermediary may also offer other more favourable terms to the final beneficiaries beyond the contractually agreed interest rate discount (see recital (41) above). If implemented, such benefits can contribute further to the pass-on of the advantage to the final beneficiaries.

(151) The EIBG will conduct a qualitative assessment to ensure that the financial intermediary has the capacity to build up the new portfolio (see recital (43) above). This minimises the risk that only at a later stage, when the EGF guarantee has already been given, the inability of the financial intermediary to build up an adequate new portfolio in time would become apparent. This assessment therefore ensures that the EIBG would face a situation in which a financial intermediary – due to new portfolio requirements which it is unable to meet – fails to pass on the advantages under the EGF synthetic securitisation product to the maximum extent possible, resulting in undue benefits to that financial intermediary.

(152) Finally, each EGF synthetic securitisation transaction is subject to detailed reporting requirements to be fulfilled by the financial intermediary (see recital (63) above), while the EIBG will also provide information to the Commission on each transaction (see recital (66) above and Annex 3). Financial intermediaries' reporting to the EIBG will enable the EIBG to take corrective action in case it detects non-compliance by a financial intermediary, which could entail an undue advantage conferred on the financial intermediary. The EIBG's reporting to the Commission will enable the Commission to verify the effectiveness of the safeguards to minimise the advantage at the level of the financial intermediaries.

(153) The Commission therefore considers that the safeguards presented above ensure that financial intermediaries will not unduly benefit from the EGF synthetic securitisation product and will, 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

(154) The aid to the financial intermediaries involved in the implementation of the measure are therefore considered compatible with the internal market under Article 107(3)(b) TFEU.

3.2.3. Compatibility of the aid at the level of the Fund

(155) As indicated in recital (79) above, the addition of the EGF synthetic securitisation product does not alter the characteristics, functioning and overall budget of the Fund.

(156) Therefore, the Commission concludes that the addition of the EGF synthetic securitisation product to the Fund does not alter its assessment 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 (see recitals (131) to (143) of the initial decision).

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

(157) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution[71] ("BRRD") and, where applicable, of Regulation (EU) 806/2014 on the Single Resolution Mechanism[72] ("SRMR"), 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 measure does not appear to violate intrinsically-linked provisions of the BRRD and, where applicable, the SRMR.

(158) 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 channelled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[73] 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 (i.e. SMEs) that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of those SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and, where applicable, Article 3(1)(29) SRMR.

(159) Moreover, as outlined in section 3.2.2, the measure introduces 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 to the final beneficiaries the advantages provided by the measure.

(160) 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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[71] OJ L 173, 12.6.2014, p. 190.

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

[73] See points 6 and 29 of the Temporary Framework.

5. 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
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

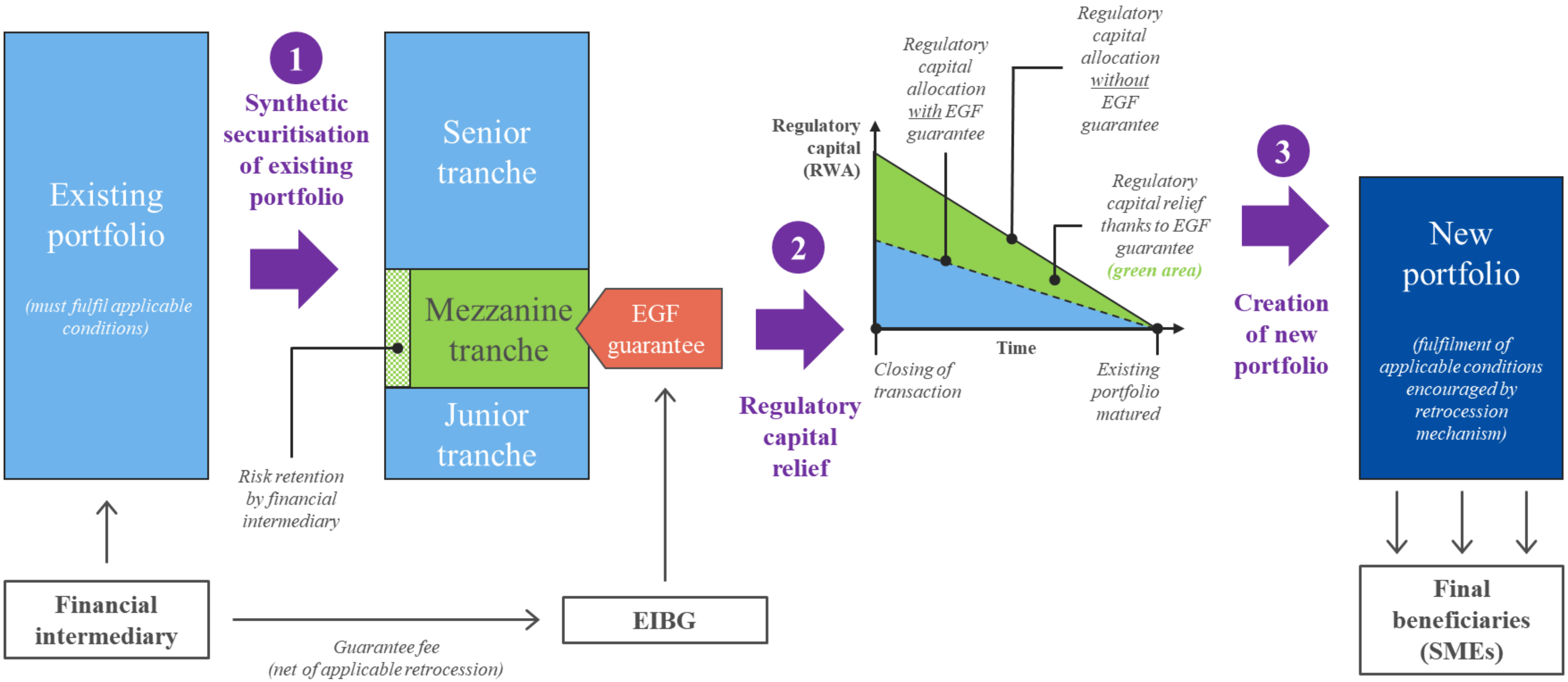
Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION

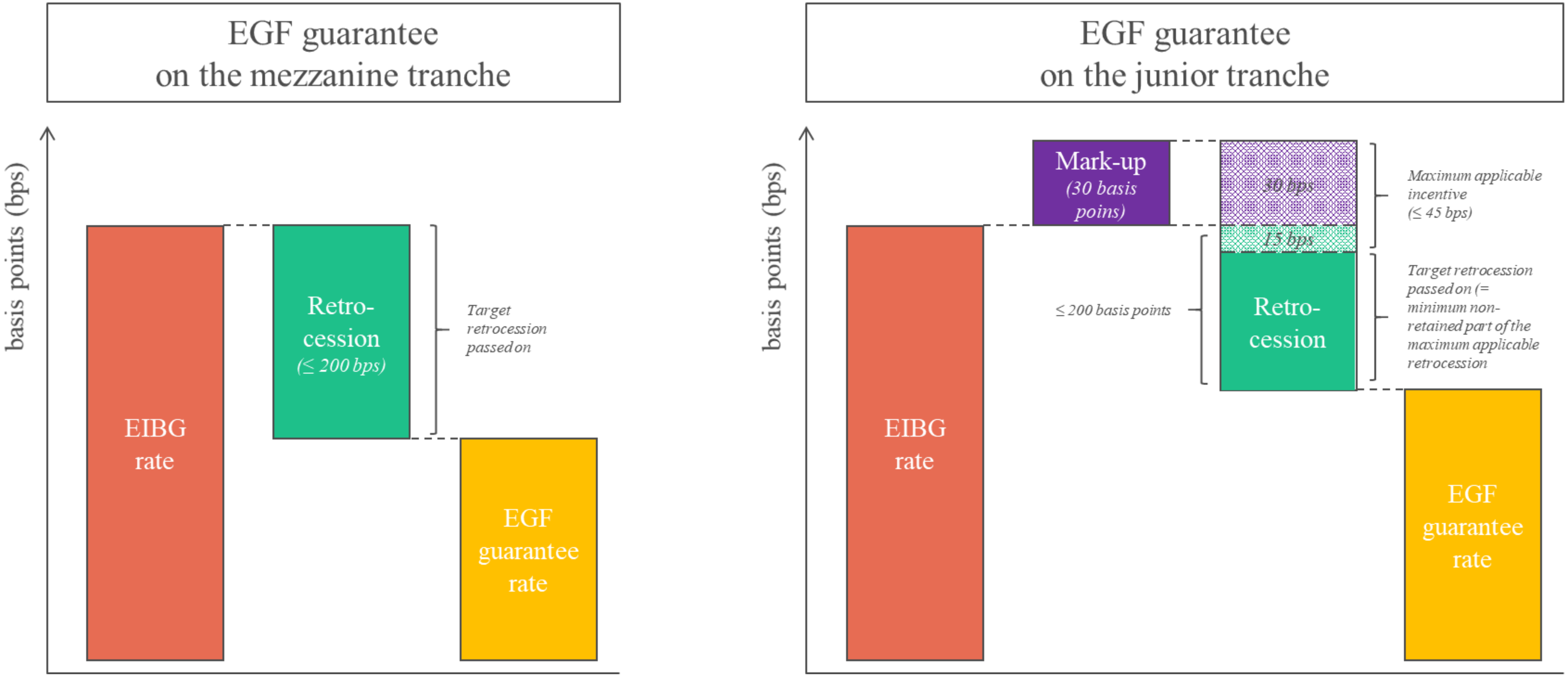
ANNEX 1

Schematic overview of the EGF synthetic securitisation product (situation of EGF guarantee on mezzanine tranche)



ANNEX 2

Schematic overview of the pricing of the EGF guarantee (not on scale)



ANNEX 3

Modalities for the reporting by the EIBG to the Commission on EGF synthetic securitisation transactions

	Group	Field	Reporting milestone Milestone 1 = within 3 months from the signature date of the guarantee	Milestone 2 = within 3 months from the end of inclusion period
1	Financial intermediary	Name of the financial intermediary	✓	x
2	Financial intermediary	Total RWA as of the latest annual regulatory report available (pillar 3)	✓	x
3	Historical (reference) portfolio	Nominal amount of historical portfolio	✓	x
4	Historical (reference) portfolio	Average RW of loans in the historical portfolio (at origination)	✓	x
5	Historical (reference) portfolio	Segmentation of final beneficiaries in the historic portfolio, by: - maturity; - WAL; - NACE code; - Secured/Unsecured	✓	x
6	Securitised portfolio	Nominal amount of securitised portfolio	✓	x
7	Securitised portfolio	Average RW of loans in securitised portfolio (at the signature date of guarantee agreement) (or EL, as assessed by the financial intermediary)	✓	x
8	Securitised portfolio	Segmentation of final beneficiaries in the securitised portfolio, by: - maturity; - WAL; - NACE code; - Secured/Unsecured ** To ensure a meaningful comparison between the Additional Portfolio and the historic portfolio, the SME segmentation would be based on the SME definition of the financial intermediary**	✓	x
9	Securitised portfolio	Remaining WAL of securitised portfolio	✓	x
10	Securitisation transaction	Nominal amount and type of the guaranteed tranche (FLP/mezzanine)	✓	x
11	Securitisation transaction	Attachment /detachment point of the guaranteed tranche	✓	x
12	Securitisation transaction	Rating of guarantee tranche (for the mezzanine)	✓	x
13	Capital Allocation over Inclusion Period	Average of the periodical (quarterly) capital allocated to the securitised portfolio without securitisation up to the following 18 months, i.e. over the inclusion period	✓ (as per ex-ante projections at closing)	✓ (Relying on the quarterly outstanding amount of the securitised portfolio, calculated by the EIBG applying the RW and CET1 at closing)
14	Capital Allocation over Inclusion Period	Average of the periodical (quarterly) capital allocated to the securitised portfolio with the benefit of the securitisation up to the following 18 months, i.e. over the inclusion period	✓ (as per ex-ante projections at closing)	✓ (Relying on the quarterly information reported by the FI up to the end of the inclusion period)
15	Minimum Capital Allocation on the Additional Portfolio	Capital requirements calculated on the total Additional Portfolio volume (i.e. considering, (i) for the ex-ante projections, the target Additional Portfolio Volume size resulting from the Capital Release Test and the other relevant safeguards and (ii) for the actual capital consumption, the total Additional Portfolio volume originated up to the end of the inclusion period)	✓ (as per ex-ante projections at closing)	✓ (Relying on RW provided by the FI - calculated by EIBG)

Unless stated otherwise, references to "capital" are intended to relate to the regulatory capital.

Modalities for the reporting by the EIBG to the Commission on EGF synthetic securitisation transactions *(continued)*

	Group	Field	Reporting milestone Milestone 1 = within 3 months from the signature date of the guarantee	Milestone 2 = within 3 months from the end of inclusion period
16	Capital release test	Assessment period, i.e. 18 months of inclusion period plus target WAL of the additional portfolio	✓	x
17	Capital release test	Sum of the periodical (quarterly) capital allocation to the existing portfolio without the benefit from the securitisation, over assessment period	✓ (as per ex-ante projections at closing)	x
18	Capital release test	Average of the periodical (quarterly) capital allocation to the existing portfolio without the benefit from the securitisation over assessment period	✓ (as per ex-ante projections at closing)	x
19	Capital release test	Sum of the periodical (quarterly) capital allocation to the existing portfolio net of the benefit of the securitisation over the assessment period	✓ (as per ex-ante projections at closing)	x
20	Capital release test	Average of the periodical (quarterly) capital allocation to the existing portfolio net of the benefit of the securitisation over the assessment period	✓ (as per ex-ante projections at closing)	x
21	Capital release test	Sum of the periodical (quarterly) capital allocation the additional portfolio over the assessment period	✓ (as per ex-ante projections at closing)	x
22	Capital release test	Average of the periodical (quarterly) capital allocation to the additional portfolio over the assessment period	✓ (as per ex-ante projections at closing)	x
23	Capital release test	Sum of the periodical (quarterly) capital released from securitised portfolio over the assessment period	✓ (as per ex-ante projections at closing)	x
24	Capital release test	Average of the periodical (quarterly) capital released from securitised portfolio over the assessment period	✓ (as per ex-ante projections at closing)	x
25	Capital release test	Target WAL of the Additional Portfolio	✓	x
26	Capital release test	Target leverage factor (i.e. nominal amount of the additional portfolio divided by the nominal amount of the EGF Guarantee)	✓	x
27	Additional portfolio	Lending volume by quarter over 18 month built-up period	x	✓
28	Additional portfolio	WAL of additional portfolio	x	✓
29	Additional portfolio	Average RW of loans at origination (or EL, as assessed by the financial intermediary)	x	✓
30	Additional portfolio	Segmentation of final beneficiaries in the additional portfolio, by: - maturity; - WAL; - NACE code; - Secured/Unsecured	x	✓
31	Retrocession	Pricing (EIBG rate, EGF pricing, retrocession amount)	✓	x
32	Retrocession	Average interest discount	x	✓
33	Retrocession	Target interest rate discount	✓	x
34	Retrocession	Retained retrocession amount (at full compliance with lending requirements), if applicable	✓	x
35	Retrocession	Final retrocession amount paid to intermediary (after clawback)	x	✓

Unless stated otherwise, references to "capital" are intended to relate to the regulatory capital.