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Subject: State Aid SA.100052, SA.100071, SA.100119, SA.100123, SA.100139, SA.100149, SA.100153, SA.100167, SA.100183, SA.100191, SA.100196, SA.100203, SA.100220, SA.100232, SA.100253, SA.100283, SA.100335, SA.100382, SA.100383, SA.100392, SA.100414, SA.100424
Amendments to the Pan-European Guarantee Fund in response to COVID-19

Excellencies,

1. PROCEDURE

(1) By decision of 14 December 2020[1] ("the initial decision"), the Commission approved four aid measures (Measures A-D) to be implemented by the European

[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. Note that Slovenia joined the Fund later, approved by decision of 16

Son Excellence Madame Sophie Wilmès, Ministre des Affaires étrangères, des Affaires européennes et du Commerce extérieur, et des Institutions culturelles fédérales, Rue des Petits Carmes, 15, 1000 Bruxelles, BELGIQUE

Светлан Стоев, Министърът на външните работи, ул. „Ал. Жендов" № 2, 1113 СОФИЯ/Sofia, БЪЛГАРИЯ/BULGARIE

Udenrigsminister Jeppe KOFOD, Asiatisk Plads 2, DK-1448 København K, DANMARK

Seiner Exzellenz Herrn Heiko MAAS, Bundesminister des Auswärtigen, Werderscher Markt 1, D - 10117 Berlin, DEUTSCHLAND

Mr. Simon Coveney, TD, Minister of Foreign Affairs and Trade, Department of Foreign Affairs and Trade, Iveagh House, 80, St. Stephen's Green, Dublin 2, D02 VY53, IRELAND

Κύριος Νίκος Δένδιας, Υπουργός Εξωτερικών, Βασιλίσσης Σοφίας 5, 10671 Αθήνα/Athens, ΕΛΛΑΔΑ/GREECE

Excmo. Sr. José Manuel Albares Bueno, Ministro de Asuntos Exteriores y de Cooperación, Plaza de la Provincia 1, 28012 MADRID, ESPAÑA

Son Excellence Monsieur Jean-Yves Le Drian, Ministre de l'Europe et des Affaires étrangères, 37, Quai d'Orsay, 75351- PARIS, FRANCE

dr. sc. Gordan GRLIĆ RADMAN, Ministar vanjskih i europskih poslova, Trg N.Š. Zrinskog 7-8, HR-10000 Zagreb, HRVATSKA

Onorevole Luigi Di Maio, Ministro degli Affari esteri e della Cooperazione Internazionale, Piazzale della Farnesina 1, 00135 Roma, ITALIA

Κύριος Νίκος ΧΡΙΣΤΟΔΟΥΛΙΔΗΣ, Υπουργός Εξωτερικών, Λεωφόρος Δημοσθένη Σεβέρη, Chypre - 1447 Λευκωσία/Nicosia, ΚΥΠΡΟΣ/CYPRUS

Mr. Gabrielius Landsbergis, Užsienio Reikalų Ministerija, J. Tumo-Vaižganto g. 2, LT-01511 Vilnius, LIETUVA/LITHUANIA

Son Excellence Monsieur Jean ASSELBORN, Ministre des Affaires Etrangères, Rue Notre-Dame 5, L - 2911 Luxembourg, LUXEMBOURG

Onor. Evarist Bartolo, Ministru għall-Affarijiet Barranin u Ewropej, Palazzo Parisio, Merchants Street, Valletta, VLT 1171, MALTA

Zijne excellentie meneer Ben Knapen, Minister van Buitenlandse Zaken, Rijnstraat 8, 2515 XP Den Haag, NEDERLAND

Seiner Exzellenz Herrn Michael Linhart, Bundesministerium für Europa, Integration und Äußeres, Minoritenplatz 8, A - 1014 Wien, ÖSTERREICH

Jego Ekscelencja Zbigniew Rau, Minister Spraw Zagranicznych, Al. Szucha 23, 00 - 580 Warszawa, POLSKA/POLAND

S. Ex.ª o Ministro dos Negócios Estrangeiros Augusto Santos Silva, Largo do Rilvas, 399-030 Lisboa, PORTUGAL

Ivan KORČOK, minister zahraničných vecí a európskych záležitostí, Hlboká cesta 2, 833 36 Bratislava, SLOVENSKO/SLOVAKIA

Dr Anže Logar, Minister za zunanje zadeve, Prešernova cesta 25, SI-1001 Ljubljana, SLOVENIJA

Ulkoministeri Pekka HAAVISTO, Utrikesministeriet, Merikasarmi, PL 176, FI-00023 Helsinki, SUOMI/FINLAND

Utrikesminister Ann Linde, Utrikesdepartementet, Arvfurstens palats, Gustav Adolfs torg 1, SE - 103 23 Stockholm, SVERIGE

Investment Bank Group[2] ("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")[3] and large companies in the Member States participating in the Fund ("the final beneficiaries") 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.[4]

(2) By decision of 16 August 2021[5], the Commission approved aid in the form of a guarantee on synthetic securitisation tranches as a fifth aid measure under the Fund.

(3) By electronic notifications in September and October 2021, Belgium (4 October 2021, SA.100203), Bulgaria (28 September 2021, SA.100149), Denmark (20 October 2021, SA.100383), Germany (30 September 2021, SA.100183), Ireland (1 October 2021, SA.100196), Greece (20 October 2021, SA.100382), Spain (28 September 2021, SA.100139), France (28 September 2021, SA.100153), Croatia (24 September 2021, SA.100119), Italy (6 October 2021, SA.100232), Cyprus (27 September 2021, SA.100123), Lithuania (8 October 2021, SA.100253), Luxembourg (1 October 2021, SA.100191), Malta (20 October 2021, SA.100392), the Netherlands (12 October 2021, SA.100283), Austria (5 October 2021, SA.100220), Poland (22 September 2021, SA100071), Portugal (21 October 2021, SA.100424), Slovenia (30 September 2021, SA.100167), Slovakia (21 October 2021, SA.100414), Finland (22 September 2021, SA.100052) and Sweden (15 October 2021, SA.100335) ("the participating Member States") notified amendments to the Fund pursuant to Article 108(3) of the Treaty on the Functioning of the European Union[6] ("TFEU").

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

April 2021, State Aid SA.58241 (2021/N) – Slovenia – Pan-European Guarantee Fund in response to COVID-19, OJ C 214, 04.06.2021, p. 1. Any reference made to the initial decision and the participating Member States shall apply in respect of Slovenia as well.

[2] The EIBG consists of the European Investment Bank ("EIB") and the European Investment Fund ("EIF").

[3] 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.

[4] The terms used in the present decision shall mean the same as defined in the initial decision, unless otherwise specified.

[5] State Aid SA.63422 – SA.63443 (2021/N) – Synthetic securitisation product under the Pan-European Guarantee Fund in response to the COVID-19 crisis, pending publication.

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

(5) 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[7] and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE AMENDMENTS

(6) The participating Member States notified several amendments to the initial decision that concern the already approved Measures A-D[8]. They also notified a new aid measure, the "Basket Bonds product".

2.1. Prolongation of the allocation period until 30 June 2022 for Measures A-D

(7) The participating Member States notified an amendment to the duration of the period during which contracts under Measures A-D can be signed between financial intermediaries and final beneficiaries for the underlying financing (the "allocation period"). The initial decision set 31 December 2021 as the latest date until which aid under the authorised measures could be granted[9]. This date is to be prolonged until 30 June 2022 for the allocation period, while guarantee agreements between the EIBG and financial intermediaries must be signed until 31 December 2021.

(8) The participating Member States submit that due to the exceptional circumstances and impact emanating from the COVID-19 outbreak and considering the Fund's objectives, the proposed prolongation is necessary to allow financial intermediaries to channel the Fund's support to the real economy, thereby maximising its impact and outreach.

(9) According to survey data from the European Central Bank and the EIBG submitted by the participating Member States, the comprehensive policy response since the start of the COVID-19 outbreak has been effective in maintaining bank credit flowing to European companies during 2020. Specifically, European companies have massively tapped bank loans at the beginning of the crisis. This was reflecting a precautionary attitude whereby companies frontloaded liquidity needs to finance working capital.

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

[8] See section 3 of the initial decision for the detailed description of the four approved measures.

[9] Recital (22) of the initial decision specified that "Aid may be granted under the measures as from their approval until no later than 31 December 2021. In particular, any contract between the final beneficiaries and financial intermediaries must be signed no later than 31 December 2021 and the respective guarantee must be granted no later than 31 December 2021."

(10) According to the participating Member States, since most of the loan origination under the approved measures was with short-term maturity, these contracts will need to be rolled-over at some point. This may happen in a situation of higher risk aversion, tightened credit standards of financial intermediaries and weaker corporates. In such a situation, a liquidity dry-up could materialise. Continuing to provide liquidity support becomes essential to avoid scarring effects from the crisis. With the remaining uncertainty surrounding the COVID-19 economic situation, companies continue to be cautious. Furthermore, the materialisation of new infection waves in the coming months cannot be completely ruled out at this stage. The precautionary attitude affects the allocation rate, i.e. the on-lending to the final beneficiary companies.

(11) According to the participating Member States, uncertainty and increased vulnerabilities are two major impediments to investment and therefore the recovery. 45% of firms surveyed in the EIBG Survey on Investment and Investment Finance[10] expect to reduce or delay investments as a result of the crisis. Many investment projects are still on hold despite the recovery. Internal financing conditions worsened abruptly during the crisis, well beyond external finance conditions.

(12) Therefore, the participating Member States consider it important to maintain the policy support well into the recovery and consider that an early removal of the support measures would be very damaging for European companies, in particular for SMEs. They consider that balance sheets have weakened and internal finance capacity is well below the pre-crisis situation. In parallel, bank credit standards are likely to tighten as prudential rules are restored and bankruptcies increase. Therefore, the participating Member States consider that liquidity support measures must remain in place to support the restart of the business activity where necessary.

2.2. Extension of the maturity of the guarantees granted under Measures A-D

(13) The initial decision does not address possible extensions in the maturity of the Fund’s (counter-)guarantee coverage in case of extensions of final beneficiaries’ transactions after the end of the allocation period The participating Member States submit that this may create a potential divergence between the Fund’s guarantee coverage and the maturity of the underlying financing transaction, should the latter be extended in duly justified circumstances.

(14) The participating Member States note that these are situations where borrowers are expected to need more time to repay the financing and which may arise due to unforeseen operational or financial difficulties, compared to the situation when the maturity was initially agreed. Financial intermediaries would typically accept such extensions in order to improve the recoverability of the financing, in accordance with their standard credit policies, which have been vetted by EIBG in the due diligence phase[11].

[10] Available at: https://www.eib.org/en/publications-research/economics/surveys-data/eu-overview-2020.htm.

[11] See recitals (26) and (37) of the initial decision.

(15) Therefore, the participating Member States submit an amendment allowing such an alignment of the maturity of the guarantee granted under Measures A-D and the underlying financing transaction if the below conditions are met.

(16) The conditions of the maturity extension are as follows:

(a) The maximum possible EGF guarantee maturity can in no circumstances exceed 15 years for Measures A and B, 6 years for Measure C, and 8 years for Measure D (see recital (26)), respectively, from the signing date of the transaction with the final beneficiary.

(b) The financial intermediary agrees in the contract[12] with EIBG that the EGF guarantee maturity may be extended up to the maximum period set out in point (a) if extensions of the underlying financing transaction are carried out according to the financial intermediary's standard policies and procedures and the following cumulative conditions are met:

(i) The final beneficiary has been made aware at the time of the financing being initially granted, that it would have the possibility to request an extension of the maturity of the underlying financing transaction, without prejudice to the fact that the financial intermediary can accept or refuse this request in accordance with its standard policies and procedures.[13]

(ii) The terms of final beneficiary transaction must not contain a prohibition preventing the final beneficiary from pre-paying the outstanding balance of the transaction, in case (as an example without limitation in the contract) the final beneficiary wishes to change to a financing provider from which it would obtain the necessary refinancing.

(iii) For Measures C and D, the cost of the guarantee will take into account this extension possibility: in the case of Measure C, this is embedded in the flat guarantee fee of 70 basis points ("bps") and in the limitation of the maximum maturity to the corresponding 6 years[14]. For Measure D, the guarantee premium needs to be adjusted to account for the new maturity. The effective extension will trigger a new pricing for the guarantee in respect of the relevant financing transaction, and the Fund will calculate the difference in pricing and charge it to the financial intermediary retroactively, in line with the applicable pricing in function of the

[12] This applies for both counter-guarantees and guarantees and will be set out in the respectively relevant contractual documentation. All of the conditions would be reflected in the relevant guarantee agreement with the financial intermediary, so the financial intermediary would be ultimately responsible vis-à-vis EIBG for their downstream implementation as well, for example by setting an equivalent condition for the sub-financial intermediary in their respective guarantee agreement.

[13] In order not to discriminate between the final beneficiaries or financial intermediaries of the Fund, this mechanism will also be incorporated in the contracts with the existing financial intermediaries, enabling these to apply the mechanism to the underlying transactions already signed when the amendment of the EGF (counter-)guarantee agreement takes place.

[14] See recitals (51) and (53) of the initial decision.

maturity set out in recitals (53) and (66)-(67) of the initial decision and recitals (27)-(32) of the present decision.

(iv) At the level of the underlying financing transaction, the extension of the maturity will not result in an increase in the interest rate or fees applicable to the underlying financing before such amendment takes place.[15] For example, it would not be allowed that the financial intermediary increases the interest rate linked to a downgrade of the final beneficiary's rating performed during the assessment of the extension request, even if such increase would be permitted by its standard policies. Financial intermediaries (financial sub-intermediaries in case of counter-guarantees) will be contractually obliged to adhere to this condition.

(v) The extension of the maturity will not affect the mechanism ensuring the transfer of benefit to the final beneficiary[16], which continues to apply as a contractual obligation/requirement for financial intermediaries throughout the EGF guarantee coverage period, even if it is extended.

2.3. Increase of the financing thresholds under Measures A and B

(17) The initial decision stipulates that under Measures A and B the overall nominal value of the guarantees per undertaking will not exceed the following ceilings:

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

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

(iii) EUR 800 000 per undertaking active in other sectors[17].

(18) The participating Member States submit that these ceilings are to be increased as follows:

(i) EUR 225 000 per undertaking active in the primary production of agricultural products;

(ii) EUR 270 000 per undertaking active in the fishery and aquaculture sector;

(iii) EUR 1 800 000 per undertaking active in other sectors.

[15] Note that (i) standard adjustments driven by changes in reference rates or interest rate fixing, and (ii) the application of standard fees and/or charges applicable to clients of the financial intermediary, defined by the intermediary's standard policies, would be permitted. However, neither the interest rate nor fee/charge types or levels could be increased as a direct result of such maturity extension.

[16] See recitals (36)-(40), (58)-(62) and (73)-(74) of the initial decision.

[17] See recital (32) of the initial decision.

(19) The participating Member States submit that these ceilings described in recital (32) of the initial decision were in line with Section 3.1 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[18] ("the Temporary Framework") applicable at the time of the adoption that decision. In January 2021, taking into consideration the continued impact of the COVID-19 outbreak, in the fifth amendment of the Temporary Framework the Commission increased the ceilings set out for certain support measures, these ceilings effectively more than doubled.[19]

(20) While the EGF deployment is still in the early stages, initial feedback from financial intermediaries is indicating that ceilings laid down in the initial decision will not be sufficient to ensure that continued support will be available to final beneficiaries throughout the allocation period. In the event of an extension of the allocation period of EGF (as described in section 2.1), such shortfall will be even more pronounced.

(21) Furthermore, the EIBG is actively engaging with national promotional banks or institutions ("NPBIs") for the deployment of EGF, where many such NPBIs are implementing national aid schemes under section 3.1 of the Temporary Framework and are already benefiting from the increased ceilings. In such cases, it is key that the terms of the EGF are aligned with those of the national aid schemes that those NBPIs are implementing.

(22) As a consequence of the prolonged economic effects of the ongoing COVID-19 pandemic resulting in additional financial needs for the enterprises, affecting the financial standing of many enterprises, the participating Member States deem necessary to increase the ceilings applicable for Measures A and B in alignment with the adjusted ceilings of the Temporary Framework.

(23) Thus, in the view of the participating Member States, the amendment will enable final beneficiaries to benefit from more support under these EGF measures during the continuing uncertain economic environment, both through commercial financial intermediaries and NPBIs. Such increased support could materialise in the form of additional EGF guarantees on further transactions granted to the same final beneficiary or in the form of larger financing being guaranteed, depending on the specific circumstances. This amendment will also allow relatively larger financing to benefit from a measure designed by analogy with section 3.1 of the Temporary Framework Section (Measures A and B), which would be otherwise excluded under Measure C. This includes, by way of example, transactions guaranteed under the capped guarantee product (Measure A), subordinated financing, transactions with small mid-caps, or transactions for which the financial intermediary needs a guarantee duration longer than six years.

[18] 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),C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (Not yet published in the Official Journal.).

[19] See points 22 and 23 of the Temporary Framework, as amended on 28 January 2021.

(24) The amendment is without prejudice to the fact that financial intermediaries will continue to be required to apply their own standard credit assessment policies in relation to (among other topics) the appropriate amount of financing (as described in recital (37) of the initial decision).

2.4. Additional amendments to Measure D

(25) Furthermore, the participating Member States submit several amendments to Measure D.

(26) The maximum maturity of the guarantees is extended from six years to eight years. The participating Member States submit that they consider it necessary to offer longer dated guarantees, more specifically up to 7 and 8 years, should final beneficiaries desire so. This reflects the uncertainty surrounding the COVID-19 outbreak that continues to persist. The experience with the second (and subsequent) lockdowns demonstrates that the European economy continues to be vulnerable to potential relapses of the infections. Growth could be significantly weaker should there be delays in vaccine deployments or lower vaccine efficacy against new variants of the virus.[20]

(27) The flat guarantee premiums for guarantees with a maturity of up to 7 or 8 years are as follows for SMEs[21]:

Guarantee coverage	Up to 7 years	Up to 8 years
50%	65 bps	77 bps
60%	97 bps	115 bps
65%	115 bps	133 bps
75%	151 bps	170 bps
80%	169 bps	188 bps
90%	195 bps	214 bps

(28) For large enterprises[22], the flat guarantee premiums are as follows:

Guarantee coverage	Up to 7 years	Up to 8 years
50%	204 bps	230 bps
60%	231 bps	257 bps
65%	246 bps	271 bps
75%	271 bps	296 bps
80%	280 bps	305 bps
90%	300 bps	324 bps

[20] Participating Member States also refer to the International Monetary Fund’s report, which states that “a premature scaling back of policy support would likely cause losses in employment and income, particularly exacerbating poverty and inequality” (International Monetary Fund, Fiscal Monitor: A Fair Shot, April 2021.)

[21] As noted in footnote 25 of the initial decision, the pricing applicable to SMEs for the different guarantee coverage rates can also be applied to public sector/health entities with less than 250 employees and which do not undertake, by nature, economic activities entities.

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

(29) For guarantees on loans with subordinated features, the flat guarantee premiums are as follows for SMEs:

Guarantee coverage	Up to 7 years	Up to 8 years
50%	224 bps	258 bps
60%	261 bps	301 bps
65%	281 bps	322 bps
70%	302 bps	343 bps
75%	323 bps	364 bps
80%	343 bps	385 bps
90%	373 bps	415 bps

(30) For large enterprises, the flat guarantee premiums on loans with subordinated features are as follows:

Guarantee coverage	Up to 7 years	Up to 8 years
50%	433 bps	483 bps
60%	464 bps	514 bps
65%	481 bps	530 bps
70%	497 bps	546 bps
75%	510 bps	558 bps
80%	520 bps	568 bps
90%	543 bps	590 bps

(31) Under the initial decision, the guarantee coverage under Measure D of a financial intermediary was up to 80% of each guaranteed transaction[23]. Following interactions with potential and approved financial intermediaries, the EIBG has identified an operational need to make available to final beneficiaries a higher guarantee rate, of up to 90%. The participating Member States consider it important to maximise the support provided through the Fund through an increased guarantee rate to maintain the bank credit flowing to European companies in a continuing environment of uncertainty, higher risk aversion, tightened credit standards and weaker companies, which is a consequence of the protracted nature of the COVID-19 outbreak and the multiple lockdowns. The increase of the maximum guarantee rate further aims at avoiding scarring effects from the crisis and allows the Fund as well as the financial intermediaries to be more flexible in meeting the financial needs of final beneficiaries.

(32) The applicable pricing for 90% guarantee coverage is as follows[24]:

	Up to 1 year	Up to 2 years	Up to 3 years	Up to 4 years	Up to 5 years	Up to 6 years	Up to 7 years	Up to 8 years
SMEs	25 bps	43 bps	48 bps	73 bps	85 bps	92 bps	195 bps	214 bps
Large enterprises	50 bps	86 bps	96 bps	146 bps	169 bps	184 bps	300 bps	324 bps

[23] See recital (65) of the initial decision.

[24] See footnotes 21 and 22.

(33) Furthermore, the participating Member States provide clarifications on the following characteristics of Measure D:

(a) In line with recital (25) of the initial decision, special purpose vehicles ("SPVs") may also be considered as eligible financial intermediaries to implement Measure D. This is because given the scope and circumstances of the Fund's implementation, SPVs could also be used as effective financial intermediaries to facilitate the implementation of specific products. Although the participating Member States expect that the use of SPVs as financial intermediaries would be the exception rather than the norm, this clarification is considered to be necessary as in some cases an SPV – as an aggregator of exposures benefitting from bankruptcy remoteness – may be the most appropriate structure. This would also clarify that Measure D may be implemented in similar ways as Measures A-C.

(b) In line with recital (30) of the initial decision, all underlying financing transactions from 14 December 2020 onwards can be eligible to be guaranteed under the Fund, if they comply with all the conditions set out in the initial decision (as amended by this decision) and other eligibility requirements applicable under the respective (counter-)guarantee agreements. For such transactions, there will be a change in the terms and conditions of the loan due to the granting of the guarantee by the Fund.

(c) If a financial intermediary provides a counter-guarantee to an underlying finance provider, the credit assessment may be performed either by the latter or by the former. If it is performed by the financial intermediary, this can be performed fully independently or partly relying on information provided by the underlying finance provider. The participating Member States provide this clarification concerning recital (70) of the initial decision, since there can be instances where some of the responsibilities delegated can remain in the responsibility of the financial intermediary directly contracted by the EIBG, for example as regards the calculation of the actual expected loss of the loans to final beneficiaries included in the portfolio.

(34) With respect to supply chain finance under Measure D, the participating Member States clarify that the aggregate maximum maturity for these transactions can effectively be of four years. This is the case since the trade payables (discounted) can be included under the contracts covered by the guarantee during a period of three years, and the maximum maturity of trade payables acceptable is of one year. For these transactions, the applicable pricing is equal to the pricing applicable for guarantees extended under Measure D, with a maturity of four years.

(35) In particular the minimum guarantee fees applicable for guarantees on trade payables of buyers/obligors are as follows, complementing the table of recital (67) of the initial decision, which remains valid:

Guarantee coverage	Up to 4 years
Up to 50%	62 bps
60%	72 bps
65%	79 bps
75%	109 bps
80%	119 bps

(36) Furthermore, in cases where the effective guarantee coverage is less than 50%, the participating Member States clarify that the pricing applicable for 50% guarantee coverage would apply.

2.5. New measure: Basket Bonds product

2.5.1. General description of the Basket Bonds product

(37) The participating Member States notified the Basket Bonds product as another measure under the Fund. Basket Bonds are described in more detail in recital (41). The objective of this product is to facilitate the access to finance for companies, which prior to the COVID-19 outbreak (i.e. before 1 January 2020) were not in difficulty as defined in the GBER, but which face difficulties in directly accessing capital markets.

(38) The participating Member States submit that these companies are facing an important lack of financing sources and, in the current difficult situation caused by the COVID-19 pandemic, are therefore significantly relying on bank loans to fund their short-term liquidity needs and growth potential. This reliance by SMEs and mid-caps[25] (together also the "issuers") on bank lending implies financial restrictions for these companies including:

(a) size of available lending lower than requested;

(b) high risk perception and pricy financing available;

(c) availability of shorter tenor than required to sustain the business growth; and

(d) requests by lenders to provide guarantees or collateral as an instrument to mitigate information asymmetries and perceived risk without increasing the appraisal cost.

(39) In this context, the Basket Bonds product, thanks to its structure, provides two main advantages, according to the participating Member States:

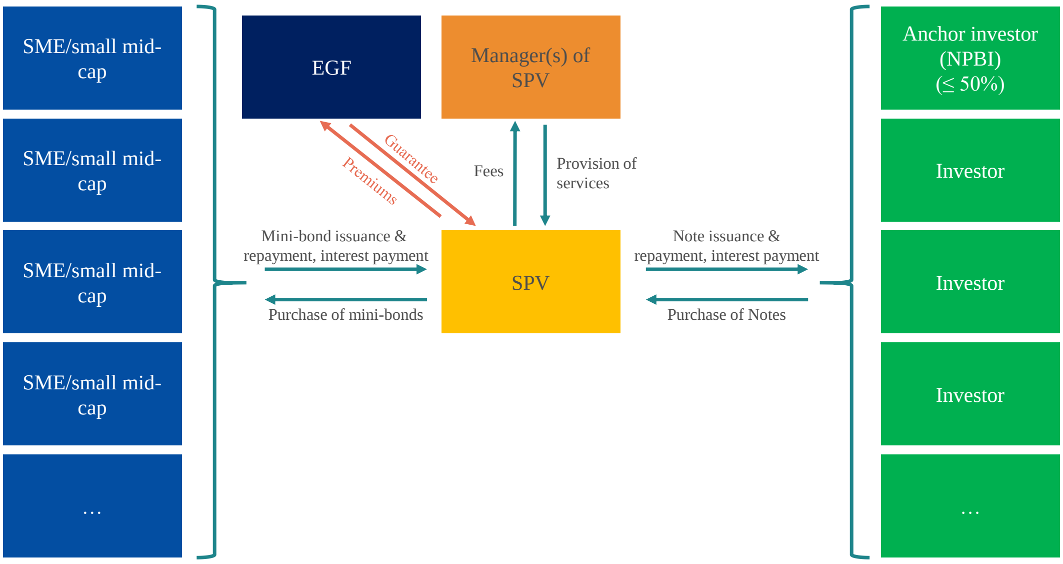
(a) because of the risk portfolio approach, it allows investors to require lower collateralisation while offering better terms (lower pricing and longer maturities); and

[25] For the purposes of the Basket Bonds product, the term mid-cap refers to undertakings with 250 to less than 3000 employees.

(b) it allows access by the issuers to investors that without the economies of scale of the Basket Bonds product would not be able to target the issuers' bond issuances due to their small size.

(40) The Fund's guarantee will allow an extension of the product for the benefit of the issuers that are considered riskier because of the COVID-19 pandemic and are in need to raise funds to support their business recovery and/or their growth.

(41) Under the Basket Bonds product, a number of SMEs and mid-caps will issue several bonds (so-called 'mini-bonds')[26] simultaneously. An SPV will purchase these mini-bonds, grouped in one portfolio (so-called 'basket') at the moment of issuance. The SPV will fund these purchases by simultaneously issuing notes (the "Notes"), which will be subscribed under the same terms and conditions by financial intermediaries (including NPBIs) acting as investors in the Notes. Financial intermediaries will also participate in the origination phase[27] of the mini-bonds. Subscribing to the Notes is open to all financial intermediaries. A schematic overview is presented in the figure below:


SME/small mid-cap
SME/small mid-cap
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SME/small mid-cap
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EGF
Manager(s) of SPV
Guarantee
Premiums
Fees
Provision of services
Mini-bond issuance & repayment, interest payment
Purchase of mini-bonds
SPV
Note issuance & repayment, interest payment
Purchase of Notes
Anchor investor (NPBI) (≤ 50%)
Investor
Investor
Investor
…

(42) The SPV thus acts as a pass-through that serves to aggregate mini-bonds issued by different issuers with a view to achieving economies of scale for both the investors in the Notes and the mini-bonds' issuers, while channelling the financing under the guarantee.

[26] As far as the term mini-bonds is concerned, the participating Member States submit that mini-bonds are medium- to long-term debt instruments, which were launched on the Italian market in 2012 in reaction to restraints in traditional bank financing and to provide SMEs with an alternative source of capital to sustain competitiveness. Mini-bonds can be securitised through special purpose vehicle companies. These transactions help to create a pool of diversified portfolios of companies available for institutional investors, which usually do not target SMEs and therefore bond issuances due to the small size of businesses.

[27] This term refers to the preparatory work done prior to the issuance of the mini-bonds, which among others involves identifying issuers, performing due diligence, determining the right size of each mini-bond and the adequate pricing.

(43) The Basket Bonds product will at this stage be implemented in Italy, while it could in principle be replicated in other participating Member States that allow issuers to make use of mini-bonds. The envisaged budget for this first implementation equals EUR 200 million (representing the guarantee cap amount) and is estimated to mobilise around EUR 800 million of new financing.

(44) As regards the first implementation of this product, the Italian NPBI Cassa Depositi e Prestiti ("CDP") will market the Basket Bonds product to all financial intermediaries active in the Italian mini-bond market. While CDP will act as anchor investor of the Notes alongside other financial intermediaries, in some cases, in order to ensure a wide market penetration of the product, it may cooperate with other financial intermediaries to originate the basket of mini-bonds. This approach may be replicated in other participating Member States. Originators of the mini bonds will co-invest in the Notes to ensure alignment of interest. CDP (or another NPBI acting in a comparable role) may retain a stake of up to 50% in the Notes at the inclusion's date, while the remainder will be held by private investors under the same terms and conditions as CDP. The originators will be required to hold on an ongoing basis at least 10% of the Notes. Originators will receive no additional remuneration other than the remuneration from the Notes.

2.5.2. Terms of the Basket Bonds product

(45) The Basket Bonds product provides for aid in the form of guarantees on a mini-bond by mini-bond basis[28] in favour of the SPV[29] with a guarantee coverage of up to 90% where losses are sustained proportionally and under the same conditions by the SPV and the Fund. The guarantee is further subject to a cap rate of 35% for each basket of mini-bonds. Any losses beyond this cap rate will be fully borne by the SPV, and thus the investors in the Notes.

(46) The guarantee will cover newly originated transactions in the form of senior unsecured mini-bonds contracted by the SPV with final beneficiaries, namely SMEs and mid-caps[30] active in the participating Member States that were not in difficulty prior to the COVID-19 outbreak (i.e. before 1 January 2020). The mini-bonds should not aim at refinancing existing exposures. The issuers will use the proceeds from the mini-bonds to fund their working capital and investment needs. The product will be open to all sectors except the financial sector and activities or sectors excluded under EIB policies.[31]

[28] The fact that the guarantee is provided on a mini-bond-by-mini-bond basis allows calls of the guarantee on the occurrence of a mini-bond default (subject to the basket cap of 35%), ensuring that the default of a mini-bond does not extend to the whole basket and the Notes. This approach ensures that the Notes remain *in bonis*. If the SPV has enough liquidity it will use that to cover directly the 10% loss not covered by the EGF guarantee. Otherwise, the 10% loss will be transferred to the Notes' holders via a (partial) restructuring of the Notes.

[29] This could also concern multiple SPVs if one Basket Bonds operation is covering multiple thematic baskets.

[30] As stated in footnote 25, for the purposes of this product, the term mid-cap refers to undertakings with 250 to less than 3000 employees.

[31] See footnotes 17 and 18 of the initial decision.

(47) The mobilisation of the guarantee will be contractually linked to specific conditions agreed between the EIBG and its counterparty, when the guarantee is initially structured.

(48) The amount guaranteed by the Fund for each portfolio will decrease over time in accordance with the principal repayment of the underlying mini-bonds.

(49) Both the mini-bonds covered by the guarantee, and the Notes will be issued no later than 30 June 2022. Mini-bonds operations signed before the conclusion of the guarantee agreement but after the entering into effect of the initial decision may be added to a basket if they fulfil the other eligibility criteria (see recital (46)) and an incentive effect is ensured. The inclusion of these operations will be subject to transfer of the advantage granted by the Fund's guarantee to the issuers. Previously signed operations will be amended accordingly in order to ensure that the step-change brought by the Fund's guarantee is passed on.

(50) Should any mini-bonds and Notes be fully repaid before the end of the allocation period, new mini-bonds and new Notes can be issued and included under the guarantee, up to the maximum guarantee amount. This is subject, *inter alia*, to the conditions that both mini-bonds and Notes are issued no later than the end of the allocation period, all other eligibility criteria are complied with and the transfer of advantage to the issuers is ensured.[32]

(51) The mini-bonds are expected to have a size between EUR 2 million and EUR 25 million.[33] The overall amount of mini-bonds per issuer shall not exceed one of the following thresholds:

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

(b) 25% of the issuer's total turnover in 2019 or for the last year available; or

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

(52) Applying the option set out in recital (51)(c) is proposed by the participating Member States, since it is particularly suitable for issuers with low wage costs (e.g. small enterprises) whose current financial needs are higher than normally expected due to an irregular turnover or its irregular distribution over the year as a result of the COVID-19 pandemic. This also applies for certain categories of

[32] The replenishment can be put in place by the establishment of a new basket of mini-bonds depending on technical features to be assessed in detail in the execution phase of the product. The replenishment will be completed ensuring the compliance with the eligibility criteria and with the safeguard of the incentive effect (i.e. the transfer of the EGF guarantee financial advantage to the final beneficiaries).

[33] Or the equivalent in other currency.

companies (e.g. start-ups or scale-ups) for which the 2019 data or the last available data would not be a good benchmark for their current financing needs. Enterprises that are experiencing a higher demand for the goods or services produced as a consequence of the COVID-19 pandemic might also fall into this category. The issuers will need to justify why the limits provided under the other ceilings are not appropriate proxies to forecast their liquidity needs in the next months.

(53) Following the approach described in recital (51)(c) also enables a more tailor-made financing solution for some entities benefiting from the guarantee and ensures minimum interference with the financial intermediaries' specific credit risk assessment processes. The financial intermediaries will be bound to continue applying their standard credit assessment to assess the creditworthiness of the issuers. Furthermore, the financial intermediaries retain risk on the portfolio, as investors in the Notes are in any case obliged by their credit policies to carefully assess on a case-by-case basis the amount of financing necessary and the repayment capacities of the issuers and might offer a lower amount than the self-declaration states, where they so decide.

(54) The duration of the guarantee will be between at least 1 month and a maximum of 8 years on each underlying mini-bond. As regards mini-bonds covered by the guarantee with a final maturity of more than 8 years, such transactions would be covered by the guarantee only up to the end of the 8 years. After the end of the 8th year, the transaction would be automatically excluded from the guarantee coverage.

(55) The pricing for the guarantees of each mini bond under the Basket Bonds product complies with the pricing for Measure D, which is set out in recital (66) of the initial decision and complemented by the pricing set out in recitals (27), (28) and (32) above. The applicable pricing will be determined based on the maturity, the guarantee coverage and the status of the issuer being an SME or mid-cap.

2.5.3. Selection and appointment of third parties as managers of the SPV

(56) The management of an SPV involves several third parties. Typically, the main actors in this context are the (corporate) servicer, the calculation agent, the paying agent, the monitoring agent and the representative of the noteholders.

(57) The participating Member States submit that the EIBG will require that the financial intermediaries acting as originators, or in turn the SPV, undertake to select and appoint third parties, as described in recital (56), to which the SPV will outsource all corporate activities, by means of a bidding process following a benchmarking exercise based on actual market surveys, and ensure that their remuneration is in line with market conditions.[34] Several skilled providers with solid and reputable experience and with a sound track-record in offering services of this nature will be invited to bid. The selection process will aim at maximising

[34] Specific provisions will be included in the relevant contractual agreements with the EIBG, providing also for the possible consequences in case of failure to comply with this requirement. Furthermore, the relevant contractual agreements will also provide that, at the request of the EIBG, the financial intermediaries or the SPV will have to share the documentation related to the relevant selection process.

the professional skills and reputation available for the various activities, while ensuring the whole structure is cost efficient in order to preserve the advantage for the issuers. In addition, an early termination clause in case of underperformance of the selected third parties will be included in the respective contractual agreements.

2.5.4. Pricing mechanism of the mini-bonds and Notes

(58) In order to set the pricing of the mini-bonds, the financial intermediaries acting as originators will assess the creditworthiness of each issuer taking into account the credit enhancement provided by the Fund's guarantee that will improve the terms of the mini-bond vis-à-vis a comparable issue without such a guarantee. Following this exercise, the financial intermediaries will size the credit risk spread applicable to the mini-bond. As a result, the pricing will be lowered because of the availability of the guarantee, with the financial intermediaries passing on the advantage to the issuers to the maximum extent possible. The financial intermediaries will also charge the cost of funding for the given maturity of the mini bonds, any possible cost associated in case specific clauses are requested by the issuer (e.g. early redemption of the bonds etc.) and the cost of the SPV.

(59) The sum of the credit risk spread, the cost of funding, and the cost associated with specific clauses, if any, will also be the coupon of the Notes. The coupon of the Notes will be equal to the weighted average of the coupon of the mini-bonds less the cost of the SPV.

(60) The mini-bonds baskets will not be modified after the mini-bonds are issued and added thereto. Once new operations will be originated by the financial intermediaries, such new mini-bond issuances will be regrouped in additional and separate baskets. This ensures that the coupon of the Notes is continuously aligned with the underlying mini-bonds pricing, since each basket will have its own mini-bonds and Notes.[35]

(61) The participating Member States consider that such a structure has a twofold objective: i) it enables a direct link of the mini-bonds with the Notes; and ii) it ensures a transfer in full of the financial advantage to the issuer in a transparent manner avoiding risk of overcollateralisation of the Notes.

(62) The Notes will be issued at 100% of their principal amount and will consist of a single tranche, ranking *pari passu* among each other. The Notes may take the legal form of partly paid notes where the nominal amount of the Notes will be

[35] In practice, it may happen that a single SPV will hold a number of baskets each one ring-fenced from the others. Alternatively, a number of SPVs will be established, with separate thematic baskets respectively.

paid-up in instalments.[36] In such a case, on the issue date, the full nominal amount of the Notes will be issued by the SPV and subscribed by the investors, while a certain amount will be paid by the investors as initial part of the subscription price in respect of the Notes. The investors will commit to make further payments upon receiving a request by the SPV to do so, to fund a proportional top-up of the mini-bonds issued by the same basket of beneficiaries[37]. For partly paid notes, the relevant subscription period window shall elapse at the latest by the end of the allocation period. Any further issuances beyond such date will not benefit from the Fund’s guarantee coverage.

2.6. Cumulation, monitoring and reporting

(63) The participating Member States confirm that the amendments and the inclusion of the Basket Bonds product do not affect the provisions concerning cumulation (as described in recitals (75) to (81) of the initial decision), monitoring and reporting (as described in recital (82) of the initial decision), which will apply to Measures A-D and the Basket Bonds product.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

(64) In section 4.2 of the initial decision, the Commission assessed and concluded that Measures A-D constitute aid within the meaning of Article 107(1) TFEU to the final beneficiaries and to the financial intermediaries and it could not be excluded that they constitute aid to the Fund (see recitals (84) to (102) of the initial decision). The amendments notified to Measures A-D do not alter this conclusion.

(65) Therefore, the Commission is going to assess below only the existence of aid with regard to the Basket Bonds product. 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;

(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.

[36] During the subscription period window, the SPV can request the investors to make a further instalment payment as an additional part of the subscription price for the Notes. If the nominal amount of the Notes is not entirely paid until the end of the subscription period, the lower amount paid up by the investors in respect of the Notes until such date shall crystallize and the amount of the Notes, which is not paid-up by the investors up to such date, shall be cancelled. This procedure, which is a standard feature of the bond market to minimize the negative carry (and therefore the cost for the SPV and the final beneficiaries), ensures that at the end of the subscription period the Notes outstanding are 100% of the Notes’ face value.

[37] This will not change the composition of the mini-bonds in that basket.

(66) The participating Member States notified the Basket Bonds product as an additional aid instrument under the Fund. Under this product, the Fund will provide a guarantee in favour of the SPVs for the benefit of SMEs and mid-caps (as the final beneficiaries) with the involvement of financial intermediaries and third parties as described in section 2.5 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 third parties involved in the management of the SPVs;

(d) the SPVs;

(e) the Fund.

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

(67) The Basket Bonds product, which aims at facilitating the access to finance for SMEs and mid-caps, is a measure imputable to the participating Member States and financed through State resources. As the Basket Bonds product will be implemented under the Fund, just like the four other aid measures assessed in the initial decision, the Commission refers to its reasoning in recital (86) of the initial decision.

(68) The measure confers an advantage on the final beneficiaries in the form of guarantees on mini-bonds on terms that are not in line with what a market operator would require. The Commission further refers to its reasoning in recital (87) of the initial decision.

(69) The advantage granted by the measure is selective, since it is conferred only on certain undertakings, i.e. SMEs and mid-caps. Moreover, certain activities excluded by the EIBG[38] are not eligible.

(70) 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.

(71) 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

(72) The Basket Bonds product is a measure imputable to the participating Member States and financed through State resources. As the Basket Bonds product will be implemented under the Fund, just like the four other aid measures assessed in the

[38] See footnotes 17 and 18 of the initial decision.

initial decision, the Commission refers to its reasoning in recital (91) of the initial decision.

(73) The measure confers an advantage on the financial intermediaries as the Fund provides guarantees on the mini-bonds on preferential terms, while the mini-bonds are intrinsically linked with the Notes. In particular, the financial intermediaries benefit from the guarantee, since it will *de facto* enhance the credit rating of the Notes in which they invest[39], as well as from economies of scale provided thanks to the structure of the measure. The Commission further refers to its reasoning in recital (92) of the initial decision.

(74) The advantage granted by the measure is selective, since it is conferred only on certain financial intermediaries, which are selected by the EIBG to support the implementation of the Basket Bonds product.[40] While all financial intermediaries are allowed to apply, the EIBG will thus exercise discretion in choosing the financial intermediaries that ultimately will implement the measure.

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

(76) 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 third parties involved in the management of the SPVs

(77) The Basket Bonds product is a measure imputable to the participating Member States and financed through State resources. As the Basket Bonds product will be implemented under the Fund, just like the four other aid measures assessed in the initial decision, the Commission refers to its reasoning in recital (91) of the initial decision.

(78) As described in recitals (56) and (57) above, the management of an SPV involves several third parties. The Commission notes that the process for the selection and the appointment of these third parties will be based on actual market surveys allowing benchmarking of market remuneration for this type of services. Third parties involved in the management of the SPV will be selected following a bidding process in the context of which several experienced providers will be invited to participate and bid for the respective services. As per the participating Member States, the aim of this process is to maximise the professional skills and reputation of the candidates available for these activities, while ensuring that the respective remuneration reflects market conditions and that the whole structure is cost-efficient in order to preserve the advantage for the issuers. Furthermore, as

[39] See recital (58) and footnote 28 above.

[40] Initially, *de facto* only financial intermediaries active in the Italian market will be able to implement the Basket Bonds product.

set out above in recital (57), the contractual agreements with the selected third parties will include early termination clauses that can be invoked in certain situations.

(79) The Commission considers that this commercially-driven selection and appointment process leads to a remuneration in line with market conditions in comparable situations for the third parties.

(80) This allows the Commission to *prima facie* observe that this measure appears not to confer an economic advantage to the parties involved in the management of the SPV. However, in the current circumstances, in the absence of a fully-fledged open, transparent and non-discriminatory selection process, it cannot be excluded with absolute certainty that a potential advantage remains with these parties. Such advantage would distort competition by strengthening their competitive position in the market for the provision of these type of services and could affect trade between Member States in those liberalised markets.

(81) In view of the above, the Commission concludes that the measure appears not to constitute aid within the meaning of Article 107(1) TFEU at the level of the third parties involved in the management of the SPVs. The Commission notes that in the event that aid was found at the level of these parties, such aid would be in any event compatible aid for the reasons set out in section 3.2.5.3 of this decision.

3.1.4. Existence of aid at the level of the SPVs

(82) The Basket Bonds product is a measure imputable to the participating Member States and financed through State resources. As the Basket Bonds product will be implemented under the Fund, just like the four other aid measures assessed in the initial decision, the Commission refers to its reasoning in recital (91) of the initial decision.

(83) The Commission notes that the SPVs are established in order to enable the purchase of multiple mini-bonds, which will be covered by the EGF guarantee, grouped in thematic baskets, and to finance these purchases by the issuance of Notes, which are ultimately purchased by investors. The SPVs thus act as a pass-through to aggregate the mini-bonds from different issuers, thereby achieving economies of scale for both the investors in the Notes and the mini-bonds issuers, while channelling the financing under the Fund guarantee.[41]

(84) The SPVs are managed by third parties, as explained in section 3.1.3, on market terms. Furthermore, the entire structure is designed in a transparent manner to ensure that the coupons of the mini-bonds and the Notes are intrinsically linked[42]. The participating Member States have further submitted that the SPV-related component of the coupon of the mini-bonds is confined to the SPV’s costs.

(85) Based on the above, the Commission considers that the SPVs are merely intermediary vehicles for the transfer of advantage of the Basket Bonds product to financial intermediaries and ultimately to the final beneficiaries. The SPVs should

[41] See recital (42).

[42] See recital (59).

therefore not be considered as the direct beneficiaries of the Basket Bonds product.

(86) In view of the above, the Commission concludes that the measure does not constitute aid within the meaning of Article 107(1) TFEU at the level of the SPVs. On a subsidiary basis, the Commission observes that in the event that the SPVs were considered an aid recipient, the considerations regarding the existence and compatibility of aid to financial intermediaries, set out in sections 3.1.2 and 3.2.5.2 respectively, would apply *mutatis mutandis*.

3.1.5. Existence of aid at the level of the Fund

(87) The implementation of the Basket Bonds product as a new 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

(88) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the amendments to Measures A-D affect their compatibility with the internal market and whether the Basket Bond product is compatible with the internal market.

(89) 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.

(90) 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"*.[43]

(91) As explained in recitals (107)-(108) of the initial decision, the compatibility of the measures is to be assessed directly under Article 107(3)(b) TFEU. However, given the similarities with guarantee schemes covered by the Temporary Framework under sections 3.1 or 3.2., the Temporary Framework can provide guidance and its principles can be applied *mutatis mutandis* as far as relevant.

[43] See point 18 of the Temporary Framework.

3.2.1. Compatibility of the prolongation of the allocation period until 30 June 2022 for Measures A-D

(92) In the initial decision, the Commission recognised the particular nature of the Fund due to the participation of a large number of Member States. Notably, the Commission recognised that (i) sharing risks and losses among several Member States helps to remedy a serious disturbance in the economy of an individual Member State (high losses in one Member State may otherwise affect more significantly the overall fiscal and economic situation of that Member State) and (ii) the setting up of a Fund of this type bears higher administrative complexity than the setting up of pure national schemes. Therefore, the Commission considered a longer timeframe for granting aid under the Fund (i.e. until 31 December 2021), deviating from points 22(d) and 25(c) of the Temporary Framework applicable at the time, appropriate.[44]

(93) Meanwhile, the Commission amended the Temporary Framework in November 2021[45] in view of the evolution of the epidemiological and economic situation, and *inter alia* prolonged its application period for schemes under Section 3.1 and 3.2 until 30 June 2022. The Commission notes that the notified amendment, i.e. the prolongation of the allocation period for Measures A-D until 30 June 2022, is in line with the currently applicable points 22(d) and 25(c) of the Temporary Framework. of

(94) Therefore, the Commission considers that the prolongation of the allocation period until 30 June 2022 does not alter the assessment of the compatibility of Measures A-D made in the initial decision, and which therefore remain compatible with the internal market under Article 107(3)(b) TFEU.

3.2.2. Extension of the maturity of the guarantees granted under Measures A-D

(95) The Commission takes note that due to the uncertainties of the evolution of the economic environment, some final beneficiaries may need more time to repay their loans than foreseen at the time of the granting of the loan. Therefore, the Commission considers that under certain circumstances and with the appropriate safeguards it may be appropriate to extend the maturity of the underlying financing transaction without the discontinuation of the guarantee provided by the Fund.

(96) Notably, the safeguards notified by the participating Member States (see recital (16)) ensure that the extension is only granted to those final beneficiaries that are viable on the long-term and have a real repayment prospect and the benefit is transferred to the final beneficiary to the maximum extent possible and at the same prevent financial intermediaries from misusing the extension to the detriment of the Fund and/or final beneficiaries.

[44] See recitals (107) and (113) of the initial decision.

[45] See footnote 18.

(97) In particular, the limitation of the maximum maturity (see recital (16)(a)) and the fact that the final beneficiary is made aware of this possibility upfront (see recital (16)(b)(i)) and it is not prohibited from pre-paying the outstanding balance and seeking refinancing from other sources (see recital (16)(b)(ii)) limit the discretion of the financial intermediaries. Furthermore, the conditions that the maturity extension will not result in the increase of the interest rate and fees applicable to the underlying financing for the final beneficiary before such amendment takes place (see recital (16)(b)(iv)) and that it will not affect the mechanism ensuring the transfer of benefit (see recital (16)(b)(v)) ensure that the advantage stemming from the maturity extension of the guarantee is passed on to the maximum extent possible to the final beneficiaries and therefore it does not result in undue advantage for the financial intermediaries.

(98) At the same time, the limitation of the maximum maturity (see recital (16)(a)) and the condition under Measures C and D that the cost of the guarantee will reflect the maturity extension (see recital (16)(b)(iii)) ensure that the aid is limited to the minimum necessary. Notably, for Measure C the flat guarantee fee of 70 bps p.a. will be applied to the longer maturity (max. 6 years), while for Measure D, the guarantee premium will be adjusted to the value corresponding to the new maturity (see recital (16)(b)(iii)).

(99) In addition, the fact that the financial intermediaries are required to continue to adhere to their standard credit assessment policies and procedures, which have been vetted by the EIBG, when deciding on granting the maturity extension and the appropriate new maturity (see recital (16)(b) and in particular point (i)), ensures that the extension is only granted to viable final beneficiaries and contributes to limiting the aid to the minimum necessary.

(100) Therefore, the Commission considers that the extension of the maturity of the guarantees granted under Measures A-D is compatible with the internal market under Article 107(3)(b) TFEU.

3.2.3. *Compatibility of the increase of the financing thresholds under Measures A and B*

(101) The Commission recalls that it assessed the compatibility of Measures A and B by analogy of Section 3.1 of the Temporary Framework.[46] Therefore, it considers appropriate to assess the amendments concerning the financing thresholds on the basis of its case practice under Section 3.1 of the Temporary Framework.

(102) On 28 January 2021, the Commission amended points 22(a) and 23(a) of the Temporary Framework to increase the applicable maximum financing thresholds. The Commission notes that by notifying the respective amendment the participating Member States make use of the increased flexibility provided by the Temporary Framework and the notified financing thresholds correspond to the maximum amounts provided therein.

(103) Therefore, the Commission concludes that Measures A and B as amended continue to be in line with points 22(a) and 23(a) of the Temporary Framework,

[46] See recital (120) of the initial decision.

thus continue to be compatible with the internal market under 107(3)(b) TFEU by analogy.

3.2.4. Compatibility of the additional amendments to Measure D

(104) With regard to the level of the guarantee premiums, the maturity and the guarantee coverage, the Commission recalls that it assessed the compatibility of Measure D by analogy with points 25(a), (b), (f) and 27bis of the Temporary Framework.[47] Therefore, the Commission considers it appropriate to continue assess the respective amendments of Measure D on the basis of its case practice under the Temporary Framework.

(105) Point 25(b) of the Temporary Framework provides for the modulation of guarantee premiums depending on the guarantee coverage, the guarantee duration and the use of flat guarantee premiums. Point 25(f) of the Temporary Framework – as a general rule – limits the duration of the guarantee to maximum six years, unless modulated according to point 25(b), and limits the guarantee coverage to 90% of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State.

(106) The Commission notes that the participating Member States make use of the flexibility provided under point 25(b) of the Temporary Framework and considers that it may be appropriate to provide financing with a maturity longer than 6 years in view of the protracted nature of the economic disturbance caused by the COVID-19 outbreak[48].

(107) The Commission notes that the flat guarantee premiums notified by the participating Member States for maturities of up to 7 and 8 years (see recitals (27)-(30) and (32)) were calculated taking into account the exceptional nature of longer maturities (proportionally higher amounts were calculated for the 7th and 8th than to the first 6 years). The significant increase of the premiums in the 7th and 8th year and the application of flat guarantee premiums contain an incentive for granting shorter maturities. The Commission observes that the flat guarantee premiums are in line with the summary of case practice on modulation under point 25(b) of the Temporary Framework the Commission published in March 2021[49].

(108) Furthermore, the Commission considers that the guarantee premiums for loans with subordinated features with maturities up to 7 and 8 years (see recitals (29)-(30)) continue to be line with the conditions of pricing of subordinated loans laid down in point 27bis of the Temporary Framework.

[47] See recitals (122)(i), (iii) and (123)(i) of the initial decision.

[48] See the established case practice under the Temporary framework, e.g. cases State Aid SA.58096 (2020/N) – Spain – COVID-19: Amendments to SA.56803 (2020/N) Guarantee scheme, OJ C 277, 21.08.2020, p. 1.; State Aid SA.58778 (2020/N) – Spain – COVID-19: Amendments to SA.56851 (2020/N) Conditions of the guarantees on loans and prolongation, OJ C 376, 06.11.2020, p. 1., and State Aid SA.59196 (2020/N) – Spain – COVID-19: Third amendment to SA.56851 (2020/N), OJ C 7, 08.01.2021, p. 1.

[49] Available at: https://ec.europa.eu/competition-policy/system/files/2021-03/summary_of_case_practice_on_modulation_under_point_25%28b%29_of_TF.pdf.

(109) With regard to the guarantee coverage, the Commission notes that the increase of the maximum guarantee coverage to 90% (see recital (31)) is within the limits provided for in point 25(f)(i) of the Temporary Framework.

(110) Therefore, the Commission considers that the extension of the maximum maturity to 8 years, the corresponding levels of the guarantee premium and the increase of the maximum guarantee coverage to 90% continue to meet the conditions of points 25(a), (b), (f) and 27bis of the Temporary Framework.

(111) Furthermore, the Commission considers that the clarifications submitted by the participating Member States (see recitals (33)-(36)) do not affect the compatibility of the measure.

(112) With regard to the unchanged elements of Measure D, the Commission refers to its compatibility assessment in the initial decision[50].

(113) Therefore, the Commission concludes that Measure D as amended continues to be compatible with the internal market under Article 107(3)(b) TFEU.

3.2.5. Compatibility of the Basket Bonds product

(114) The Basket Bonds product aims at facilitating the access to finance for SMEs and mid-caps against the background of the COVID-19-related economic crisis. That crisis has negatively affected the provision of liquidity to undertakings, and to SMEs and mid-caps in particular. The measure thus pursues the same policy objective as the one pursued by the various types of aid measures included in the Temporary Framework.

(115) 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 disturbance in the economy caused by the COVID-19 outbreak, the Temporary Framework is not directly applicable to the measure proposed by the participating Member States.

(116) The Basket Bonds product has several similarities with loan guarantee schemes covered by the Temporary Framework under section 3.2 thereof. The main differences lie in the layered structure and the bundling of several mini-bonds covered by the guarantee in one basket while the purchase is funded indirectly through the issuance of Notes.[51]

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

[50] See recitals (122) and (123) of the initial decision.

[51] See recital (41).

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

Appropriateness

(118) 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 were to 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) were not appropriate to remedy the disturbance.

(119) The measure aims at maintaining SMEs' and mid-caps' access to funding at a time when the normal functioning of credit markets remains severely disturbed by the COVID-19 outbreak, which has been affecting the wider economy and leading to severe disturbances of the real economy of the participating Member States. In particular, the measure will help these companies overcome the difficulties in directly accessing funding in the wake of the COVID-19 outbreak, which is still disturbing the functioning of credit markets, with its associated serious risks of a significant further damage to the real economy of the participating Member States, while opening a new source of financing for such issuers (see recitals (37) and (38)).

(120) The aid will be granted no later than 30 June 2022 since both the issuers' mini-bonds, covered by the guarantee, and the respective Notes will be issued until that date (see above, recital (49)). Therefore, the measure meets the condition of point 25(c) of the Temporary Framework.

(121) In addition, the Commission considers that the Basket Bonds product is more complex than a typical loan guarantee scheme. However, it provides the two main advantages of allowing investors to require lower collateralisation while offering better terms to the final beneficiaries and of allowing access by the issuers to investors that would not be able to target the issuer's bond issuance individually due to the limited amounts per mini-bond.[52]

(122) Based on the above, the Commission considers that the measure is appropriate, as it will fulfil the objective to facilitate the access to finance by companies that face difficulties in directly accessing capital markets.

Necessity

(123) 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.

(124) The participating Member States have chosen to implement the Basket Bonds product through the EIBG. This product encourages investors to provide lending to companies that face limited access to financing sources to fund their short-term liquidity needs and growth potential, and largely rely on bank lending, which, as clarified in recital (38) above, also implies restrictions. At the same time, it

[52] See recital (39).

ensures that economic incentives are in place for the financial intermediaries, which are required to focus on viable companies, subject to due diligence and a case-by-case decision in accordance with their standard credit assessment and pricing policies, vetted by the EIB, when acting as originators. In this regard, the Commission also takes positive note of the fact that while the maximum guarantee coverage is set at 90%, this is further subject to a cap rate of 35% for each basket of mini-bonds. This, alongside the fact that originators are required to co-invest in the Notes that are linked to the mini-bonds and are required to hold on an ongoing basis at least 10% of the Notes, ensures that the relevant decisions of the originators maintain an important economic orientation.

(125) Besides, as for the other measures under the Fund, firms that were already in difficulty on 31 December 2019 are excluded from benefitting from the measure. The measure therefore respects the objective of the Temporary Framework, which aims at targeting the schemes to companies, which are in difficulties only because of the COVID-19 outbreak.

(126) Based on the above, the Commission concludes that the measure is limited to the amount and form necessary to achieve the objective pursued. 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

(127) For the proportionality assessment of the Basket Bonds product, the Commission will apply the conditions of the Temporary Framework *mutatis mutandis*[53].

(128) In particular, by analogy to section 3.2 of the Temporary Framework concerning guarantees on loans[54]:

(a) The measure sets minimum levels for guarantee premiums that comply with the pricing for Measure D, depending on the maturity, the guarantee coverage and the status of the issuer (SME or mid-cap) (see recital (55)). It therefore complies with the guidance provided in point 25(b) of the Temporary Framework.

(b) The overall amount of mini-bonds per issuer covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (see recital (51)). The participating Member States also provided an appropriate justification as to why the option of point 25(d)(iii) of the Temporary Framework is used. They explained that this option is particularly suitable for issuers with low wage costs, whose current financing needs could be higher than expected due to an irregular turnover or its irregular distribution over the year as a result of the COVID-19 pandemic, or for certain categories of companies (e.g. start-ups or scale-ups or companies that are experiencing a higher demand for the

[53] Except for point 25(c), which rather ensures that the aid is appropriate and do not relate to the proportionality of the aid. This point is therefore mentioned in the relevant section.

[54] The Commission considers that mini-bonds are sufficiently equivalent to a loan in their effects and characteristics.

goods or services as a consequence of the COVID-19 pandemic) whose 2019 data or last available data would not be a good benchmark. The issuers are also required to provide a justification why the limits provided under the other ceilings are not appropriate proxies to forecast their liquidity needs in the next months (see recitals (52) and (53)).

(c) The measure limits the duration of the guarantees to a maximum of 8 years (see recital (54)). Those guarantees cover up to 90% on a mini-bond by mini-bond basis and losses stemming from the mini-bonds are sustained proportionally[55] and under the same conditions by the SPV and the Fund (see recital (45)). Furthermore, when the size of the mini-bond decreases over time, the guaranteed amount decreases proportionally (see recital (48)). The measure therefore complies with point 25(f) of the Temporary Framework.

(d) Guarantees granted under the Basket Bonds product relate to investment and working capital needs of the issuers (see recital (46)(46)). The measure therefore complies with point 25(g) of the Temporary Framework.

(e) Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (see recital (37)). The measure therefore complies with point 25(h) of the Temporary Framework.

(129) Based on the above as well as on the considerations set out above in recital (63), the Commission concludes that the features of the Basket Bond product ensure that the measure is proportionate to the objective pursued.

Conclusion

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

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

(131) The Temporary Framework notes that where aid is provided in the form of public guarantees pursuant to Section 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.

(132) The Basket Bonds product is designed in an adequate manner to minimise the possible indirect aid to the financial intermediaries, which helps to limit undue distortions to competition. The Basket Bonds product introduces the following safeguards in relation to the possible indirect aid:

[55] While the overall losses for the Fund are in any case limited by a cap rate that is applied to a basket of mini-bonds, corresponding to 35% on the underlying basket exposure.

(a) The measure only applies to newly granted instruments[56], excluding the provision of State guarantees to legacy exposures (recital (46)), thereby limiting the probability that financial intermediaries benefit unduly;

(b) During the first implementation, the NPBI will market the Basket Bonds product to all financial intermediaries active in the mini-bond market in Italy (see recital (44)). Therefore, the Commission considers that competition among financial intermediaries will contribute to the aid being passed on to final beneficiaries to the maximum extent possible;

(c) The financial intermediaries will pass on the advantage from the guarantee by lowering the credit risk spreads of the mini-bonds thanks to the Fund's guarantee, thereby lowering the cost for the final beneficiaries. In addition, the coupon of the Notes will be the weighted average of the coupons of the mini-bonds less the cost of the SPV, and the composition of a basket of mini-bonds will not be modified after the initial issuance. The Commission considers that this ensures that the coupon of the Notes is continuously aligned with the ones from the mini-bonds and there is no risk of overcollateralization of the Notes. Finally, also in case of partly paid Notes, the measure ensures that the alignment between mini-bonds and Notes remains intact (see recitals (58) to (62)).

(133) The Commission therefore considers that the safeguards presented above ensure that financial intermediaries will not unduly benefit from the Basket Bonds 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

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

3.2.5.3. Compatibility of the aid at the level of the third parties involved in the management of the SPVs

(135) As indicated above in section 3.1.3, the Commission cannot fully exclude the possibility that there is aid at the level of the third parties involved in the management of the SPVs. Therefore, the Commission needs to assess the compatibility of such potential aid.

(136) The Commission notes that the potential aid to these third parties supports the set-up of the Basket Bonds product structure and the implementation of the Basket Bonds product, which the Commission considers as necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the participating Member States (see reasoning set out in section 3.2.5.1 above).

[56] Mini-bond operations signed after the initial decision may be added to a basket only if they fulfil the eligibility criteria and an incentive effect is ensured. Therefore, this provision (recital (49)) does not affect the compatibility of the measure and the pass-on of the benefit to the issuers to the largest extent possible.

(137) The Commission further notes that the Basket Bonds product, while presenting similarities with loan guarantee schemes, requires the set-up of a more complex structure and its dedicated management. However, this in turn results in economies of scale and, as observed above in recital (39), facilitates the issuers' access to finance while allowing them to obtain better terms, at a time when the functioning of the credit markets and the economy remains severely disturbed by the COVID-19 outbreak. Having regard to these considerations, as well as to the considerations set out in recitals (118)-(126) above, the Commission concludes that any potential aid benefitting the third parties involved in the management of the SPVs is necessary and appropriate in view of the objective of this measure and is justified to remedy a serious disturbance in the economy of the participating Member States.

(138) As regards proportionality, the Commission notes that the main economic effect for the third parties involved in the management of the SPVs stems from their remuneration. The Commission recalls that such parties will be chosen following a commercially-driven selection and appointment process (see recitals (78)-(79) above), which will lead to a remuneration in line with market practice. The Commission therefore concludes that any potential economic advantage for these third parties is limited to the minimum necessary. On this basis, the Commission concludes that any potential aid at the level of the third parties involved in the management of the SPVs is proportionate in view of the objective of the measure.

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

(139) As indicated in recital (87), the addition of the Basket Bonds product does not alter the characteristics, functioning and overall budget of the Fund.

(140) Therefore, the Commission concludes that the implementation of the Basket Bonds product under 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 would be compatible with the internal market under Article 107(3)(b) TFEU (see recitals (131) to (143) of the initial decision).

3.2.6. Conclusion of the compatibility assessment

(141) The Commission concludes that the notified amendments and the inclusion of the Basket Bonds product under the Fund are compatible with the internal market under Article 107(3)(b) TFEU.

4. Compliance with intrinsically-linked provisions of Directive 2014/59/EU and, where applicable, Regulation (EU) 806/2014

(142) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution[57] ("BRRD") and, where applicable, of Regulation (EU) 806/2014 on the Single Resolution Mechanism[58] ("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 it has already assessed the compliance with the intrinsically-linked provisions of the BRRD and, where applicable, the SRMR, with respect to Measures A-D in the initial decision and the notified amendments do not alter that conclusion. Therefore, the Commission considers that in the present decision it is only necessary to assess the compliance with intrinsically-linked provisions of the BRRD and, where applicable, the SRMR, with respect to the Basket Bonds product.

(143) 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.[59] 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. the final beneficiaries) that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of those undertakings. 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.

(144) Moreover, as outlined in section 3.2.5.2, 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.

(145) The Commission therefore concludes that the measure does not violate any intrinsically-linked provisions of the BRRD and, where applicable, the SRMR.

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

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

[59] 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

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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