

***THIS FORM SHOULD BE ATTACHED AS AN ANNEX TO THE STANDARD NOTIFICATION FORM IN SANI2***

**NOTIFICATION TEMPLATE FOR THE TEMPORARY FRAMEWORK TO SUPPORT THE ECONOMY IN THE CURRENT COVID-19 OUTBREAK**

**STATE AID MEASURES IN A FORM OF RECAPITALISATION OF NON-FINANCIAL UNDERTAKINGS (SECTION 3.11)**

On 8 May 2020, the Commission amended the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, originally adopted on 19 March 2020) and set out the conditions for granting aid in form of recapitalisation to non-financial undertakings (section 3.11 TF COVID-19). The Temporary Framework was further amended on 29 June 2020, 13 October 2020, and 28 January 2021.<sup>1</sup>

With this separate template, the Commission invites Member States to provide in their notification on recapitalisation measure(s) to non-financial undertakings:

- the general information under Section I (including the language waiver in Annex I) and
- the information in Section II for aid under section 3.11 of the TF COVID-19 – Aid in form of recapitalisation measures for non-financial undertakings (including the term sheets for equity instruments in Annex II and hybrid instruments in Annex III).

This notification form applies to the notification of State aid measures, which may concern one of the following:

- recapitalisation State aid scheme (aid scheme);
- individual State aid recapitalisation measures based on an approved State aid scheme where the nominal value of the recapitalisation is above EUR 250 million (individual aid measure);
- individual ad hoc State aid recapitalisation measures granted outside of an State aid scheme regardless of the nominal value of the recapitalisation (individual ad hoc aid measure).

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<sup>1</sup> Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1-9, Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3-15, Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C218 of 2 July 2020, p.3-8, Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1, and Communication from the Commission C(2021) 564 final of 28 January 2021 on the Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6.

## SECTION I: GENERAL INFORMATION

### 1. **Description of the serious disturbance in the economy of your country and the official reaction of your authorities**

Considering that the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings, the Commission considers that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU. The information below aims at clarifying the country specific situation:

- Data on the economic impact of the COVID-19 outbreak in your country, notably in the sectors covered by the scheme, information on liquidity shortage faced by undertakings, if available,
- Sequence of (main) events between the occurrence and the adoption of the notified measure including any official recommendations or prohibitions decided by the competent authorities.

### 2. **General description of the aid measure**

- National legal basis - please provide a copy;
- Granting authority and competent authority to manage the scheme, if different;
- Does the aid measure require establishment of an investment fund structure, if yes, please provide the structure;
- Objective of the notified aid measure;
- Budget;
- Geographical scope;
- Beneficiaries: estimated number / sectors concerned / size of companies concerned, if relevant / exclusions from scope;
- Duration:
  - Date of entry into force of the aid measure:

- Confirmation of compliance with 108(3) TFEU<sup>2</sup>:
- Time period in which beneficiaries can submit written requests for aid:

### 3. General confirmations and commitments:

- Confirm that credit and financial institutions are excluded from the scope of the notified aid measure and cannot benefit from the aid.
- Confirm if aid under TF COVID-19 may be cumulated with de Minimis aid<sup>3</sup> and/or with aid under the General Block Exemption Regulation<sup>4</sup>; in such a case, confirm that the provisions of the relevant Regulations will be respected.
- Confirm if aid granted under the different sections of TF COVID-19 may be cumulated with each other; in such a case, confirm that the relevant provisions in the specific sections of TF COVID-19 are respected.
- Confirm that SMEs are defined in line with Annex I of the relevant Block Exemption Regulation.
- Commit to comply with all the monitoring and reporting provisions in section 4 of the TF COVID-19:
  - The obligation to publish relevant information on individual aid above EUR 100 000 and EUR 10 000 for the primary agriculture and the fisheries sectors granted under the measure on the comprehensive national State aid website or Commission's IT tool within 3 months from the moment of recapitalisation<sup>5</sup>; the nominal value of the recapitalisation measure shall be published per undertaking;
  - To keep detailed records regarding the granting of aid for 10 years upon granting of the aid and commit to provide them to the Commission upon request. Such

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<sup>2</sup> No aid granted before notification of the Commission's approval.

<sup>3</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

<sup>4</sup> 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.

<sup>5</sup> Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014.

records must contain all information necessary to establish that the necessary conditions set out in the TF COVID-19 have been observed;

- To submit annual reports in line with the requirements of the Commission Regulation (EC) No 794/2004<sup>6</sup>;
- Confirm that the notification does not contain confidential information. Otherwise, indicate the information from the notification that contains confidential information.
- Please provide the language waiver in Annex I.

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<sup>6</sup> The Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.4.2004, p. 1–134.

## **SECTION II: RECAPITALISATION MEASURES FOR NON-FINANCIAL UNDERTAKINGS**

### **A. APPLICABILITY**

1. Please provide information whether application of the aid measure is limited to large undertakings and/or only SMEs.
2. Please confirm that the aid under the measure can be granted by 31 December 2021 at the latest.

### **B. ELIGIBILITY AND ENTRY CONDITIONS**

3. Please explain how the measure ensures that the aid measure applies only to the beneficiaries, which would go out of business or would face serious difficulties to maintain its operations without the State intervention. Such difficulties may be shown by the deterioration of, in particular, the beneficiary's debt to equity ratio or similar indicators.
4. Please explain how the measure ensure that the aid measure applies only in cases when there is common interest to intervene. This may relate to avoiding social hardship and market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company, the risk of disruption to an important service, or similar situations duly substantiated.
5. Please explain how the measure ensure that it applies only to undertakings, which are not able to find financing on the markets at affordable terms, and the horizontal measures existing in the Member State concerned to cover liquidity needs are insufficient to ensure its viability. To justify the intervention, please explain which kind of an assessment will be carried out to show that undertakings are not able to find financing on the markets at affordable terms, and explain why other aid or general measures that are available to cover the liquidity needs are insufficient to ensure the viability of the beneficiary undertakings.
6. Please confirm that the recapitalisation measure is not open to medium<sup>7</sup> and larger enterprises that were already in difficulty (within the meaning of the General Block Exemption Regulation<sup>8</sup>, the Agricultural Block Exemption Regulation<sup>9</sup> or of the Fisheries Block Exemption Regulation<sup>10</sup> respectively) on 31 December 2019.

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<sup>7</sup> As defined in Annex I of the General Block Exemption Regulation.

<sup>8</sup> As defined in Article 2 (18) of the 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 of 26.6.2014, p. 1.

7. Please confirm that the recapitalisation measure is open to micro and small enterprises<sup>11</sup> that were already in difficulty on 31 December 2019, these enterprises are not subject, at the moment of granting the aid, to collective insolvency procedure under national law and that they have not received rescue aid or restructuring aid. If these enterprises have received rescue aid, confirm that, at the moment of granting the aid, these enterprises will have reimbursed the loan or terminated the guarantee. If these enterprises have received restructuring aid, confirm that, at the moment of granting of the aid, these enterprises will no longer be subject to a restructuring plan.
8. Please confirm that the recapitalisation measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid, irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
9. Please confirm that the authorities will enter into COVID-19 recapitalisation only upon a written request for such aid by the prospective beneficiary undertakings.
10. If the aid measure concerns a scheme, please commit that your authorities will separately notify the individual aid under the scheme above the threshold of EUR 250 million.
11. In this case please provide evidence of a written request for such aid by the prospective beneficiary undertaking and confirm that the Commission will be put in a position to assess the following:
  - that the existing financing in the market or horizontal measures to cover liquidity needs are insufficient to ensure the viability of the beneficiary;
  - that the selected recapitalisation instruments and the conditions attached to them are appropriate to address the beneficiary's serious difficulties;
  - that the aid is proportionate; and
  - that all conditions required by all sections 3.11.2 to 3.11.7 of the TF COVID-19 are complied with.

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<sup>9</sup> As defined in Article 2 (14) of the 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 of 1.7.2014, p.1.

<sup>10</sup> As defined in Article 3 (5) of the 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 of 24 December 2014, p. 37.

<sup>11</sup> As defined in Annex I of the General Block Exemption Regulation.

## C. TYPES OF RECAPITALISATION MEASURES

12. Please describe the type of the TF COVID-19 recapitalisation measures possible under the aid measure. Please indicate whether the aid measure foresee:

a. Equity instruments, in particular, the issuance of new common or preferred shares;

yes

no

In this case, if the aid measure foresee also a participation of private investors, please describe at which conditions.

b. Instruments with an equity component (referred to as 'hybrid capital instruments'<sup>12</sup>), in particular profit participation rights, silent participations and convertible secured or unsecured bonds.

yes

no

c. Instruments which are subordinated debt in line with point 27bis TF COVID-19 but are in excess of the limits set out in point 27bis.

yes

no

d. Any variation of the above instruments, or a combination of equity and hybrid capital instruments.

yes

no

13. An underwriting of (any of) the above instruments in the context of a market offering. In this case please commit that any resulting State intervention in a beneficiary meets the conditions set out in the section 3.11 of the TF COVID-19, and fill the following form accordingly.

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<sup>12</sup> Hybrid capital instruments are instruments that have characteristics of debt as well as of equity. For instance, convertible bonds are remunerated like bonds until they are converted into equity. The assessment of the overall remuneration of hybrid capital instruments thus depends on the one hand on their remuneration while they are debt-like instruments and on the other hand on the conditions for conversion into equity-like instruments.

## **D. AMOUNT OF THE RECAPITALISATION**

14. Please demonstrate how the aid measure, whereby hybrid instruments granted by the State are counted as equity, ensures that the amount of the COVID-19 recapitalisation in each case will not exceed the minimum needed to ensure the viability of the beneficiary, and will not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, *i.e.* the situation on 31 December 2019.
15. In case the notification concerns an individual or ad hoc measure, please provide information on other State aid measures the beneficiary already received or are planned for this beneficiary in the context of the COVID-19 outbreak.

## **E. REMUNERATION AND EXIT OF THE STATE**

### **i. Remuneration of equity instruments**

16. In case you provide equity instruments, in particular, the new common or preferred, shares, please describe the features of the instrument, in particular the seniority/ranking in a going and gone concern by completing a term sheet annexed to the notification form (Annex II).
17. Please explain how the entry price of the capital injection will be computed and confirm that the State, or an equivalent intervention, will be not pay more than the average share price of the beneficiary over the 15 calendar days preceding the request for the capital injection. If the beneficiary is not a publicly listed company, please confirm that an estimate of its market value will be established by an independent expert or by other proportionate means.
18. Please explain the step-up mechanism included in the aid measure, and confirm that it ensures an increase in the remuneration of the State, and incentivises the beneficiary to buy back the State capital injections. Please explain whether such increase in remuneration takes the form of additional shares<sup>13</sup> granted to the State or other mechanisms, and confirm that it correspond to a minimum of 10% increase in the remuneration of the State (for the participation resulting from the State's COVID-19 equity injection that has not been repaid), for each of the step-up steps:
  - a. Four years after the COVID-19 equity injection, if the State has not sold at least 40 percent of its equity participation resulting from the COVID-19 equity injection.

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<sup>13</sup> Additional shares can, for instance, be granted via the issuance of convertible bonds at the date of the recapitalisation, which will be converted into equity at the date of trigger of the step-up mechanism.

- b. Six years after the COVID-19 equity injection, if the State has not sold in full its equity participation resulting from the State's COVID-19 equity injection, for instance.
  - c. In case the beneficiary is not a publicly listed company, Member States may decide to implement each of the two steps above one year later, *i.e.* five years and seven years after granting of the COVID-19 equity injection, respectively.
19. If the aid measure does not foresee the step-up mechanism as described above, please explain what the alternative mechanism is and confirm that it will lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.
  20. Please confirm that the beneficiary has, at any time, the possibility to buy back the equity stake that the State has acquired and that the buy-back price will be the higher amount of
    - (i) the nominal investment by the State increased by an annual interest as presented in the table of '*Remuneration of hybrid capital instruments: 1-year IBOR +*' in point 66 of the TF COVID-19 plus an additional remuneration 200 basis points per year until year 8; or
    - (ii) the market price at the moment of the buy-back.
  21. In case the aid measure foresees that the State may sell at any time its equity stake at market prices to purchasers other than the beneficiary,<sup>14</sup> please confirm that such a sale will in principle be conducted through:
    - (i) an open and non-discriminatory consultation of potential purchasers; or
    - (ii) a sale on the stock exchange.
  22. Please inform whether the State may give existing shareholders priority rights to buy at the price resulting from the public consultation as required by the point 64 of the TF COVID-19. Priority rights to existing shareholders under point 64 TF COVID-19 should not cause the existing shareholders to exceed their stake in the equity of the beneficiary prior to the COVID-19 recapitalisation.

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<sup>14</sup> The exit of the State from beneficiaries of COVID-19 recapitalisation through the mechanism of point 64 TF COVID-19 requires a sale of the State's equity stake at market prices to third-party purchasers, meaning entities other than the beneficiary that are neither public authorities nor public undertakings within the meaning of Article 2 of Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17.

Please confirm that in case the State sells its equity stake at a price below the minimum price laid down in point 63 of TF COVID-19, the governance rules laid down in section 3.11.6 TF COVID-19 will apply at least until four years after the COVID-19 equity injection measure was granted.

23. In case the aid measure foresees that the redemption may take place pursuant to point 64bis TF COVID-19, please confirm that:
  - a. such redemption may take place provided two years have passed since the granting of COVID-19 recapitalisation;
  - b. such redemption may take place based on a valuation of the beneficiary performed by an entity independent from that beneficiary and from the State, establishing a positive market value, even if the beneficiary remains State-owned;
  - c. if the positive market value is less than the minimum price laid down in point 63, the governance rules laid down in section 3.11.6 will continue to apply until four years after the grant of the COVID-19 recapitalisation measure; and
  - d. for COVID-19 recapitalisation measures that exceed EUR 250 million, the Member State will submit that independent valuation to the Commission.
  
24. In case the aid measure foresees that the redemption (for the whole or a fraction of the COVID-19 equity) may take place pursuant to point 64ter TF COVID-19, please confirm that:
  - a. such redemption may take place provided two years have passed since the granting of COVID-19 recapitalisation;
  - b. for the part of the COVID-19 equity that the State would need to retain in order to restore its shareholding to that before the COVID-19 recapitalisation, the conditions of point 64bis TF COVID-19 may apply. If the State sells a significant fraction of the shares of the beneficiary undertaking to private investors via a competitive process as referred to in point 64 TF COVID-19, that process can be considered as an independent valuation for the purposes of point 64bis TF COVID-19;
  - c. for the rest of the COVID-19 equity, the conditions of point 64 TF COVID-19 apply, including in particular the need to conduct a competitive process. The State does not have the priority rights mentioned in point 64 TF COVID-19.

**ii. Remuneration of hybrid capital instruments**

25. Please describe how the overall remuneration of hybrid capital instruments factors in the following elements which should also be indicated in a term sheet annexed to the notification form (Annex III):

- a. the level of subordination (seniority/ranking in a gone concern, loss participation in a going concern).
  - b. the risk of the instrument, i.e. the maturity of the instrument (fixed or perpetual),
  - c. the payment modalities of the coupon (discretionary or mandatory upon profit, and if it can be deferred if it is capitalised) and
26. Please confirm that the minimum remuneration of hybrid capital instruments until they are converted into equity-like instruments will be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission<sup>15</sup>), plus the premium as set out below.

*Remuneration of hybrid capital instruments: 1-year IBOR +*

Type of recipient	1st year	2 <sup>nd</sup> and 3 <sup>rd</sup> year	4 <sup>th</sup> and 5 <sup>th</sup> year	6 <sup>th</sup> and 7 <sup>th</sup> year	8 <sup>th</sup> year and after
SMEs	225 bps	325 bps	450 bps	600 bps	800 bps
Large enterprises	250 bps	350 bps	500 bps	700 bps	950 bps

27. Please explain whether the characteristics of the instrument chosen, in particular its level of subordination, risk and all modalities of payment as well as its incentives for exit allow for the above minimum remuneration or requires an increase of it.
28. Please inform if a conversion is envisaged for the instrument and if so please inform at what conditions (automatically or discretionally), based on which triggers and confirm that the conversion of hybrid capital instruments into equity will be conducted at 5 percent or more below TERP (Theoretical Ex-Rights Price) at the time of the conversion.
29. In case the hybrid instrument is converted into equity, please provide a description of a step-up mechanism, in particular by explaining its incentive effect and impact on the State's remuneration, envisaged to increase the remuneration of the State after conversion into equity. Please confirm that the State will receive an additional share of ownership of the beneficiary at a minimum 10 percent of the remaining participation resulting from the State's conversion of the COVID-19 hybrid capital instruments in the case when the equity resulting from the State's COVID-19 intervention is still owned by the State two years after the conversion into equity. In case the aid measure envisages alternative step-up or payback clauses, please

<sup>15</sup> Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.), published on the website of DG Competition at: [https://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

demonstrate that this formula equally encourages an early end to the State's recapitalisation support of the beneficiary.

30. In case the aid measure foresees a pricing formula that includes additional step-up or payback clauses, please demonstrate that this formula encourages an early end to the State's recapitalisation support of the beneficiary.
31. If the aid measure introduces an alternative pricing methodology, please describe their mechanism and show that it leads to remunerations that are higher than or similar to those resulting from the above methodology.

### **iii. Combinations of equity and hybrid capital instruments**

32. If the aid measure is a variation of the above instruments, or a combination of equity and hybrid capital instruments and does not provide for the remuneration methodologies set out in the points above, please explain the remuneration methodology foreseen by the aid measure, in particular by confirming that:
  - The methodology is adapted in accordance with the features and seniority of the capital instrument, and
  - Their overall leads to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.

### **iv. Subordinated debt**

33. If the aid measure concerns subordinated debt, the compatibility of which is assessed under Section 3.11, please confirm that the remuneration follows point 66 TF COVID-19. If an alternative remuneration methodology is envisaged please explain it and provide the underlying elements by completing the hybrid term sheet annexed to the notification form (Annex III).

Please explain the methodology in particular by reference to:

- the risk of the instrument, i.e. the maturity of the instrument (fixed or perpetual),
- the payment modalities of the coupon (discretionary or mandatory upon profit, and if it can be deferred if it is capitalised).

v. **Governance and prevention of undue distortions of competition**

34. Please confirm that the aid measure includes a prohibition for beneficiary undertakings to engage in aggressive commercial expansion financed by State aid or beneficiaries taking excessive risks.
35. In case of an individual notification for the beneficiary benefitting of a COVID-19 recapitalisation measure above EUR 250 million, please propose additional measures to preserve effective competition in the markets if this beneficiary is an undertaking with significant market power on at least one of the relevant markets in which it operates. In proposing such measures, you may in particular offer structural or behavioural commitments foreseen in Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.
36. Please confirm that the notified aid measure prohibits the beneficiaries, which benefit from COVID-19 recapitalisation measures to advertise it for commercial purposes.
37. Please confirm that as long as at least 75% of the COVID-19 recapitalisation measures have not been redeemed:
  - beneficiaries other than SMEs are prohibited from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations.
  - in exceptional circumstances, and without prejudice to merger control, such beneficiaries are allowed to acquire a more than 10% stake in operators upstream or downstream in their area of operation, only if the acquisition is necessary to maintain the beneficiary's viability. Please commit that such acquisition will not be implemented before the Commission has taken a decision on this issue.
38. Please confirm that the State aid under the notified measure will not be used to cross-subsidise economic activities of integrated undertakings that were in economic difficulties already on 31 December 2019.
39. Please confirm that the aid measure includes a requirement for a clear account separation to be put in place in integrated companies to ensure that the recapitalisation measure does not benefit those activities.
40. Please confirm that beneficiaries shall not make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the State as long as the COVID-19 recapitalisation measures have not been fully redeemed.

41. Please confirm that as long as at least 75% of the COVID-19 recapitalisation measures has not been redeemed:

- the remuneration of each member of the beneficiaries' management will not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the fixed remuneration of the members of the management with the same level of responsibility on 31 December 2019. Under no circumstances, bonuses, other variable or comparable remuneration elements will be paid.

42. In cases where the State is an existing shareholder, i.e. before the COVID-19 equity injection and

a. the State injects new equity under the same conditions as private investors and pro rata to its existing shareholding (or below); and

b. the private participation is significant (in principle at least 30% of the new equity injected), and

c. this State's new equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefitting the company

please confirm that all conditions from the section 3.11. TF COVID 19 apply, except for points 61 and 62 and the section 3.11.7. (excluding point 83), while other conditions will apply as follows:

- the acquisition ban and the cap on the remuneration of the management are limited to three years;
- there is no dividend ban for the holders of the new shares. For existing shares, the dividend ban is lifted, provided the holders of those existing shares are altogether diluted to below 10% in the company. If holders of existing shares are not altogether diluted to a share in the company below 10%, the dividend ban applies to existing shareholders for three years. In any event, the remuneration due for COVID-19 hybrid capital and subordinated debt instruments held by the State shall be paid before any dividends are paid to shareholders in a given year;
- the reporting obligations under point 83 TF COVID-19 shall apply for three years.

43. In case where the State injects equity into a company in which it is not an existing shareholder (i.e. before the COVID-19 equity injection measure), and
- a. it injects new equity under the same conditions as private investors, and
  - b. the private participation is significant (in principle at least 30% of the new equity injected), and
  - c. where the State's equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefiting the company,
- please confirm that all conditions in section 3.11 TF COVID-19 apply except that:
- the dividend ban is lifted for all holders of new shares. For existing shares, the dividend ban is lifted, provided the holders of such existing shares are altogether diluted to a share in the company below 10%. In any event, the remuneration due for COVID-19 hybrid capital and subordinated debt instruments held by the State shall be paid before any dividends are paid to shareholders in given a year.

vi. **Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations**

Exit strategy

44. Please confirm that beneficiaries other than SMEs that have received a COVID-19 recapitalisation of more than 25% of equity at the moment of intervention must demonstrate a credible State's exit strategy for the participation of the State, unless the State's intervention is reduced below the level of 25% of equity within 12 months from the date of the granting of the aid (in this context, for calculating the level of equity, hybrid instruments granted by the State should be counted as equity). Please confirm that this comprises:
- a. a plan on the continuation of its activity and the use of the funds invested by the State, including a payment schedule of the remuneration and of the redemption of the State investment (together 'the repayment schedule'); and
  - b. the measures that the beneficiary and the State will take to abide by the repayment schedule.
45. Please confirm that the exit strategy presented by the beneficiary must be endorsed by the State.

#### Reporting obligation for all beneficiaries

46. Please confirm the obligation for the beneficiaries to report to the State on the progress in the implementation of the repayment schedule and the compliance with the conditions concerning the Governance and prevention of undue distortions of competition (point 3.11.6 of the TF COVID-19) within 12 months of the schedule's presentation, and thereafter periodically every 12 months.

#### Publication obligation for large enterprises

47. Please confirm that as long as the COVID-19 recapitalisation measures has not been fully redeemed, beneficiaries of a COVID-19 recapitalisation, other than SMEs, shall, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this should include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

#### Reporting obligation for the State

48. Please commit to report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions in section 3.11.6 of TF-COVID 19. Where the beneficiary received a COVID-19 recapitalisation above EUR 250 million, the report shall include information on compliance with the conditions concerning the amount of the recapitalisation set in point 54 of the TF-COVID 19.

#### Restructuring plan

49. Please confirm that if six years after the COVID-19 recapitalisation (or seven years in case of companies not publically listed or SME) the State's intervention has not been reduced below 15% of beneficiary's equity (in this context, for calculating the level of equity, hybrid instruments granted by the State should be counted as equity), a restructuring plan in accordance with the Rescue and Restructuring Guidelines will be notified to the Commission for approval. For that case, please commit that the actions envisaged by the restructuring plan will ensure the beneficiary's viability in accordance with the Rescue and Restructuring Guidelines and with a view of:
  - EU objectives and national obligations linked to the green and digital transformation; and
  - The exit of the State without adversely affecting trade to an extent contrary to the common interest.

## **Annex I - Language waiver**

In order to speed up the processing of the notification, the below language waiver should be provided with the notification, on letterhead of the relevant authorities, dated and signed.

*Due to the urgent need to adopt and notify a Decision in relation to the present notification relating to [brief description of the scheme subject to the notification], the [national: specify] government agrees exceptionally to waive its rights deriving from Art. 342 TFEU in conjunction with Art. 3 of the EC Regulation 1/1958 and to have the planned Decision adopted and notified pursuant to Article 297 of the Treaty in English language.*