

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 (Text with EEA relevance)

CHAPTER III

SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID

SECTION 3

Aid for access to finance for SMEs

Article 21

Risk finance aid

1 Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2 At the level of financial intermediaries, risk finance aid to independent private investors may take one of the following forms:

- a equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings;
- b loans to provide risk finance investments directly or indirectly to eligible undertakings;
- c guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.

3 At the level of independent private investors, risk finance aid may take the forms mentioned in paragraph 2 of this Article, or be in the form of tax incentives to private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings.

4 At the level of eligible undertakings, risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

5 Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:

- a they have not been operating in any market;
- b they have been operating in any market for less than 7 years following their first commercial sale;
- c they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

6 The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7 year period mentioned in paragraph 5(b), if the following cumulative conditions are fulfilled:

- a the total amount of risk finance mentioned in paragraph 9 is not exceeded;

- b the possibility of follow-on investments was foreseen in the original business plan;
- c the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

7 For equity and quasi-equity investments in eligible undertakings, a risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least 50 % of each investment round into the eligible undertakings.

8 For equity and quasi-equity investments as referred to in paragraph 2(a), no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

9 The total amount of risk finance referred to in paragraph 4 shall not exceed EUR 15 million per eligible undertaking under any risk finance measure.

10 For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds:

- a 10 % of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;
- b 40 % of the risk finance provided to the eligible undertakings referred to in paragraph 5(b) of this Article;
- c 60 % of the risk finance for investment provided to eligible undertakings mentioned in paragraph 5(c) and for follow-on investments in eligible undertakings after the 7-year period mentioned in paragraph 5(b).

11 Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in paragraph 10 and does not provide for private capital participation at the level of the eligible undertakings the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraph 10.

12 A risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfil predefined criteria objectively justified by the nature of the investments.

13 A risk finance measure shall fulfil the following conditions:

- a it shall be implemented via one or more financial intermediaries, except for tax incentives to private investors in respect of their direct investments into eligible undertakings;
- b financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
- c in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;

- d in the case of guarantees falling under point 2(c), the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

14 Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled:

- a financial intermediaries shall be established according to the applicable laws.
- b the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
- c risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex-ante* financial viability;
- d a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

15 Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:

- a they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- b their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- c they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
- d they shall set out an investment strategy, criteria and the proposed timing of investments;
- e investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

16 A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:

- a as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;
- b in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9;
- c in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9. The guarantee shall not exceed 80 % of the underlying loan.

17 A Member State may assign the implementation of a risk finance measure to an entrusted entity.

18 Risk finance aid for SMEs that do not fulfil the conditions laid down in paragraph 5 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that

- a at the level of the SMEs, the aid fulfils the conditions laid down in Regulation (EU) No 1407/2013; and
- b all the conditions laid down in the present Article, with the exception of those set out in paragraphs 5, 6, 9, 10, and 11, are fulfilled; and
- c for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60 % of the risk finance provided to the SMEs.