

The logo features a black circle with the text "EIF-NPI EQUITY PLATFORM" in white, bold, sans-serif capital letters. Surrounding the circle are several curved, ribbon-like shapes in dark blue, yellow, and pink, arranged in a circular pattern.

EIF-NPI EQUITY PLATFORM

General Forum (“GF”) Special Session on State Aid *Supporting Information Pack*

Luxembourg, 24 October 2023

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Agenda

The EIF-NPI Equity Platform Special Session on State Aid is planned to take place at the European Investment Fund (37B, avenue John F. Kennedy, L-2968 Luxembourg), **Building PKI-B Meeting Room P2112** on **Tuesday, 24 October 2023 at 14.30**.

14.00 – 14.30	Registration and access to the EIF ahead of the meeting
14.30	Start of the meeting
Speakers:	<i>Joachim Keller, Case Handler, DG COMP (EC)</i> <i>Hannes Ackert, Case Handler, DG COMP (EC)</i>
	1 The amended GBER risk finance rules <i>Overview of the key amendments to the risk finance rules (Articles 21-24 GBER)</i> <i>Discussion of interpretation issues raised so far</i>
	2 Market conformity and the application of the pari passu test <i>Combination of State funding, independent private investment and other investments</i> <i>When is a private investor independent?</i>
	3 Financial instruments topics <i>Revision of de minimis regulation</i>
17.00	End of the Session

Any queries concerning formalities related to the Special Session can be sent to: NPIEquityPlatform@eif.org

Useful Information for Participants

How to get to EIF Headquarters

EIF Headquarters Address

37B, avenue J.F. Kennedy, L-2968 Luxembourg

Useful links

Book a taxi: <http://www.webtaxi.lu/en>

Bus Itineraries: <https://www.mobiliteit.lu/>

Luxembourg has free public transportation

From Luxembourg Airport to EIF

EIF is situated 6 km from Luxembourg airport.

A taxi between the airport and EIF should cost around EUR 30.

During the day, bus 16 and 6 run every 10 minutes.

To reach EIF from the airport, take bus 16 or 6 and stop at “Kirchberg, Luxexpo”. Change to the tram, stop at “Kirchberg, Nationalbibliothék” (5 minutes’ walk from the tram stop to EIF)

From Railway station to EIF

The EIF is situated 8 km from Luxembourg railway station.

A taxi from the station to EIF should cost around EUR 25.

During the day, the tram runs from the Railway Station every 4-8 minutes.

To reach EIF from the railway station, take the tram towards “Kirchberg, Luxexpo”.

Stop at “Kirchberg, Nationalbibliothék” (5 minutes’ walk from the tram stop to EIF)

EIF Parking

We have five available parking places for guests in our facilities. The parking entrance is located in 8-8A Rue Albert Borschette, L-1855 Luxembourg, block C2 for guests parking. The parking works on a “first arrived first served” basis. If you would like to use one for the event, please contact our assistant office MM-Equity-Assistants@eif.org to verify availability and if so, to register your car to enter our premises.

Agenda Supporting Materials



Special session for the EIF-NPI Equity Platform: Risk finance & State Aid

Joachim Keller & Hannes Ackert (DG COMP D.3)

24 October 2023

Competition

Disclaimer:

This presentation represents purely the views of the presenters and may not in any circumstances be regarded as stating an official position of DG Competition or the European Commission.

Overview

1. Introduction
2. Risk finance State aid rules
3. Market economy operator (MEO) measures
4. Annex

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Introduction

Objectives of aid for Risk Finance

- To **improve access to finance** for specific groups of companies (mainly SMEs) that are viable but (due to their early stage) unable to demonstrate their creditworthiness to investors (the specific **market failure** is information asymmetry)
- To incentivize, through a public contribution (e.g. equity injection in a fund, portfolio guarantee, tax exemptions for investors), **independent private investors to co-provide financing** and share the risks, so that over time the private risk finance market in the Member States develops

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Fitness check and the revised risk finance framework

- The [Fitness Check](#) of the State aid rules for access to finance for SMEs (risk finance rules) has shown that the rules **remain relevant** and fit for purpose. Yet, there was **room for clarification and simplification** of the rules without big changes to their substance
- Implementation of revised risk finance rules in two steps:
 - 2021 RFG adopted in December 2021, applicable as of 1 January 2022
 - Targeted "Green Deal" GBER applicable as of 1 July 2023
- Consistency between RFG and GBER amendments ensured in drafting process

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Aid for Risk Finance = good State aid

- Leverage & multiplier effect: **involvement of private investment:**
 - Private sector money is used to achieve policy goals (never 100% public money*), using a gradual approach depending on development stage of company
- **Repayable - i.e. no grants*:**
 - Incentive for beneficiaries to be more efficient & achieve targets
 - Reflows from public investment can be reused
- **Professionalism and limited distortions of competition:**
 - Involvement of the private financing market in selection (deployment via **financial intermediaries** or **individual investors**)
 - **Only schemes** (not individual aid!)

*Exception: Limited amount to start-ups 100% public, can be grants

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Risk Finance: State aid framework in force

General Block Exemption Regulation (GBER):

- Sets up the conditions for risk finance aid
Member States may give without having to notify such aid to the Commission (Art. 21)
- Also includes specific conditions for start-ups (max. 5 years old) (Art. 22)

Risk Finance Guidelines (RFG):

- Public support beyond the limits specified in the GBER
- Such measures have to be ex-ante notified to the Commission, who then applies the guidelines to assess compatibility

- Extensive use of RFG and GBER since 2014 with more than 340 schemes put in place and more than EUR 11 billion expenditure. Most schemes under GBER (95%), but RFG schemes account for almost 60% of the expenditure

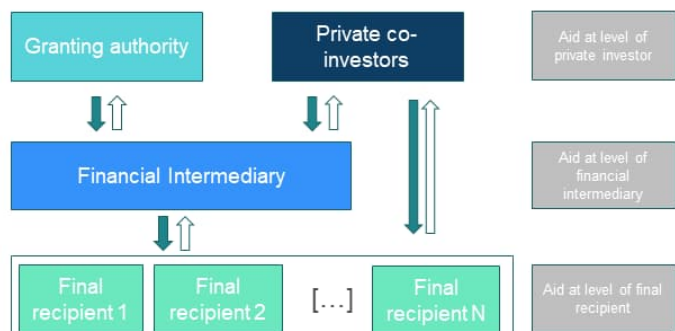
8



Risk Finance State Aid Rules

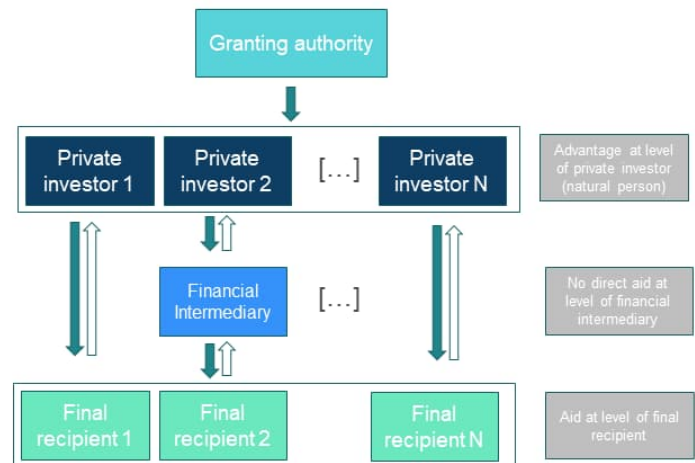
Article 21 GBER: Structure

- Key condition: **schemes** implemented **through a financial intermediary** (except for tax incentives for retail investors investing (in)directly in SMEs)
- **Restructuring** of Article 21 GBER to highlight three-layered structure, tax incentives to natural persons separated (new Article 21a)



Article 21a GBER: Structure

- Article 21a on tax incentives to private investors that are natural persons:
 - For direct equity investments
 - For indirect investment via financial intermediary (via acquisition of shares or participation in intermediary)



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GBER Article 21 re. Risk Finance

- Possible forms of investment:
 - Equity & quasi-equity
 - Loans
 - (Capped) guarantees
- Criteria for commercial management and **profit-oriented decision-making** applicable to financial intermediaries
- Open and transparent selection** of financial intermediaries, managers and investors. Financial intermediaries have to pass on the benefit to the SMEs
- Possibility for asymmetric profit sharing, but first loss covered by public investor must be limited to 25%

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Article 21 GBER – Eligible undertakings

- Unlisted SMEs:
 - that have not been operating in any market; or
 - within 7 years from their first commercial sale or 10 years from registration*; or
 - requiring an initial investment which is, based on a business plan prepared in view of a new economic activity higher than 50% of their average annual turnover;
- ↳ “Initial investment threshold” reduced to 30% of average annual turnover for:
 - Investments improving environmental performance above legal standards and for environmentally sustainable investments as defined in the Taxonomy Regulation; or
 - Activities for the extraction, separation, refining, processing or recycling of critical raw materials
- All other SMEs, subject to specific conditions (Art. 21 (18) GBER) but only in compliance with *de minimis* rules at the level of the SME

“early-stage”
SMEs

*: materiality threshold as regards mergers and acquisitions for determination of eligibility period

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Article 21 GBER – Definition private investors

- Definition of **independent private investor**:
 - A private investor:
 - Pursues a purely commercial interest; and
 - Uses own resources and bears full risk
 - Investors not meeting the private investor definition:
 - EIB, EIF or national promotional banks
 - Independent investors:
 - Not a shareholder of the investee company (special provision as regards follow-on investment and creation of a company)

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Article 21 GBER – Private investor participation rate

- Minimum independent private investor participation rates reflecting the investees' risk profile:

- a) 10% - SMEs that have not been operating in any market
- b) 40% - SMEs within 7 years from their first commercial sale or 10 years after registration
- c) 60% - SMEs beyond the eligibility period under b), if new economic activity or follow-on investment

Weighted average
for funds combining
these categories

- Minimum participation rates under b) and c) halved for investments:

- In assisted regions fulfilling the conditions of Article 107(3)(a) TFEU
- Made on the basis of a Member State's Recovery and Resilience plan
- Receiving support from the European Defence Fund or under the Union Space programme
- Receiving support from Union Funds implemented under Shared Management

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Article 21 GBER – Private investor participation rate at fund level

- Private investor participation rate can be achieved at fund level by achieving weighted average participation rate given investee's risk profile
 - In principle, a fund manager is expected to estimate upfront the private participation needed at fund level based on the team's investment strategy
 - To address a shortfall of private investors at individual companies, additional private investment at the company level may, in exceptional circumstances, count towards reaching the minimum private investment rate for that recipient company
 - However, 'surplus' private investment at an individual recipient level should not be counted for the overall weighted private investment rate at fund level.

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Article 21a GBER

- Same provisions as Article 21 on:
 - Eligible undertakings
 - Investment conditions for financial intermediaries (for indirect investments)
- Tax relief parameters in analogy to minimum private investor participation rates:
 - differentiated according to early-stage character of investee company
 - Tax relief can be higher for defined policy areas as in Article 21

Article 22 GBER Article (Start-up aid)

- Eligible undertakings are **unlisted small enterprises up to 5 years following their registration** (or the start of their economic activities)
- Forms of start-up aid (including a mix thereof):
 - **Loans** up to EUR 1.1 million / 10 years in non-assisted areas (EUR 1.65 or EUR 2.2 million in (c) and (a) assisted areas respectively)
 - **Guarantees** up to EUR 1.65 million / 10 years in non-assisted areas (EUR 2.48 or EUR 3.3 million in (c) and (a) assisted areas respectively)
 - **Grants and equity investments and tax incentives** up to EUR 0.5 million / 10 years in non-assisted areas (EUR 0.75 or EUR 1 million in (c) and (a) assisted areas respectively)
- **In addition, IPR transfer with aid component of up to EUR 1 million**
- **Clarification that start-up aid can also be implemented via financial intermediaries subject to relevant conditions of Article 21**
- Aid amounts **doubled for "small and innovative enterprises"**

Articles 23 and 24 GBER

- Article 23 GBER: aid to **alternative trading platforms** specialised in SMEs
 - Start up aid in accordance with Article 22 GBER
 - Tax incentives to independent private investors (natural persons only) for investments into SMEs eligible pursuant to Article 21a GBER
- Article 24 GBER: aid for **scouting costs**
 - Eligible costs:
 - initial screening and formal due diligence by managers of financial intermediaries
 - research cost for individual undertakings listed on alternative trading platforms, provided the research is made public (within 3 months)
 - Aid intensity: 50% of the eligible costs

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GBER Transitional Provisions

- Article 58(5) applies as regards transitional provisions:
 - "If this Regulation is amended, any aid scheme exempted under this Regulation as applicable at the time of the entry into force of the scheme shall remain exempted during an adjustment period of six months."
- After the transition period, risk finance measures must be in compliance with the amended GBER rules:
 - Any funding agreement of a risk finance measures that is signed after the transition period must be in compliance with the new rules.
 - As regards funding agreements which have been signed under the old GBER rules and which might be affected by the new definition of private investor, the Member States concerned may want to assess whether a change to existing funding agreements is required. Member States may decide to notify any affected risk finance measures under the Risk Finance Guidelines.

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Access to finance under InvestEU GBER

Section 16 GBER caters for InvestEU-supported products containing State aid

SMEs and small mid-caps

Article 56e(10):

- Nominal amount of total financing provided per final beneficiary is below:
 - €2.2 million
 - €16.5 million in assisted areas or to 'innovative' or 'early stage' firms
- Special definition for small mid-caps under this Article based on number of employees only

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Smaller financing

Article 56f:

- Up to €8.25 million per beneficiary
- Must be provided through a commercial financial intermediary which
 - retains some risk exposure (20%); and
 - is selected in an open, transparent and non-discriminatory way

2021 Risk Finance Guidelines

- Guidance on compatibility
 - Removal of section 2.1 on 'The market economy operator test'
- Definitions ensure maximum consistency with the GBER
- Objective of common interest no longer a compatibility requirement (but demonstration of market failure remains necessary)
- Sub-section with all requirements re. *ex ante* assessment
- No quantification of funding gap if investment is below EUR 16.5 million

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Risk Finance Guidelines: eligible companies

- SMEs after GBER eligibility period
- SMEs requiring more than EUR 16.5 million overall investment
- Small mid-caps:
 - Employees < 500 & annual turnover ≤ EUR 100 million or annual balance sheet ≤ EUR 86 million
 - Rationale: allowing a better diversification of the investment portfolio (beyond SMEs); supporting a seamless financing chain from company creation to internationalisation
- Innovative mid-caps:
 - Employees < 1500,
 - R&D costs representing 10% of total operating costs during the last 3 years (or at least 15% of these costs in 1 of the last 3 years); or attestation by external expert of innovativeness; or participation in or award receiver of certain EU programs (e.g. EIC Seal of Excellence, CASSINI, European Defence Industrial Development Programme)
 - Rationale: Innovative companies face specific market failure despite their larger size

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Risk Finance Guidelines: design parameters

- Financial instruments with independent private investor participation below the GBER ratios
 - Member States or regions with particularly severe market failure in SME financing
- Financial instruments with design parameters above GBER ceilings and giving preference to down-side protection
 - Public funding may provide more downside protection than stipulated in Article 21 GBER
 - Preference for downside protection over asymmetric profit sharing
- Fiscal incentives to corporate investors

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Risk Finance Guidelines: *ex ante* assessment

- Identifying the relevant market failure: demonstrate specific "**funding gap**" affecting eligible firms in the target area
- Identifying policy **targets and performance indicators**: required leverage, expected number of investees, newly created undertakings, newly created jobs, expected returns
- **Justifying the specific design** of the measure compared to other policy & State aid instruments
- Demonstrating that **negative effects are limited**
- **Also tax incentives for professional investors** (for investment of max. EUR 16.5 million per eligible undertaking)

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Market economy operator (MEO) measures

Risk Finance through market conform implementation (MEO)

- Risk finance support may be deployed in accordance with the “Market economy operator principle” (MEOP): no advantage => **no State aid**
- State aid is an objective notion (full judicial review of EU Courts) vs. compatibility assessment with higher margin of discretion
- [Notion of Aid Notice](#) (NoA) sets out general principles to determine if investment in line with the MEOP:
 - ***Pari passu* conditions**
 - **Selection procedures**
 - [Benchmarking and other assessment methods (IRR, NPV)]

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Focus on *pari passu*: Definition of private investors

- Conditions on private investors for *pari passu* test:
 - In particular, credit institutions investing at own risk and from own resources, private endowments and foundations, family offices and business angels, corporate investors, insurance undertakings, pension funds, academic institutions, as well as private individuals or natural persons
 - In a comparable starting position with public investors (e.g. prior economic exposure, possible synergies, transaction costs)
 - Investing at own risk and from own resources and not aided
 - EIB/EIF may count in light of special institutional set-up within the EU and governance rules, if investing own resources and at own risk and if matched by at least equal share of genuine private investments

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Aspects to consider when checking 'starting position' of private investors

- Shareholder or creditor of the target company
- Involvement of investors in different aspects of the project, e.g. as promoter of an investment, providing services to (or sourcing input from) the target company
- Having received (specific) tax incentives to invest in risk finance funds or projects
 - Issue can be addressed through self-declarations of investors

Focus on *pari passu*: Same terms and conditions for Risk Finance

- “Same terms and conditions” for all private and public investors in risk finance for equity investments:
 - Share same risk and rewards, holding same class of subordination for same risk class
 - Better terms for public investor do not invalidate “same risk and reward” condition
 - Examples of non *pari passu* terms if given to private investors: preferential returns (upside incentives), loss caps (downside protection)
 - Carried out at the same time: Investment via the same investment transaction
 - E.g. in the context of public private partnerships

Focus on *pari passu*: Significant participation of private investors

- “Real economic significance” of the private investors’ participation in the transaction:
 - At least 30% of overall investment amount in risk finance measure
 - 15% or more by EIB/EIF at own risk and from own resources may count towards that threshold if matched by at least 15% of the overall investment amount from genuine private investors under same terms and conditions for the purpose of establishing compliance with the *pari passu* conditions
 - Multiple levels: 30% participation either measured at level of the investment project or at the level of the fund (i.e. no aggregation of private investments at different levels to ensure comparable situation)

**If compliance with *pari passu* conditions is established on the level
of private investors, downstream compliance can be presumed**

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Focus on selection procedure and public financial intermediaries

- Parties selected through competitive, transparent, non-discriminatory selection procedure on a deal-by-deal basis, without the intention to provide support:
 - Competitive: all interested and qualified bidders may participate in the process
 - Transparent: all bidders are equally and duly informed at each stage, tender is well-publicised
 - Non-discriminatory: objective selection and award criteria specified in advance, non-discriminatory treatment of all bidders
 - Any specific conditions attached to tender should be closely and objectively related to the subject matter and to the specific economic objective of the contract (i.e. selection of FI or its manager)
- Public entities, not chosen through procedure as described above, considered as not receiving State aid if:
 - capped management fee, overall remuneration reflects normal market conditions and is linked to performance; and
 - Managed commercially, profit-oriented investment decisions at arm’s length from the State

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Wrap-up: Assessment of existence of State aid in the area of Risk Finance

- At the **level of private co-investors**, aid can be excluded if:
 - *Pari passu* investment between public and private investors; or
 - Investors are selected through competitive, transparent, non-discriminatory selection procedure on a deal-by-deal basis, without the intention to provide support; or
- At the **level of financial intermediaries**, aid can be excluded if:
 - A competitive, transparent, non-discriminatory and unconditional selection procedure ensures market-conform remuneration; or
 - Intermediaries fully pass-on the benefits they receive
- At the **level of final beneficiaries**, aid can be excluded if:
 - Financing (loans/equity) are provided *pari passu* with independent private investors; or
 - [For (senior) loans: interest rates in line with the criteria under the **Reference Rate Communication**]
 - [For guarantees (on senior loans): premia and conditions in line with the **Guarantee Notice**]
- Alternatively, State aid can be excluded on the respective level if the public investment/financing is in line with market terms as established based on benchmarking or other assessment methods

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Annex

(Pre-)Notification process for measures



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Links to the relevant legislation mentioned

- GBER (consolidated version): <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:02014R0651-20230701>
- 2021 Risk Finance Guidelines: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2021.508.01.0001.01.ENG&toc=OJ%3AC%3A2021%3A508%3ATOC
- Commission Notice on the notion of State aid: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52016XC0719%2805%29>
- Reference Rate Communication: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0119%2801%29>
- Updated base rates: https://ec.europa.eu/competition-policy/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates/reference-and-discount-rates_en
- Guarantee Notice: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0620\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0620(02)&from=EN)
- Corrigendum Guarantee Notice: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52008XC0620%2802%29R%2801%29>

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Thank you