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European Commission adopts new rules on risk finance investments

editorial

Benoît Le Bret
Partner

As part of the European Commission's State Aid Modernisation strategy, which aims at fostering growth in the Single Market, the Commission adopted on 15 January 2014 new guidelines on State aid to promote risk finance investments ("the new Guidelines").

These new rules provide a useful revision of the state aid framework and of the compatibility assessment which will apply to national measures falling outside of the scope of the General Block Exemption Regulation ("GBER"). The ultimate objective of the reform is to promote a more efficient and effective access to various forms of risk finance to a larger category of European SMEs.

The new Guidelines include several important changes compared with the current legal framework, since they aim to resolve the issues identified in the implementation of the current Guidelines which were adopted in 2006 and amended in December 2010.

The new Guidelines will apply in conjunction with the relevant risk finance provisions in the forthcoming GBER. The latter, currently subject to a public consultation, will exempt from the notification requirement national measures which fulfil specific conditions. It should also integrate the improvements and changes reflected in the new Guidelines.

> "These new rules will help bridge this funding gap by encouraging Member States to put in place well-designed aid measures Such measures can give private investors the right incentives to invest more into SMEs and midcaps, enhancing their capacity to grow and create jobs."
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> **Joaquín Almunia**
> Commission Vice-President in charge of competition policy

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IMPROVEMENTS TO THE CURRENT FRAMEWORK

A wider scope

As for the new Guidelines, their scope is broader than the scope of the 2006 Risk Capital Guidelines. The new Guidelines thus provide a wider definition of eligible undertakings, so as to include not only start-ups but also small and medium-sized enterprises (SMEs), small midcaps, and innovative midcaps.

Higher compatibility threshold

In addition, the threshold for presuming the compatibility of aid, i.e. aid which may be considered *a priori* compatible with the EU rules, has been significantly increased: set today at EUR 2.5 million per year and per company, it has been raised to EUR 15 million per company. The new amount agreed upon by the European Commission clearly demonstrates that the EU is aware of -and takes into account- the needs of the venture capital market in Europe, notably as compared with the USA, as well as the financing issues currently faced by SMEs.

> "The market failure in access to finance, which has been exacerbated by the crisis, affects European companies in their development, from the start-up stage onwards."
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> **Joaquín Almunia**

Private investors' participation

The new Guidelines also introduce additional flexibility regarding the condition of the minimum private investor participation ratio, in order to better reflect the high risks faced by SMEs during their first stages of development. Minimum private investor participation, currently set at 50%, will now range from 10% to 60% depending on the age and level of risk of the company.

Admissible financial instruments

The condition related to the type of financial instruments which must be used by the risk finance measure (in the current Guidelines, at least 70% must take the form of equity or quasi-equity investment instruments into SMEs) has been removed altogether, in order to better reflect market practices and the diversity of financial instruments.

Transparency

Last, the transparency requirements are adapted in order to better protect SMEs. A new exemption has been introduced with respect to SMEs which have not carried out any commercial sale in any market, and for investments below EUR 200,000 into a final beneficiary undertaking. This provision avoids making public sensitive information such as the identity of the beneficiaries supported under the measure, the type of undertaking, the principal economic sector in which the undertaking is active and the form and amount of investment.

ENTRY INTO FORCE OF THE NEW RULES

Concretely, the new Guidelines also include a prolongation of the current Risk Capital Guidelines, which will apply until 30 June 2014; the new provisions will enter into force only then and will apply until 31 December 2020.

GIDE CONTRIBUTION

Gide participated in the public consultations and was directly involved in the discussions leading to the adoption of the new Guidelines, representing in particular the interests of the French and European private equity and venture capital industry during direct negotiations with DG Competition, in Brussels.

Most of the suggestions made by the industry were heard by the European Commission and clearly taken into account in the drafting of the new Guidelines. The resulting changes made to the legal framework should help further reinforce the important contribution made by the venture capital industry to the financing of the real economy and innovation in Europe.

CONTACTS

ANN BAKER
ann.baker@gide.com

BENOIT LE BRET
lebret@gide.com

STEPHANE PUEL
puel@gide.com

ROMAIN RARD
romain.rard@gide.com