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Subject: **State Aid SA.55719 (2020/N) – Portugal**
Banco Português de Fomento

Excellency,

1. PROCEDURE

(1) On 26 June 2020 and following a number of pre-notification contacts since October 2019, the Portuguese authorities notified, pursuant to Article 108(3) TFEU, the measure to set up a national promotional bank Banco Português de Fomento, S.A. ("BPF", "the measure").

(2) By letter dated 26 June 2020, Portugal agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958[1] to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) The Portuguese authorities notified the creation of a new national promotional bank BPF under the strategy to stimulate Portuguese economic growth through the promotion of an increase in business activities and entrepreneurship. The project of setting up of BPF was strategically defined as the coordination and optimisation of the activities performed by the different financial institutions responsible for

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

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supporting the Portuguese economy and which are owned by other entities belonging to the public administration sector.

(4) BPF will be created through the regrouping of the existing public participations in entities responsible for supporting the Portuguese economy by merger of Instituição Financeira de Desenvolvimento, S.A., ("IFD")[2] and PME Investimentos – Sociedade de Investimento, S.A. ("PME") into SPGM – Sociedade de Investimento, S.A. ("SPGM").

(5) PME is a State owned financial company incorporated in 1989 with a mission to promote the development and increase of the financing offer to Portuguese companies, notably small and medium enterprises ("SMEs") in the non-financial sector in order to boost investment, development and corporate restructuring.

(6) SPGM was founded in 1994 and it is the coordinating entity of the Portuguese Mutual Guarantee System whose mission is to provide financial guarantees in favour of national companies. As coordinating entity of the Mutual Guarantee System in Portugal, SPGM is responsible for management of the Mutual Counter-Guarantee Fund, envisaged for counter-guaranteeing all the guarantees issued by the Mutual Guarantee Societies. It holds a stake in four of them and provides a shared service centre to both them and the Fund.

2.1. Legal basis for BPF's set-up

(7) BPF will be established by a Decree Law, i.e. the 'Decreto-Lei' (hereafter "the Decree Law"). The Portuguese government submitted the draft Decree Law allowing for the merger and the creation of BPF to the Council of Ministers on 3 June 2020. The Council of Ministers approved the general principles of the Decree Law on 18 June 2020.

(8) The statutes of BPF are annexed to the Decree Law and include details on BPF's mission, objectives, shareholder structure and corporate governance.

2.2. The objectives of BPF

(9) BPF will be a State-owned national promotional bank and will continue the activities previously undertaken by IFD, PME and SPGM. Its main objective is to promote the growth of the Portuguese economy, mainly by supporting SMEs, mid-caps as well as large companies considered important in terms of the national economy, by means of targeted funding (through intermediary financial institutions or via direct financing), equity and hybrid instruments and guarantees.

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2 In 2014 and 2016, the Commission adopted two decisions on IFD (SA.37824 (2014/N) and SA.42665 (2016/N)). Since the exact details and parameters of all the planned activities of IFD in the long run had not been defined yet in 2014, the Portuguese authorities indicated their intent to enlarge the scope of activities of IFD in several subsequent phases. The second phase was implemented following the decision in 2016. At the time, an eventual third phase was planned in which Portugal's existing public participations in financial entities dedicated to the financing of small and medium enterprises were to be regrouped in IFD. That approach has been altered and replaced by the notification of the Portuguese authorities underpinning the present decision.

(10) In order to achieve its main objective, BPF will focus on financing or facilitating access to finance in the following areas:

(a) projects in research and innovation, facilitating taking research results to the market, digitisation, scaling up innovative companies, artificial intelligence, *inter alia*;

(b) projects in the sustainable infrastructure segment, such as decarbonisation and energy transition, sustainable energy, digital connectivity, transport and mobility, circular economy, water, waste and other environment infrastructure; in particular, BPF intends to develop a green bank with the aim of providing financial capacity and accelerating the various existing sources of financing dedicated to investing in carbon neutrality and circular economy projects;

(c) projects in the social investment and skills segment, covering in particular the health sector, long-term care, education and training at all levels, employment and social inclusion, affordable and/or social housing and similar initiatives, territorial cohesion, *inter alia*;

(d) projects increasing the competitiveness of Portuguese companies;

(e) long-term financing of investment projects to be developed by the public sector, at central, regional and municipal levels.

(11) To achieve these goals, BPF will apply innovative forms of investment and financing and use new tools to be able to contribute to access to funding in quantity and appropriate costs, mitigating the effects that the fragmentation of financial markets has caused in terms of competitiveness of Portuguese companies.

(12) Facilitating the access to finance may also include the provision of adjacent advisory services linked to its financing activities for projects and businesses. Most of those adjacent services will be made freely available to all interested parties. In the cases where the provision of these services would provide a selective advantage to particular undertakings, the Portuguese authorities will ensure compliance with either the *de minimis* Regulations[3] or the General Block Exemption Regulation[4] ("GBER") (e.g. with Articles 24 and 28 of the GBER, which deal respectively with 'scouting costs' and 'innovation aid for SMEs').

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[3] 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, OJ L 352, 24.12.2013, p. 1–8 ("de minimis Regulation"); 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. 9–17 ("Agricultural de minimis Regulation"); 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. 45–54 ("Fisheries de minimis Regulation").

[4] 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 on the Functioning of the European Union, OJ L 187 26.6.2014, p. 1.

2.3. The operational set-up of BPF

(13) BPF will be a fully State-owned national promotional bank with a share capital of EUR 255 million and total assets of EUR 950 million.[5] Its public shareholders will be:

(a) the Portuguese State, represented by the Directorate-General for Treasury and Finance, with a shareholding corresponding to 40.92 % of the share capital;

(b) the Agency for Competiveness and Innovation with a shareholding corresponding to 47.00 % of the share capital;

(c) Turismo de Portugal, I.P. with a shareholding corresponding to 8.08 % of the share capital; and

(d) Agency for Investment Foreign Trade in Portugal, E.P.E. with a shareholding corresponding to 4.00 % of the share capital.

(14) The total capital will be EUR 276 million when including other reserves and retained earnings of EUR 10 million as well as the consolidated net income of EUR 12 million for 2019.

(15) BPF will qualify as a financial company under Article 6(1) (l) of the Portuguese General Rules on Credit Institutions and Financial Companies. It will not hold a banking licence and it will not take any customer deposits, nor will any of its subsidiaries.

(16) BPF will be subject to the prudential and behavioural supervision of the Banco de Portugal. BPF will also be also subject to regular monitoring by the Inspecção-Geral de Finanças and the Portuguese Court of Auditors, in accordance with the law and within the scope of their respective powers.

(17) In terms of geographical scope of its activities, BPF will focus mainly on the Portuguese economy. It may possibly be active in other Member States to the benefit of the European economy.

2.4. BPF's remit of activities

(18) BPF will act as an impact investor, i.e. when investing it will also take into account broader societal returns potentially at the expense of financial returns. BPF will invest by means of both aided and *de minimis* measures. Furthermore, BPF will implement market economy operator ("MEO") measures. If possible, BPF will invest on an MEO basis but it may deviate from the MEO principle if this is necessary to achieve the targeted societal returns. Concretely, this entails for instance a longer duration of the financing/investment, a higher risk profile than other investors or a discount on the financing rate.

[5] The figures are based on pro-forma calculations for the new entity as of June 2020 provided by the Portuguese authorities. The total assets represent less than 0.45% of Portugal's gross domestic product.

(19) BPF will be allowed to use the following instruments:

(a) debt;

(b) quasi-equity investments: junior/subordinated debt (including mezzanine or convertible);

(c) guarantees;

(d) equity.

(20) BPF will use both direct measures (such as direct lending) and on-lending.[6]

(21) In particular, when carrying out its activities, BPF may carry out the following activities:

(a) on-lending activities, i.e. obtaining wholesale financing from multilateral financial institutions such as the European Investment Bank and the European Investment Fund and/or other National Promotional Banks, which are then re-lent by BPF to financial institutions operating in Portugal;

(b) the participation in International or EU Financial Instruments, both on aided and MEO terms, either acting as a vehicle to channel and manage EU funds or as a co-investor. This includes, namely, centrally managed EU Financial Instruments (such as InvestEU, COSME or Horizon 2020), the European Structural and Investment Funds ("ESIF") and the European Fund for Strategic Investments ("EFSI");

(c) so-called arrangement activities whereby BPF arranges wholesale funding from multilateral institutions such as the European Investment Bank and the European Investment Fund and/or other National Promotional Banks for financial institutions operating in Portugal. These funds must then be used to finance companies within the remit of the BPF, with impact control and coordination by the BPF.

2.4.1. Aided measures and de minimis measures

(22) BPF will carry out financing activities which fall:

(a) under the following block exemption regulations: the GBER, the Agricultural Block Exemption Regulation[7] (“ABER”) or the Fisheries Block Exemption Regulation[8] (“FIBER”);

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6 Loans to financial intermediaries, which then subsequently on-lend to the final beneficiaries such as SMEs.

7 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1–75.

8 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 on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37–63.

(b) under the *de minimis* Regulation, the Agricultural *de minimis* Regulation or the Fisheries d*e minimis* Regulation; or

(c) (following a notification) under the approval by the Commission: in particular, measures assessed under the Framework for State aid for research and development and innovation ("RD&I")[9], the Guidelines on State aid to promote risk finance investments ("Risk Finance Guidelines")[10], the Guidelines on State aid for environmental protection and energy[11] or any other applicable State aid guidelines.

2.4.2. MEO measures

(23) BPF's MEO activities will only take place in areas where market failures have been established *ex ante*. The Portuguese authorities did not submit new market failure studies but, to date, relied exclusively on market failures already identified in the Commission's State aid Guidelines, Communications and Frameworks. Those MEO measures and the associated market failures will be linked to the GBER, ABER and FIBER or the Commission Guidelines on State aid for environmental protection and energy or the Risk Finance Guidelines and the eligibility conditions therein (except for cumulation rules, maximum aid amounts (both in absolute terms and in percentages), aid intensities and publication and reporting requirements).[12]

(24) BPF's MEO remit[13] will include loans, quasi-equity investments and equity investments, directly or indirectly (through another entity), to SMEs, small mid-caps, mid-caps or larger companies under the different articles in the GBER, ABER, FIBER and/or relevant State aid guidelines.

(25) BPF's MEO equity investments will also and concretely include the following:

(a) equity investments complying with all the conditions of Article 22 of the GBER on aid for start-ups (except for the total aid/financing amounts); or

(b) equity investments directly in (eligible) final beneficiaries, while complying with all the conditions of Article 21 of the GBER on risk finance aid (except for the maximum financing amount and the conditions related to financial intermediaries); or

(c) equity investments in SMEs and small mid-caps[14] provided that:

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9 Communication from the Commission — Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1–29.

10 Communication from the Commission – Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4 – 34.

11 Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55.

12 Such an approach has been approved previously in the Commission Decisions on Invest-NL and Invest International.

13 IFD, one of the entities to be merged, currently has two MEO schemes, which should be assigned to BPF: Portugal Growth Capital Initiative and Portugal Tech.

14 Small mid-caps as defined in recital 52 (xxvii) of the Risk Finance Guidelines.

(i) they are RD&I intensive (15% of their total operating costs in minimum one of three years preceding the first investment relate to projects that are eligible under section 4 of the GBER or under the Framework for State aid for RD&I); or

(ii) they fall within any of the categories of the Risk Finance Guidelines; or

(iii) they are engaged in projects related to renewable energy and environmental protection (meeting the conditions of Articles in section 7 of the GBER or the Environmental Protection and Energy Guidelines);

(d) equity investments in innovative mid-caps[15];

(e) other types of equity investments targeting different realities, provided that they are duly notified to the Commission proving market failure *ex ante* (where applicable).

(26) To avoid undue distortions of competition, when carrying out activities on MEO terms, BPF will apply the following “no-crowding-out” measures:

(a) BPF will explicitly invite investees to obtain private sector financing;

(b) The investee will have to demonstrate that it tried to obtain the financing. Either the investee has to confirm that it had issued an open call for investment (which did not provide the funding needed), or the investee has to disclose which financiers (at least two) have been approached, but did not want to provide sufficient financing;

(c) BPF will not take majority stakes (in terms of voting shares) in undertakings;

(d) BPF will invest in business cases which can be assumed *ex-ante* to offer a sufficient return;

(e) BPF will establish an internal complaint mechanism under which any third party, be it companies or self-employed persons, can file complaints against the activities of BPF;

(f) BPF will provide yearly updates to its shareholders on whether complaints have been settled/dealt with;

(g) With or without a complaint, BPF will cease activities which have been found to have an undesirable effect on competition on the market as soon as possible but no later than within one year.

(27) BPF’s remit for investments on MEO terms may include undertakings in difficulty.[16] For reasons of guidance or legal security, BPF could choose to notify

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[15] Innovative mid-caps as defined in recital 52 (xviii) of the Risk Finance Guidelines.

[16] See Article 2 (18) GBER or par. 20 of the Guidelines on State aid for rescuing and restructuring nonfinancial undertakings in difficulty (Communication from the Commission, OJ C 249, 31.7.2014, p. 1–28). This provision in particular refers to investments into start-ups or scale-ups, which may fall under

such investments to the Commission for a 'no-aid' decision. Also, it is not excluded that compatible aid has been or will be granted to the companies or projects where BPF aims to provide financing under MEO terms.

2.4.3. *Export finance activities*

(28) BPF will provide export financing:

(a) predominantly outside of the internal market, in compliance with the OECD Arrangement on Officially Supported Export Credits ("OECD Arrangement")[17]; and

(b) to a smaller extent inside the internal market, on a market conform basis by using the proxies of the Reference Rate Communication and the Guarantee Notice as a framework in the internal market for determination of the market interest rates.[18]

(29) According to the Portuguese authorities, the banks operating in Portugal have great limitations in supporting long-term export-credit operations. It is very difficult to obtain financing for export-credit operation for maturities longer than two years and for the amounts needed, mainly for the designated political risk markets, for instance, and as way of example, to Angola, which is a destination market of importance for Portuguese exports.[19]

(30) Therefore, there is a need to give official support for such operations under the rules allowed by the OECD Arrangement. In particular, the Portuguese Authorities note that, unlike many other European countries, Portugal so far did not have a State-owned Export Credit Agency. Official support in the form of State guarantees has been channelled through a private insurance company operating in the Portuguese market, which has been acting on behalf of the State when providing such State guarantees.

(31) Hence, it is the aim of the Portuguese authorities that BPF also acts as an Export Credit Agency according to a specific mandate to be assigned to it by the Portuguese State. The export credit activities will be carried out under the rules of the OECD Arrangement. The Export Credit Agency will be providing official support in the form of export credit guarantees, as well as direct credit/financing and refinancing.

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the definition of an undertaking in difficulty due to the need to expend significant investments during their early years that may cause losses.

17 The OECD Arrangement is integrated into Union law through Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC (OJ L 326, 8.12.2011, p. 45–112).

18 The Commission already accepted in similar cases that the interest rates are benchmarked to the methodology set up in the Reference Rate Communication (see e.g. Commission decision NN 4/2010 - Denmark – State financing of long-term export loans of 9 February 2010).

19 Similar financing provided by SFIL-CAFFIL, see Commission decision SA.39690 *Extension du champ d'activité de SFIL-CAFFIL au refinancement des crédits à l'exportation* of 5 May 2015 and SA.56071 *Renouvellement de l'autorisation de l'extension des activités de SFIL-CAFFIL au financement des crédits à l'exportation* of 7 May 2020

(32) The Portuguese authorities wish to ensure that BPF can channel such operations, which are the ones that the private market fails to finance or guarantee, in order to avoid potential distortions of competition, mainly among exporters but also among export credit insurers currently operating in the Portuguese market.

(33) The activities of BPF will mainly focus on long-term operations, whenever it is confirmed that there is a failure in the private market for such financing or guarantee, which means mainly for non-negotiable risk markets (mainly for category II countries according to the classification of the OECD Arrangement).

(34) In addition, BPF could act on category I countries according to the classification of the OECD Arrangement, provided that (i) there are market failures and that (ii) it acts on a market conform basis (using the proxies of the Reference Rate Communication and the Guarantee Notice).[20] In those situations, as well as when providing export financing inside the internal market as described under recital (28)(b), BPF will apply the non-crowding out measures as defined in recital (26).

(35) Finally, BPF may also provide short-term export-credit support for all markets, including the temporarily non-marketable risks under the Short-term export-credit Communication[21], provided that those activities focus on targeting market failures and that the applicable regulations apply.

(36) The Portuguese authorities confirm that the exact export finance activities of BPF are not yet entirely defined. Once they have been defined, the Portuguese authorities will send a report to the Commission outlining the precise setup and scope of activities.

2.5. Evaluation

(37) The Portuguese authorities will re-notify the measures to the Commission before 31 December 2025 and include a report on the effectiveness, the efficiency and the effects of the Decree Law in practice.

3. POSITION OF THE MEMBER STATE

(38) According to the Portuguese authorities, SMEs, mid-cap and large enterprises strategic to the economy, are undertakings that play a crucial role in the economic growth of countries, a fact, which is observable not only in the Portuguese economy, but also in other countries of the European Union. Notwithstanding their recognised importance, it is also a universally accepted fact that SMEs and mid-caps face difficulties in accessing adequate and sufficient sources of funding to support their investments and capital needs. This is particularly the case in the Portuguese economy, where SMEs (and mid-caps) are an important lever of growth and exports, but the small size in a European and global scale does not provide

[20] For financing outside the internal market where the application of the OECD Arrangement leads to interest rates in line with market conditions, the intervention will be non-aided and provided on a market conform basis. See Commission decision SA.55465 *Invest International* of 29 May 2020.

[21] 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 392, 19.12.2012, p. 1–7).

them a high international uptake capacity of funds, which leads to a high vulnerability to the negative impacts of shocks on the Portuguese financial system.

(39) In order to address the insufficient levels of available financing and its cost for SMEs, the Portuguese government already owns financial institutions with the purpose of targeting market failures. However, those institutions invest in companies' activity through financial intermediaries, specifically commercial credit institutions already operating in the market, business angels, venture capitalists, private equity firms or other private investors.

(40) Through BPF, the Portuguese Government now intends to act directly to address market failures and to bring to companies, particularly to SMEs and mid-caps, but also large companies deemed strategic to the Portuguese economy, the necessary financial resources for their investment and growth projects with costs weighted on the basis of actual business risk and not of company size. At the same time, it also intends to act on certain causes of these failures, not neutralising the intervention of private operators, but on the contrary, promoting their participation through their equity in financing operations.

(41) In case BPF were to provide, on an MEO-basis, loans, quasi-equity investments and equity investments, directly or indirectly (through another entity), to SMEs, small mid-caps, mid-caps or larger companies that do not fall within the scope of *ex ante* determined market failures, Portugal submits that a specific market failure study will be notified to the Commission before implementing such financing activities.

(42) BPF will provide funding to financial intermediaries on the condition that all advantages are passed on to the level of the final beneficiary. In addition, BPF's funding will be available to all financial intermediaries and will be distributed based on a fair, open, transparent and competitive process.

(43) Under the agreements/protocols to be concluded with partner institutions, BPF will always seek to promote the risk sharing with the funding institutions and secure more appropriate price, attending to the company's rating. This risk sharing in co-financing of SMEs activity should also ensure leverage of the private sector.

(44) The Portuguese authorities consider that the activities, to be developed by BPF, fulfil the requirements and can be considered as compatible with Article 107 TFEU given that:

(a) the activities to be developed by BPF contribute to the achievement of a well-defined objective of common interest of the Union and, as such, a goal considered a priority, as is the case of higher levels of availability of the financial system for funding the activity of companies, especially SMEs, to increase economic growth and employment;

(b) the initiative aims to fill gaps identified in the market with regard to the financing of SMEs, mid-caps and large companies deemed strategic to the Portuguese economy;

(c) it is a suitable State aid since no less costly measures, that could solve problems faced by these companies, exist;

(d) BPFs intervention, working in conjunction with the financial market and not in lieu of this, has an incentive effect on the intervention of private operators, stimulating their further participation in the capitalisation and financing of SMEs, mid-caps and large companies deemed strategic to the Portuguese economy's activity;

(e) it is the most appropriate method to achieve compliance with the primary objective of the Union, which would not be possible to achieve with less aid and less distortion of competition;

(f) it does not create negative effects on competition and trade between Member States; on the contrary, it aims to overcome the negative effects of market failures on competition. On the other hand, as the funding gap value is much higher than the value of the aid, the intervention of BPF implies the partnership in financing with private stakeholders. Such actions essentially encourage the attraction (crowding-in) and not expulsion (crowding-out) of private lenders, while the latter's effect will be insignificant;

(g) transparency is ensured, because the relevant information concerning BPF's activities will be subject to public advertising.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of State aid

(45) By virtue of Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*."

(46) To constitute State aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, the measure has to confer a selective advantage on its recipients. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

Scope

(47) The present decision assesses only the presence of aid to BPF related to the EUR 255 million share capital provided by its public shareholders (Level I aid). Whether BPF's financing activities involve State aid to the final recipients (Level II aid), financial institutions and co-investors, is not within the scope of this decision.

Economic activities

(48) BPF provides financing (by means of e.g. loans or equity) directly and indirectly. It also facilitates financial activities of banks by providing guarantees. Both of these points constitute an economic activity.

(49) In addition, BPF might also provide adjacent advisory services linked to its financing activities for projects and businesses. The provision of these services may constitute an economic activity as well.

(50) On that basis, the Commission considers that BPF performs economic activities falling under the scope of Article 107(1) TFEU.

State resources and imputability

(51) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(52) BPF will have a share capital of EUR 255 million provided by the Portuguese authorities either directly or through public entities, as described in recital (13).

(53) Since the provided capital of EUR 255 million ultimately comes from the Portuguese State, that funding comes from State resources and the decision to provide the above support is imputable to the State. Therefore, the State resources and imputability condition is fulfilled.

Selective economic advantage

(54) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention.

(55) The Portuguese authorities acknowledge that no commercial return is expected on the capital of EUR 255 million invested in BPF. By addressing market failures and by acting in a way which is additional to the commercial market, BPF undertakes by definition projects which would not (or not to the same extent or under the same conditions) be undertaken by a private undertaking. Moreover, the Portuguese authorities did not provide the Commission with detailed projections showing that BPF would generate a return on equity on its EUR 255 million capital that private investors would accept. Indeed, BPF wants to be an investor that also takes into account broader societal returns when making investments.

(56) The advantages derived from the capital of EUR 255 million are selective in nature as they confer an advantage only on BPF and not on other financial institutions.

(57) Therefore, based on the analysis made in recitals (54) to (56), it can be concluded that the criterion of selective advantage within the meaning of Article 107(1) TFEU is met.

Distortions of competition and effect on trade

(58) When a measure granted by the State is liable to improve the competitive position of its recipient compared to other undertakings with which it competes on the internal market, it is considered to distort or threaten to distort competition. A distortion of competition within the meaning of Article 107(1) TFEU is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.

(59) BPF provides and facilitates financing to companies and it is in competition with other financial institutions in that market. Furthermore, BPF might implement certain economic activities such as adjacent advisory services linked to its financing activities for projects and businesses, thereby potentially being in competition with companies active in the advisory and consultancy markets.

(60) Both the financial services market and the advisory and consultancy markets have a strong cross-border dimension and there are players from other Member States active in the Portuguese market. State measures in favour of such activities can therefore affect trade between Member States.

Conclusion

(61) Based on the above, the Commission considers that the measure constitutes aid within the meaning of Article 107(1) TFEU.

4.2. Legality

(62) By notifying the merger and the creation of the new institution BPF before putting it into effect, the Portuguese authorities have respected their obligation under Article 108(3) TFEU.

5. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURES

5.1. Scope and criteria for assessing the compatibility

(63) The notification relates to the creation of BPF. Therefore, the Commission will assess below the compatibility of the measure. This decision does not pronounce itself on the existence of aid (and the potential compatibility of such aid) related to BPF's financing activities at the level of financial institutions, co-investors and final beneficiaries (Level II aid).

(64) Article 107(3)(c) TFEU provides that "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered compatible with the internal market.

(65) The Commission has examined whether any secondary State aid act could be applicable to the measure, but concludes that the measure does not fall within any existing Commission Communications, Guidelines or Frameworks setting out the rules for implementing Article 107(3)(c) TFEU.[22]

(66) In light of the above, the Commission will assess the measure directly under Article 107(3)(c) TFEU, following the common State aid assessment principles and the Commission's extensive case practice in the field of development banks.[23] In

[22] For a more detailed analysis on this matter, see recitals (96) to (101) of the UK Business Bank Decision, OJ C 460, 19.12.2014, p. 1-9.

[23] See for example, Commission Decision of 17 October 2012, SA.33984 Green Investment Bank, United Kingdom, OJ C 370, 30.11.2012, p.2; Commission Decision of 15 October 2014, SA.36061 UK Business Bank, United Kingdom, OJ C 460, 19.12.2014, p.1; Commission Decision of 24 August 2016, SA.39793 Malta Development Bank, Malta, OJ C 471, 16.12.2016, p.1; Commission Decision of 28 October 2014, SA.37824 Portuguese Development Institution, Portugal, OJ C 005, 09.01.2015, p.1; Commission Decision of 9 June 2015, SA.36904 MLB development segment and creation of the Latvian

particular, the Commission will analyse whether the measure contributes to a well-defined objective of common interest; is necessary; appropriate; has an incentive effect; is proportionate; and avoids undue negative effects on competition and trade between Member States. In order to avoid undue distortions of competition, the measure (representing Level I aid) can only be compatible if the remit of BPF is limited to activities that address market failures. Therefore, the Commission will assess below that the different activities of BPF correspond to this criterion.

5.2. Contribution to a well-defined objective of common interest

(67) The measure must aim at a well-defined objective of common interest.

(68) BPF's main objective is to overcome market failures which impede the growth of the Portuguese economy (see recital (9)). BPF will focus on projects in the areas of research and innovation, sustainable infrastructure, social and public investment (see recital (10)).

(69) Those more general objectives have been concretised further in a detailed remit.

(70) For the aided measures and the *de minimis* measures of BPF – described in recital (22) – the Commission notes that BPF will address market failures identified in the GBER, ABER, FIBER or the *de minimis* Regulations. Alternatively, its interventions will be assessed separately in Commission decisions. Full compliance with those regulations or decisions ensures that the interventions of BPF pursue the common interest objectives set out in those regulations or decisions in a precise manner.[24]

(71) The MEO interventions of BPF – described in recitals (23) to (27) – will help to address the market failures identified in the GBER, ABER, FIBER, the Commission Guidelines on State aid for environmental protection and energy or the Risk Finance Guidelines. The fact that those interventions comply with the eligibility criteria of these regulations and guidelines (except for certain conditions such as cumulation and transparency) helps to target those measures towards the well-defined common interest objectives, also because the MEO interventions always take place on the basis of the parameters defined in recitals (23) to (27).

(72) In addition, with regard to MEO interventions, the Commission notes that equity interventions in the fields of SMEs, small mid-caps and innovative mid-caps are in line with the definitions of the Risk Finance Guidelines. The general policy objective of the Risk Finance Guidelines is to improve the provision of finance to viable SMEs and (in certain circumstances) to small mid-caps and innovative mid-

Single Development Institution, Latvia, OJ C 25, 22.01.2016, p.1; Commission Decision of 6 June 2019, SA.47821 Invest-NL, The Netherlands, OJ C 268, 9.8.2019, p.1; Commission Decision of 29 May 2020, SA.55465 Invest International, The Netherlands, (not yet published in the OJ).

[24] This also includes the adjacent advisory services linked to BPF's financing activities; insofar they constitute an economic activity, as described in recital (12).

caps[25], so as to develop a competitive business finance market in the Union, which should contribute to overall economic growth.[26]

(73) Moreover, MEO equity interventions to SMEs (which do not fulfill all the eligibilty conditions laid down in the GBER) and small mid-caps will be limited to companies that are RD&I intensive or to projects in renewable energy and environmental protection. The provision of financing to companies engaged intensively in RD&I projects – RD&I aid – should contribute to the achievement of the Europe 2020 strategy of delivering smart, sustainable and inclusive growth. The support for projects in renewable energy and environmental protection should also contribute to the Europe 2020 strategy and the European Green Deal[27]. This holds true in particular for sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy. Therefore, the Commission concludes that the MEO interventions in general also serve a well-defined objective of common interest.

(74) Lastly, the Portuguese authorities will notify MEO interventions that are not covered by the *ex-ante* determined market failures together with specific market failure studies to the Commission before implementing them as described in the MEO-remit in recitals (23) to (27) and the above recitals (71) to (73).

(75) Export credits are a key element of the financing solution which forms one part of the exporters' business offers. Mainly structured in the form of buyer credits, in Portugal they depend on the offer of commercial banks. However, commercial banks are reluctant to take over long-term or very long-term export-credit financing commitments, in the absence of an appropriate State backed export-credit financing solution. BPF, through its planned export credit financing activities, would contribute to addressing gaps in the financing of export credits, as explained in recitals (29) and (30). It aims to improve access to competitive financing offers for Portuguese and European exporters established in Portugal and for European and foreign buyers. In that way, the extension of the scope of BPF’s activity to export credit financing activities – in line with the criteria of the OECD Arrangement – will also actively contribute to the commercial policy of the European Union within the framework of the Europe 2020 strategy.[28]

(76) In this manner, the interventions to be carried out by BPF (Level II aid) serve a well-defined objective of common interest and therefore the measures of aid in favour of BPF (Level I aid) also serve these objectives.

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[25] See also the Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4.

[26] In particular, the Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, (COM(2010) 2020 final, 3.3.2010) sets out a strategy framework for a fresh approach to industrial policy that should put the Union economy on a dynamic growth path strengthening Union competitiveness. It underlines the importance of improving access to finance for businesses, especially for SMEs.

[27] See Communication from the Commission – The European Green Deal (COM(2019) 640 final, 11.12.2019).

[28] See Communication from the Commission – Trade, Growth and World Affairs – Trade Policy as a core component of the EU's 2020 strategy (COM (2010) 612 final, 9.11.2010).

(77) In light of the elements described in recitals (68) to (76), the Commission finds that the measures in favour of BPF serve well-defined objectives of common interest.

5.3. Necessity

(78) State aid must be needed to remedy a market failure. If the market already delivers an optimal equilibrium, State aid is not needed. However, if market failures – such as for instance information asymmetries or externalities – lead to a suboptimal equilibrium, State aid can help to maximise welfare.

(79) As described in section 2.3, the remit of BPF addresses market failures.

(80) First, BPF may provide financing in compliance with State aid schemes approved by the Commission. When approving individually those schemes, the Commission verifies whether they address the market failures identified in the relevant State aid legal basis. Therefore, there is no need to re-notify the remit of BPF when new aid schemes are added to BPF's activities, since those schemes are approved by the Commission and the relevant market failures are established in the related Commission decisions.

(81) BPF may also provide financing on the basis of State aid schemes that are compatible under the GBER, ABER or FIBER. These regulations are based on the assumption that market failures are addressed by providing access to finance measures which are set out in these texts and which fulfil all their respective conditions, without the need for further market failure evidence in that regard.

(82) BPF may also provide financing under the *de minimis* Regulation as well as the Agricultural and Fisheries *de minimis* Regulations. The financing will concern a limited amount received per undertaking, BPF will conduct a limited activity under these regulations and effects on competition of such interventions are absent. Therefore, the Commission considers that the activities conducted under these regulations do not alter its assessment of the necessity of the measure to BPF as they are also closely associated to market failures in the access to finance market for SMEs.

(83) Second, BPF may provide financing on MEO terms but only to address the market failures identified by the GBER, ABER, FIBER and the Commission's State aid guidelines. Consequently, these MEO schemes will target exclusively undertakings which are eligible under the respective articles in the GBER, ABER, FIBER or the State aid guidelines to receive aid instruments specified therein. These rules are based on the assumption that market failures are addressed by providing measures which are set out in these texts and which fulfil all their respective conditions, without the need for further market failure evidence in that regard.

(84) More specifically, BPF will limit its equity interventions (that do not comply with the eligibility conditions of the relevant GBER articles)[29] to smaller companies which are RD&I intensive or engaged in projects related to renewable energy and environmental protection.[30] As a result of asymmetric information, business finance markets may fail to provide the necessary volume of equity finance to

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29 Notably, Articles 21 and 22 of the GBER.

30 See recital (25)(c)(iii).

smaller and innovative companies. The Commission also notes the significant need (high demand) for investments in the transition to renewable energy, which further supports the need to overcome any possible market failures for smaller companies in this area.

(85) BPF's financing of exports is necessary in particular for long-term export projects and given the factors which are hindering the development in Portugal of a market for financing export credits, in particular for the designated political risk markets as explained in recital (29). The need for export financing is particularly important in sectors of activity where the amounts of export credits are high and where the maturities of receivables can be particularly long - and therefore, where the supply of finance itself is limited. Portugal does not have a national State-owned export credit agency, which led to official support for those sectors being channelled through a private insurance company operating in the Portuguese market (see recital (30)).

(86) The adjacent advisory services linked to BPF's financing activities, when economic in nature, will be provided within the scope of the GBER, therefore addressing market failures defined therein or in the *de minimis* Regulations with the consequent absence of effects on competition.

(87) The Commission also takes positive note of the fact that the Portuguese authorities will assess the activities of BPF and whether the activities are effective (and efficient) as described in recital (37).

(88) In light of the above, the Commission concludes that the remit of BPF is limited to activities that address market failures and therefore the measure is necessary to fulfil the identified common objectives.

5.4. Appropriateness

(89) The State aid measure must be an appropriate policy instrument to address the objective of common interest. In that regard, the Commission has assessed whether the creation of BPF is an appropriate response to addressing market failures in Portugal.

(90) First, as mentioned in section 2.2, BPF has as the main objective to promote the growth of the Portuguese economy by improving the access to finance mainly for SMEs. Consolidating a number of initiatives addressing those market failures in one institution (i.e. BPF) is – from the viewpoint of efficiency and coherence – an appropriate tool. In this regard, as described in recital (37), the Commission also takes positive note of the fact that the Portuguese authorities plan to evaluate the effectiveness and efficiency of the measure within five years.

(91) Second, by limiting BPF's activities to interventions that address market failures, the set-up of this institution is an appropriate way of ensuring that it is a true development bank with a remit limited to addressing the identified market failures without unduly distorting competition.

(92) Therefore, the Commission concludes that creating a development bank with BPF's remit with the help of the capital provided is an appropriate tool to address the identified market failures.

5.5. Incentive effect

(93) A State aid measure must have an incentive effect, i.e. it must change the behaviour of an undertaking in such a way that it engages in additional activity which it would not carry out without the aid or would carry out to a lesser extent or at different condition.

(94) The Commission has examined whether the creation of BPF and the financing it obtains will itself provide an incentive effect.

(95) The Commission notes that no commercial return is expected on the EUR 255 million capital provided to BPF. This means that in the absence of the capital provided by the Portuguese State, BPF would not be able to attract financing externally and engage in the same financing activities in absence of the aid.

(96) With respect to BPF’s financing activities (and the adjacent advisory services linked to them) which are carried out on the basis of GBER, ABER and FIBER, all conditions laid down therein will have to be fulfilled, including as regards the necessary presence of an incentive effect.[31]

(97) With respect to funding provided below the respective thresholds set under the *de minimis* Regulations, the Commission considers that the limited amount of such funding per undertaking and the absence of effect on competition ensure that the implementation of *de minimis* activities by BPF does not alter its assessment of the incentive effect of the measure.

(98) With respect to BPF's financing activities on MEO terms, firstly, BPF will provide funding only in areas where a market failure is presumed to exist, since they will comply with the relevant eligibility conditions as included in GBER, ABER, FIBER, or the Commission’s State aid guidelines. Therefore, BPF will contribute to close the funding gap that exists in the markets where it will be active. It will make loan or investment volumes available, which the final beneficiary – without BPF – would only have available in lower volumes and/or at a higher price. Secondly, BPF will apply no-crowding-out measures as described in recital (26), thereby ensuring that only those entities and projects with insufficient market access can receive funding from BPF. Therefore, the Commission can conclude that the funding provided by BPF will be additional to market finance and that BPF’s interventions on MEO terms will increase the funding available to projects in areas where a market failure exists and where insufficient market funds are available.

(99) With respect to BPF's financing activities funded from EU Financial Instruments (e.g. COSME and Horizon 2020), the Commission finds that there is an incentive effect for the following reasons. First, such instruments also aim to address market failures or suboptimal investment situations. Second, according to Article 209 of the Financial Regulation[32], the principle of additionality, non-distortion of competition in the internal market and consistency with the State aid principles

[31] For example, as set out in article 6 of the GBER.

[32] See Financial regulation applicable to the general budget of the Union, as available on https://op.europa.eu/en/publication-detail/-/publication/e9488da5-d66f-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-86606884

apply to them. Therefore, the Commission concludes that BPF's interventions funded from EU Financial Instruments ensure the incentive effect of the measure.

(100) With respect to BPF' export financing activities which will result in a broader range of instruments offered, it should lead to positive results, encouraging certain private operators to offer an alternative export financing offer. Thus, the proposed scheme could ultimately encourage the emergence of private offers and produce an incentive effect.

(101) In light of these elements, the Commission concludes that the measure in favour of BPF has an incentive effect.

5.6. Proportionality

(102) The State aid measure must be limited to the minimum necessary to induce the additional investments or activity by the undertakings concerned, i.e. it is not possible to reach the same outcome with a lesser amount of aid.

(103) The Commission notes that, with the EUR 255 million capital provided, BPF aims to provide a sufficient (but non-commercial) return, which will be used to benefit SMEs (and larger companies) that are affected by market failures in accessing the necessary finance. As indicated in footnote 5, the total assets of BPF amount to less than 0.5% of GDP, which seems to be a proportionate size (smaller on a relative basis than most other development banks).

(104) With respect to BPF's financing activities (and the adjacent advisory services linked to them), the Commission notes that the aided measures will be either constrained within the eligibility criteria and certain other limits (such as with regard to aid amounts and aid intensities) of the block-exemption regulations. If all conditions laid down therein are fulfilled, the aid is presumed to be proportionate. Alternatively, the proportionality of the aided measures will be assessed in the Commission decisions based on the respective guidelines.

(105) With respect to funding provided below the threshold set under the *de minimis* Regulations, the Commission considers that the limited amount of such funding per undertaking and the absence of effect on competition ensure that the implementation of *de minimis* schemes by BPF does not alter its assessment of the proportionality of the measure.[33]

(106) With regard to the MEO measures, the Commission notes that since those interventions are market-conform and do not provide a selective advantage to the final beneficiary, the aid amount (actually no aid) is also limited to the minimum necessary. While there are shortages in the capital market, the MEO activities should yield a market-conform return to BPF.

[33] The Commission notes that various elements point to the proportionate use of the *de minimis* Regulation by Member States in general. In the context of the revision of the *de minimis* Regulation the data available on the use of the current *de minimis* Regulation showed that the great majority of beneficiaries receive a quite limited amount. A rather large sample showed that the average amount per beneficiary per year is below EUR 30 000 aid and that the vast majority of beneficiaries receive below EUR 50 000 aid per year, with approximately 69-89% of them receiving less than EUR 10 000 aid per year. As regards the Member States for which the Commission received detailed data on that point, as shown, around 90% of the beneficiaries were micro and small undertakings and more than 95% were SMEs.

(107) With respect to the financing activities funded from EU Financial Instruments, the Commission notes that the principle of proportionality also applies to them. According to Article 209 of the Financial Regulation, "*Financial instruments and budgetary guarantees shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives*). Moreover, the principle of "leverage effect" applies to EU Financial Instruments by virtue of Article 209 of the Financial Regulation, which ensures that they also aim to attract co-financing, including from private investors.

(108) BPF will intervene in a well-defined sector, namely the activity of financing export credits for significant amounts. The financing of export credits is currently insufficient. Consequently, the well-circumscribed extension of BPF's activity is limited to filling a market failure, and is therefore proportionate. With respect to pricing of those export-financing activities, the Commission notes that those activities will be carried out in line with the OECD Arrangement outside of the internal market and on a market conform basis using the proxies of the Reference Rate Communication and the Guarantee Notice inside the internal market.

(109) In light of those elements, and in particular the fact that each of the activities conducted by BPF will be proportionate, the Commission concludes that the measure of aid to BPF is proportionate.

5.7. Avoidance of undue negative effects

(110) The measure has limited crowding out risk for a number of reasons. In particular, all interventions carried out by BPF at Level II will limit potential negative effects on competition to the minimum.

(111) First, BPF will conduct its activities in line with State aid rules, which by itself ensures that potential negative effects are limited to the minimum.

(112) With regard to BPF's financing activities on MEO terms, they will be subject to no-crowding-out measures[34], whereby BPF intervenes only when market funding is not sufficient or not available. This will be ensured by a set of mandatory steps that BPF will follow before investing in an entity. The investee will have to demonstrate that it tried to obtain the required financing from the market, but was unable to secure part or whole of the required financing. Therefore, the Commission finds that the no-crowding-out measures, which will apply for the MEO activities of BPF, will ensure that the financing provided will not distort the market.

(113) Finally, the Commission notes that BPF might provide financing to undertakings in difficulty. In this case, BPF will ensure that the financing is provided on MEO basis (that such intervention does not constitute aid within the meaning of Article 107(1) TFEU). The Portuguese authorities could choose to notify such investments to the Commission for a 'no-aid' decision for reasons of guidance or legal certainty.

(114) In light of those elements, the Commission concludes that the creation of BPF will not lead to undue distortions of competition.

[34] See recital (26).

5.8. Conclusion

(115) On the basis of the foregoing assessment, the Commission concludes that the measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

6. DECISION

(116) The Commission concludes that this aid measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(117) The Commission reminds the Portuguese authorities that the authorisation of the measures is limited until 31 December 2025. All plans to modify the measure, in particular with respect to further funding, the remit and duration, must be notified to the Commission.

(118) This approval does not extend to any potential aid by BPF to other undertakings, financial institutions and co-investors.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

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Directorate-General Competition
State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission
Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
Secretary-General

Ilze JUHANSONE
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