

1. The removal of Section 2.1 “The market economy operator test” of the 2014 Risk Finance Guidelines, wherein the conditions of its application were clearly stated (pari passu transactions, minimum participation of private investors of 30%, simultaneous investments, private investor concept), as well as the removal of footnote 25 of the 2014 Risk Finance Guidelines, in which it was clearly stated that the EIB Group is considered a private investor when investing its own money at its own risk, are considered to create strong uncertainties.

We understand that the purpose of the European Commission is to avoid duplications between Guidance and the Notion of Aid. However, we believe that this section [2.1] of Risk Finance Guidelines 2014 actually complements rather than overlaps the guidelines in question.

We believe that, in practice, both the EIF and the Member States make particular use of the detailed implementing rules as described in Section 2.1, to jointly develop financial instruments. Ensuring legal certainty and clarity is particularly important, especially for investments in the digital transformation, the green transformation and the recovery of SMEs from the health crisis. The State Aid sector has mainly technical characteristics and the introduction of detailed implementing rules both by the DG and through these Guidelines will benefit all stakeholders.

Lack of clarity and consequently legal certainty can negatively affect and / or delay the implementation of business risk financial instruments aimed at supporting SME financing. For the above reasons, we propose the restoration of both the removed Section 2.1. “The market economy operator test” and the removed footnote 25, of the 2014 Risk Finance Guidelines, in the final text of RFG 2022.

2. As a result of the pandemic there is a need to develop tools for all sizes of businesses, at least for a limited time and until the recovery of the Member States' economies is achieved. For this reason, and in cases where there is a need for the ex ante evaluation, we would suggest that schemes be applicable to large non-listed companies, at least for a limited period.
3. The possibility of financing companies operating for 10 instead of 7 years is considered positive. However, we would also propose a recast of the definition of "undertaking in difficulty" in the GAC, in line with that of the Guidelines.
4. According to paragraph 53 of the draft: “The Commission considers that there is no general market failure as regards access to finance for SMEs or mid-caps, but only a failure related to certain groups of SMEs and some types of mid-caps, depending in particular on the specific economic context of the Member State concerned”. However, according to the general assumption, where SMEs often face difficulties in gaining access to finance [paragraphs 3 and 22], this statement creates a contradiction. Therefore, we consider this requirement to be problematic for certain SME groups and types of companies.
5. Paragraph 97 of the draft refers to the minimum percentage of private participation in risk financing aimed at eligible undertakings operating in any market for more than ten years after their registration. We would suggest that the minimum ratio of private participation [in paragraph 97 is set at 60%] results from the ex ante evaluation.