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COMMUNICATION FROM THE COMMISSION

6th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the 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

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1. INTRODUCTION

1. On 19 March 2020, the Commission adopted its Communication "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak"[1] (the 'Temporary Framework'). On 3 April 2020, it adopted a first amendment to enable aid to accelerate research, testing and production of COVID-19 relevant products, to protect jobs and to further support the economy during the current crisis[2]. On 8 May 2020, it adopted a second amendment to further ease the access to capital and liquidity for undertakings affected by the crisis[3]. On 29 June 2020, it adopted a third amendment to further support micro, small and start-up companies and incentivise private investments[4]. On 13 October 2020, it adopted a fourth amendment to prolong the Temporary Framework and to enable aid covering part of the uncovered fixed costs of undertakings affected by the crisis[5]. On 28 January 2021, it adopted a fifth amendment to further prolong the Temporary Framework, to adapt the aid ceilings set out therein and to enable the conversion of repayable instruments into direct grants under certain conditions[6].

2. The Temporary Framework seeks to ensure an appropriate balance between the positive effects of the aid measures granted to undertakings and any potential negative effects on competition and trade in the internal market. A targeted and proportionate application of State aid control ensures that national support measures effectively help affected undertakings during the COVID-19 pandemic, whilst limiting undue distortions to the internal market, maintaining the integrity of the internal market and ensuring a level playing field. This will contribute to the continuity of economic activity during the COVID-19 pandemic and provide the economy with a strong platform to recover from the crisis, and accelerate the necessary green and digital transitions, in line with EU law and the Union's objectives.

3. It is necessary to prolong the measures set out in the Temporary Framework until 30 June 2022; to adapt the aid ceilings of the uncovered fixed cost measure in order to address the prolonged economic effects of the ongoing crisis; to enable investment support towards a sustainable recovery and solvency support; and to clarify and amend the conditions for certain temporary State aid measures that the Commission considers compatible under Article 107(3)(b) of the Treaty on the Functioning of the

[1] Communication from the Commission of 19 March 2020, C(2020)1863, OJ C 091I, 20.3.2020, p.1.
[2] Communication from the Commission of 3 April 2020, C(2020)2215, OJ C 112I, 4.4.2020, p. 1.
[3] Communication from the Commission of 8 May 2020, C(2020)3156, OJ C 164, 13.5.2020, p. 3.
[4] Communication from the Commission of 29 June 2020, C(2020)4509, OJ C 218, 2.7.2020, p. 3.
[5] Communication from the Commission of 13 October 2020, C(2020)7127, OJ C 340I, 13.10.2020, p. 1.
[6] Communication from the Commission of 28 January 2021, C(2021)564, OJ C 34, 1.2.2021, p. 6.

European Union ('TFEU') in light of the serious economic disturbance caused to the economies of all the Member States by the COVID-19 pandemic. In addition, the removal of the list of marketable risk countries set out in the Annex to the 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 ("STEC")[7] should be prolonged.

4. First, the Commission recalls that the Temporary Framework was set to expire on 31 December 2021. The Temporary Framework also envisaged that the Commission would review that framework before 31 December 2021 on the basis of important competition or economic considerations.

5. In that context, the Commission has assessed the continued need for aid under the Temporary Framework, with a view to deciding whether it was necessary to maintain it after 31 December 2021. In particular, the Commission considered the following factors: on the one hand, the evolution of the economic situation in the exceptional circumstances created by the COVID-19 pandemic; on the other hand, the appropriateness of the Temporary Framework as an instrument to ensure that national support measures effectively help affected undertakings during the outbreak, whilst limiting undue distortions to the Internal Market and ensuring a level playing field.

6. According to the Autumn 2021 Economic Forecast[8], GDP is forecast to grow by 5.0 % in 2021 and 4.3 % in 2022 in both the Union and the euro area. The volume of output is projected to return to pre-crisis level (2019-Q4) by the end of 2021. However, uncertainty and risks surrounding the growth outlook remain high taking into account the resurgence in COVID-19 infections across certain Member States, increasing tensions in the supply chains and the rise of energy prices.

7. Member States have made substantial use of the possibilities under the Temporary Framework as an instrument to address the serious economic disturbance affecting their economies, as well as to facilitate the development of certain economic activities required to tackle the COVID-19 pandemic.

8. Given that the Temporary Framework has been useful as an instrument to address the economic consequences of the pandemic and also in light of the feedback received from Member States, the Commission considers that a limited prolongation of existing measures set out in that framework until 30 June 2022 is appropriate to ensure that national support measures effectively help affected undertakings during the outbreak while maintaining the integrity of the internal market and to ensure a level playing field. This limited prolongation will also ensure that undertakings still affected by the crisis need not be cut off suddenly from necessary support. Rather, it will enable a coordinated phase-out of the level of support in light of the observed economic recovery. That phase-out has to be seen in light of the heterogeneity of the recovery, with specific sectors and regions in different Member States still lagging behind others. Based on currently available information, the Commission considers it likely that no additional prolongation of the existing types of measures covered under sections 3.1 to 3.12 may be necessary beyond 30 June 2022. This is especially

[7] OJ C 392, 19.12.2012, p. 1.
[8] European Commission, Economic and Financial Affairs: *Autumn Forecast 2021* (Interim) (November 2021).

the case as regards existing liquidity measures, where the new forward-looking possibilities for investment support towards a sustainable recovery and solvency support should be better suited in the recovery phase to address business needs and policy objectives, including to limit undue distortions in the internal market. The Commission will nevertheless continue to closely monitor the situation and assess whether any measures need to be further extended and/or adapted on the basis of important competition or economic considerations.

9. The Commission also considers it necessary to adjust the aid ceilings provided under section 3.1 in line with this prolongation.

10. Second, taking into consideration the continued impact of the COVID-19 pandemic and the lapse of time since the adoption of the Temporary Framework, the Commission considers that it is necessary to increase the aid ceilings set out in section 3.12 of that framework, which enables targeted support to companies that experienced significant turnover losses.

11. Third, several Member States have underlined the need to mitigate the risk of corporate insolvencies through additional possibilities for debt restructuring and conversion of repayable aid instruments into other forms of aid (e.g., direct grants)[9]. In order to address those concerns and mitigate the risk of corporate insolvencies, the Commission considers that it is necessary to enable the conversion of repayable aid instruments into other forms of aid under section 3.1 and section 3.12 of the Temporary Framework until 30 June 2023 provided that the conditions of the applicable sections are complied with[10]. Furthermore, the Commission also considers that repayable instruments under section 3.1, section 3.3, and section 3.12 may require restructuring in line with ordinary prudential practices of the financial intermediaries involved. Such a restructuring will be considered compatible, if completed at the latest by 30 June 2023 and under the conditions specified in this Communication. In particular, such restructuring must respect the conditions laid down in the applicable sections and may not lead to an increase of the initially granted amounts[11].

12. In addition, this Communication clarifies that Member States may extend the duration of guarantees granted under section 3.1, section 3.2, and section 3.12 of the Temporary Framework also after the expiry of that framework, provided the conditions in those sections and section 3.4 are respected. The terms and conditions of such an extension should be stipulated in the initial guarantee contracts between the State and the credit or financial institutions. Those conditions should not leave any discretion to the Member State's authorities when the duration of the guarantee is extended. Final beneficiaries must be informed at the time of the financing being initially granted that they can request an extension of the maturity of that financing,

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[9] See, also, European Systemic Risk Board: *Prevention and management of a large number of corporate insolvencies* (April 2021).

[10] The Commission clarifies that point 9 of the Communication of 13 October 2020 (C(2020)7127, OJ C 340I, 13.10.2020, p. 1) applies also to aid granted under section 3.12 of the Temporary Framework.

[11] This is without prejudice to the existing possibilities of granting new aid under the Temporary Framework, which may be used to repay existing instruments, provided that the relevant conditions set out in that framework are fulfilled. Aid which has been reimbursed before or at the same time as granting new aid shall not be taken into account in determining whether the relevant ceiling is exceeded.

without prejudice to the fact that the credit or financial institutions may accept or refuse that request in accordance with their standard policies and procedures[12].

13. Fourth, the Commission considers that the recovery of the Union's economy will be largely determined by the speed of vaccination programmes and the progression of possible variants of the virus, but also by other unknown factors such as the state of the international economy and the spending and investment behaviours of companies and households.

14. The Commission recalls that the risk of a post-crisis investment drop actually materialised in the Union in the years following the 2008 crisis, because of increased indebtedness of the private sector. When the present crisis comes to an end, financial difficulties, risk aversion and spare capacity in some sectors could also hold back corporate investment and therefore long-term growth.

15. It is appropriate to provide further options for Member States based on Article 107(3)(c) TFEU to directly support investments in assets as well as provide an instrument to improve the equity position of European companies, by introducing a new section on investment support towards a sustainable recovery, as well as a new section on solvency support. In parallel, the Commission also considers it to be necessary to apply the individual notification requirements for schemes under specific existing guidelines with particular importance for the recovery in a more flexible manner for a limited amount of time.

16. On the one hand, investment support should facilitate the development of economic activities required for the return to a sustainable long-term growth, overcoming the negative economic effects of the crisis including a widening of the investment gap. It should also support a more resilient economy for the future, while effectively limiting potential negative effects on competition and trade.

17. Support of that kind may also help Member States to particularly develop those economic activities required to achieve the objectives of the green and digital transitions and support recovery towards a greener and more digital future while strengthening resilience and preserving a level playing field. It is also relevant as part of a phase-out of immediate short-term crisis response measures, predominantly in terms of liquidity support, and a shift towards fostering a more long-term recovery of the economy. In order to achieve the intended effect of accelerated investment spending, the application of this measure should be limited until 31 December 2022.

18. The pandemic and the measures taken by the Member States to combat the spread of the COVID-19 virus induced an immediate fall in economic activity on an unprecedented scale, in particular as regards investment. In light of these exceptional circumstances created by this crisis, the Commission considers that the provisions of section 3.13 of the present amendment may be applied to aid granted after 1 February 2020, provided all conditions are met and in particular an incentive effect can be demonstrated. Such measures need to pursue the same objective as the one

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[12] The extension should not result in an increase in the interest rate or fee rates applicable to the underlying instrument (including due to a downgrade of the final beneficiary's rating even if that downgrade happens before the extension request is decided).

laid down in section 3.13, namely provide a stimulus to overcome an investment gap accumulated in the economy due to the crisis.

19. On the other hand, solvency support is an important element for the development of economic activities in a wide range of sectors in situations where undertakings are suffering from increased debt ratios due to the crisis. Given the overall macroeconomic increase of indebtedness, Member States may seek to provide undertakings with easier access to private investments in the form of equity while limiting potential negative effects on the internal market. Such support can be an important element to strengthen the economic recovery. A longer application period for this type of solvency support measure is appropriate given the complexity and time needed to set up such schemes. Against that background, the period of application of this type of measure should extend to 31 December 2023.

20. Through the Technical Support Instrument[13], the Commission supports Member States in designing and implementing reforms aimed at overcoming the investment gap and accelerating the green and digital transitions. Member States can ask for support through the Technical Support Instrument to design and put in place solvency support measures.

21. Fifth, the application of the Temporary Framework has shown the need to introduce additional clarifications and amendments to other points of that framework, especially in section 1.3, section 3.11 and section 4, and add new tools under sections 3.13 and 3.14.

22. Therefore, Member States may envisage modifying existing aid measures approved by the Commission under the Temporary Framework in order to prolong their period of application until 30 June 2022, allow restructuring or conversion of certain instruments up to 30 June 2023, introduce new measures supporting investments towards a sustainable recovery until 31 December 2022, or new measures providing solvency support until 31 December 2023. Member States may also envisage increasing the budget of existing measures approved in light of section 3.12 or introducing other amendments to align those measures with the Temporary Framework, as amended by this Communication. This may also include a dedicated tailoring of new or existing aid measures to sectors that are particularly affected by the crisis in specific Member States within the limits of the amended Framework.

23. Member States that plan to prolong or modify existing schemes are invited to notify a list of all existing aid measures they envisage modifying and to provide the necessary information listed in the Annex of this Communication. This will allow the Commission to adopt one decision covering the list of notified measures.

24. Finally, the Commission considers that it should continue applying the provisions of the communication on the short-term export-credit insurance ("STEC") beyond 2021 to allow for a coordinated transition to normal market practice or the adoption of specific schemes under the applicable rules where necessary. It accordingly prolongs the temporary removal of all countries on the list of marketable risk countries set out in the Annex of STEC until 31 March 2022.

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[13] Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument, OJ L 57, 18.2.2021, p. 1.

25. The STEC provides that marketable risks shall not be covered by export-credit insurance with the support of Member States. As a consequence of the COVID-19 pandemic, the Commission found in March 2020 that there is a lack of sufficient private insurance capacity for short-term export-credits in general and considered all commercial and political risks associated with exports to the countries listed in the Annex to the STEC as temporarily non-marketable until 31 December 2020[14]. By its Communications of 13 October 2020 and 28 January 2021, the Commission prolonged that temporary exception until 30 June 2021 and 31 December 2021, respectively. The current STEC will expire on 31.12.2021 and will be replaced by a new communication, which will still consider the criterion of non-marketable risk.

26. In the context of the continuing difficulties due to the COVID-19 pandemic and in accordance with points 35 and 36 of the STEC, the Commission conducted a public consultation to assess the availability of short-term export-credit insurance in order to determine whether the current market situation might justify the prolongation of the removal of all countries from the list of marketable risk countries in the Annex to the STEC beyond 31 December 2021.

27. Taking into account the outcome of the public consultation, as well as the global signs of continuing disruptive impact of COVID-19 on the economy of the Union as a whole, the Commission considers that a prolongation of that removal for a period of three months is an adequate solution to allow for a smooth transition before all countries listed in the Annex are considered marketable again as from 1 April 2022. Evidence submitted in the consultation by private insurers and a number of Member States indicates that private insurers started to provide coverage to serve the exporters active in most relevant markets. At the same time, further feedback received points towards a situation where market capacity is still insufficient to cover all economically justifiable risks for exports to countries from the list of marketable risk countries in the Annex to the STEC. In those circumstances, the Commission will therefore continue to consider all commercial and political risks associated with exports to the countries listed in the Annex to the STEC as temporarily non-marketable until 31 March 2022 as a prolongation to ensure a smooth transition towards normal market practice or the adoption of specific schemes under the applicable rules where needed.

2. AMENDMENTS TO THE TEMPORARY FRAMEWORK

28. The following amendments to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak will take effect as of 18 November 2021.

29. The following point 14bis is introduced:

    'The Commission acknowledges that the COVID-19 pandemic and the measures taken to contain it have created exceptional circumstances for many undertakings. In that unique situation, and depending on the individual case, the Commission clarifies that it may be justified that own contributions within the meaning of points (62) to (64) of the Guidelines on State aid for rescuing and restructuring non-financial

[14] Communication from the Commission amending the Annex to the 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 101I, 28.3.2020, p. 1.

undertakings in difficulty(*) (the "Rescue and Restructuring Guidelines") remain below 50 % of the restructuring costs, as long as they remain significant and include additional fresh funding at market conditions. The exceptional and unforeseeable nature of the current situation may also allow for exceptions from the 'one time last time' principle, pursuant to point (72)(c) of the Rescue and Restructuring Guidelines, if the renewed difficulties arise from the COVID-19 pandemic and the economic downturn generated by it, i.e., if the undertaking concerned has become an undertaking in difficulty due to the COVID-19 pandemic and the following economic downturn. For the avoidance of doubt it should be noted that the remaining provisions of the Rescue and Restructuring Guidelines, and in particular the need for a restructuring plan, the return to long-term viability, and burden-sharing, continue to apply.'

(*) Communication from the Commission (OJ C 249, 31.7.2014, p. 1).

30. Footnote 19, attached to letter a. of point 22 is replaced by the following:

31. '(*) Aid granted on the basis of schemes approved under this section that has been reimbursed before granting new aid under this section shall not be taken into account in determining whether the relevant ceiling is exceeded.'

32. Letter a. of point 22 is replaced by the following:

'a. The overall aid does not exceed EUR 2.3 million per undertaking at any given point in time.(*) The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures remains below the overall cap of EUR 2.3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

(*) Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid shall not be taken into account in determining whether the relevant ceiling is exceeded.'

33. Letter d. of point 22 is replaced by the following:

'd. the aid is granted no later than 30 June 2022;(*)

(*) If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 30 June 2022.'

34. Letter a. of point 23 is replaced by the following:

'a. the overall aid does not at any point in time exceed EUR 345 000 per undertaking active in the fishery and aquaculture sector(*) or EUR 290 000 per undertaking active in the primary production of agricultural products(**);(***) the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 345 000 or EUR 290 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

(*) As defined in Article 2(1) of 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.

(**) As defined in Article 2(5) of Commission Regulation (EC) 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.

(***) Aid granted on the basis of schemes approved under this section which has been reimbursed before granting of new aid shall not be taken into account in determining whether the relevant ceiling is exceeded.'

35. Point 23bis is replaced by the following:

'Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a), the Member State concerned shall ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.3 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a), the overall maximum amount of EUR 345 000 should not be exceeded per undertaking.'

36. Footnote 27, attached to point 23 is replaced by the following:

'(*) Aid granted on the basis of schemes approved under this section that has been reimbursed before granting new aid under this section shall not be taken into account in determining whether the relevant ceiling is exceeded.'

37. Point 23ter is replaced by the following:

'23ter. Measures granted under this Communication in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in this section are complied with.'

38. Letter c. of point 25 is replaced by the following:

'c. The guarantee is granted by 30 June 2022 at the latest;'

39. The chapeau in letter d. of point 25 is replaced by the following:

'd. For loans with a maturity beyond 30 June 2022, the overall amount of loans per beneficiary shall not exceed:'

40. Letter e. of point 25 is replaced by the following:

'e. For loans with a maturity until 30 June 2022, the amount of the loan principal may be higher than under point 25(d) with appropriate justification provided by the Member State to the Commission, and provided that the proportionality of the aid remains assured and is demonstrated by the Member State to the Commission;'

41. Letter c. of point 27 is replaced by the following:

'c. The loan contracts are signed by 30 June 2022 at the latest and are limited to maximum six years, unless modulated according to point 27(b);'

42. The chapeau in letter d. of point 27 is replaced by the following:

'd. For loans with a maturity beyond 30 June 2022, the overall amount of the loans per beneficiary shall not exceed:'

43. Letter e. of point 27 is replaced by the following:

'e. For loans with a maturity until 30 June 2022, the amount of the loan principal may be higher than under point 27(d) with appropriate justification provided by the Member State to the Commission, and provided that the proportionality of the aid remains assured and is demonstrated by the Member State to the Commission;'

44. The following point 27ter is included:

'27ter. The Commission considers that in case repayable instruments granted under this section, section 3.1, or section 3.12 require restructuring, this will be compatible provided that: (i) it is based on sound economic analysis of the specific situation of the individual case as part of the ordinary prudential practices; (ii) it respects the conditions of the applicable section especially in terms of minimum credit risk margins and maximum duration, as well as the requirements of section 3.4 (where applicable); (iii) it does not lead to an increase in the initially granted loan amount; and (iv) such restructuring takes place at the latest by 30 June 2023.'

45. Point 33 is replaced by the following:

'33. In that context, the Commission considers all commercial and political risks associated with exports to the countries listed in the Annex to the STEC as temporarily non-marketable until 31 March 2022.'

46. Letter a. of point 35 is replaced by the following:

'a. The aid is granted in the form of direct grants, repayable advances or tax advantages by 30 June 2022;'

47. Letter b. of point 37 is replaced by the following:

'b. The aid is granted in the form of direct grants, tax advantages or repayable advances by 30 June 2022;'

48. Letter b. of point 39 is replaced by the following:

'b. The aid is granted in the form of direct grants, tax advantages or repayable advances by 30 June 2022;'

49. Point 41 is replaced by the following:

'41. The Commission will consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid schemes that consist in temporary deferrals of taxes or of social security contributions which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 pandemic, for example in specific sectors, regions or of a certain size. This applies also to measures provided for in relation to fiscal and social security obligations intended to ease the liquidity constraints faced by the beneficiaries, including but not limited to the deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, suspension of tax debt recovery, and

expedited tax refunds. The aid shall be granted before 30 June 2022 and the end date for the deferral shall not be later than 30 June 2023.'

50. Letter c. of point 43 is replaced by the following:

'c. The individual aid awards of the wage subsidy scheme are granted no later than 30 June 2022, for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 pandemic (or for self-employed individuals whose business activity has been negatively affected by the COVID-19 pandemic), and subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (or subject to the condition that the relevant business activity of the self-employed individual is maintained for the entire period for which the aid is granted);'

51. Point 48 is replaced by the following:

'48. COVID-19 recapitalisation measures shall not be granted later than 30 June 2022.'

52. The following point 77bis is introduced:

'77bis. In derogation from the above, the ban on non-mandatory coupon payments does not apply to:

a. hybrid capital instruments issued at the same time(*) as, with the same level of subordination as, and with a coupon no more than 150 bps higher than the coupon on the COVID-19 hybrid capital instruments. Moreover, the COVID-19 hybrid capital instruments should correspond to more than 20 % of the overall hybrid issuance (**);

b. hybrid capital instruments issued after any COVID-19 recapitalisation, provided that the proceeds from those instruments are used exclusively to redeem the COVID-19 recapitalisation instruments and/or hybrid capital instruments issued in accordance with the present point 77bis; and

c. COVID-19 hybrid capital instruments whenever they are sold by the State to private investors (i.e. not public authorities) at a price equal to or greater than the par value of the hybrid instrument plus any accrued unpaid coupons including compound interest.

In any event, non-mandatory coupon payments on COVID-19 hybrid capital instruments shall take place before or at the same time as any respective coupon payments on hybrid capital instruments that benefit from the lifting of the ban on non-mandatory coupon payments pursuant to this point.

Without prejudice to the redemption options set out in letter b., in the case of a partial or full redemption of hybrid capital instruments that benefit from the lifting of the ban on non-mandatory coupon payments pursuant to this point, the beneficiary shall: (i) redeem at least the same amount of COVID-19 hybrid capital instruments(***); or (ii) issue at least the same amount of new hybrid capital instruments; or (iii) if neither (i) nor (ii) are fulfilled within six months from the partial or full redemption of the hybrid capital instruments, increase, retroactively from the date of the redemption of the hybrid capital instrument, the remuneration

on the outstanding COVID-19 hybrid capital instruments. In this latter case, the increase of the remuneration is calculated as the maximum step-up(****) that may be applied over the life of the redeemed hybrid capital instruments on the nominal amount of such instrument(*****), with a minimum of 100 bps. Moreover, in case of a partial redemption of COVID-19 hybrid capital instruments or in case of the issuance of new hybrid capital instruments, the nominal amount on which this remuneration increase is applied is reduced accordingly.

The present derogation will apply to all hybrid capital instruments mentioned above issued as of 18 November 2021, including in the context of COVID-19 recapitalisation measures already granted, as authorised by the Commission, prior to this date.

(*) For the purpose of this point, hybrid capital instruments issued up to six months after the issuance of the COVID-19 hybrid capital instruments are considered to have been issued at the same time as those instruments.

(**) Such hybrid capital instruments shall be taken into account in the assessment under point 54.

(***) Up to the total amount of existing COVID-19 hybrid capital instruments.

(****) Difference between the contractually agreed maximum and minimum coupon rates over the lifetime of the hybrid instruments.

(*****) If the beneficiary redeems several tranches of hybrid capital instruments with different interest rates, this condition must be applied to each tranche independently.'

53. Letter a. of point 87 is replaced by the following:

'a. The aid is granted no later than 30 June 2022 and covers uncovered fixed costs incurred during the period between 1 March 2020 and 30 June 2022, including such costs incurred in part of that period ('eligible period');'

54. Footnote 75, attached to letter b. of point 87 is replaced by the following:

'(*) The reference period is a period in 2019 irrespective of whether the eligible period is in 2020, 2021 or 2022.'

55. Letter d. of point 87 is replaced by the following:

'd. The overall aid shall not exceed EUR 12 million per undertaking(*). The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures remains below the overall cap of EUR 12 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

(*) Aid granted on the basis of schemes approved under this section that has been reimbursed before granting new aid under this section shall not be taken into account in determining whether the relevant ceiling is exceeded.'

56. The following point 87bis is introduced:

‘87bis. Measures granted under this Communication in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in this section are complied with.’

57. The following section is inserted:

‘3.13 Investment support towards a sustainable recovery

88. Member States may envisage supporting private investment as a stimulus to overcome an investment gap accumulated in the economy due to the crisis. Such a stimulus could facilitate the development of certain economic activities or of certain economic areas.

89. The Commission will consider such measures compatible with the internal market under Article 107(3)(c) TFEU provided the following conditions are met:

a. The aid is granted on the basis of a scheme. The maximum individual aid amount that may be granted per undertaking shall in principle not exceed 1 % of the total budget available for such a scheme except in situations that will have to be duly justified by the Member State.

b. Eligible costs may include only the costs of investments in tangible and intangible assets. Costs related to purchasing land may be included only in as far as they are part of an investment for production of goods or provision of services. Financial investments are not eligible.

c. Member States may limit the aid to investments that support specific economic areas of particular importance for the economic recovery. However, such limits need to be designed broadly and not lead to an artificial limitation of eligible investments or potential beneficiaries that would result in targeting only a small number of undertakings.

d. The aid intensity may not exceed 15 % of the eligible costs. However,

i. for investments made by small enterprises(*), the aid intensity may be increased by 20 percentage points;

ii. for investments made by other SMEs(**), the aid intensity may be increased by 10 percentage points; or

iii. for investments in assisted areas that comply with the conditions of Article 14 of the General Block Exemption Regulation, excluding Article 14(14) of the General Block Exemption Regulation, the aid intensity may be increased by the aid intensity established in the regional aid map, which is in force at the time the aid is granted in the area concerned.

e. The overall aid granted under this section may not exceed EUR 10 million per undertaking in nominal terms, regardless of the specific aid instrument. However, in assisted areas, the overall aid granted under this section per undertaking may not exceed the maximum aid amount calculated in accordance with Article 14 of the General Block Exemption Regulation, with the exception of Article 14(14) of the General Block Exemption Regulation and based on the applicable regional aid map,

increased by EUR 10 million, in nominal terms, regardless of the specific aid instrument.

f. The aid may be granted in different forms, including non-repayable grants, tax grants or deferrals, subsidised interest rates on loans, or guarantees. In case of repayable instruments, Member States may provide for a possibility for conversion into grants under predefined conditions and on the basis of predefined criteria that must be laid down in the scheme and specified in the individual granting decisions. Repayable instruments such as loans as well as guarantees must be limited to a maximum duration of eight years.

90. In weighing the positive effects of the aid against its negative effects on competition and trade, the Commission will pay particular attention to Article 3 of the EU Taxonomy Regulation (EU) 2020/852, including the ‘Do no significant harm’ principle or other comparable methodologies. The Commission considers that investments that do significant harm to environmental objectives ([***]) are unlikely to have sufficient positive effects to outweigh their negative effects on competition and trade([****]).

91. Aid under this section may be added to notifiable regional investment aid and cumulated with other types of aid under the conditions specified in point 20 of this Temporary Framework. Under no circumstances may the total aid amount exceed 100 % of eligible costs. As a result, cumulation with other aid instruments that allow the coverage of a funding gap is excluded.

92. Aid under this section may not be granted to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation([*****])) on 31 December 2019. This does not apply to micro and small enterprises (within the meaning of Annex I to the General Block Exemption Regulation) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law and that they have not received rescue aid([******]) or restructuring aid([*******]).

93. Aid under this section may be granted until 31 December 2022. Aid for investments that predate 1 February 2020 is excluded.

94. Aid granted under this section shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before works on the investment have started.

95. By way of derogation from point 94, measures in the form of tax advantages shall be deemed to have an incentive effect if the following conditions are fulfilled:

a. the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and

b. the measure has been adopted and is in force before works on the investment have started.

96. Where investment support schemes exclusively provide aid in the form of guarantees or loans or similar repayable instruments, in derogation of point 89(e) the overall aid may not exceed EUR 15 million per undertaking in nominal terms and in derogation of point 89(d) aid intensities may not exceed 30 % of the eligible costs. Where the conditions of 89(d) (i), (ii), or (iii) apply, this limit may be increased in

line with these provisions. Schemes under this point shall comply with points 25(a), 25(b), 25bis first and second sentence, or 27(a), 27(b), and 27bis first and second sentence respectively. Cumulation with other aid under this section is excluded. Furthermore, points 29, 30, and 31 must be respected. In case of guarantees, these may not exceed:

i. 90% of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or

ii. 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee); and

iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally.

97. Member States may also consider setting up or amending existing schemes under the rules applicable to environmental or research projects, namely the Environmental and Energy Aid Guidelines([********]) or the Research, Development and Innovation Aid Framework([*********]) to support the sustainable recovery of the economy. The Commission considers that, in light of the objectives to facilitate the speedy recovery of the European economy, Member States may temporarily envisage setting up or amending existing schemes that would also allow to cover larger individual aid under those guidelines, without requiring individual notification of measures. The Commission will consider such aid schemes or amendments of existing schemes to be compatible where the applicable thresholds for individual notifications are exceeded by up to 50 %, provided all other provisions of the applicable guidelines are complied with, the Commission decision authorising the measure is taken before 1 January 2023, and the individual aid concerned is granted before 1 January 2024.

([*]) Within the meaning of Annex I of the General Block Exemption Regulation.

([**]) Within the meaning of Annex I of the General Block Exemption Regulation.

([***]) Within the meaning of Article 17 of Regulation (EU) 2020/852, OJ L 198, 22.6.2020, p. 13.

([****]) For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, compliance with the ‘Do no significant harm’ principle is considered fulfilled, since this has already been verified.

([*****]) As defined in Article 2(18) of the General Block Exemption Regulation.

([******]) Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under this Communication.

([*******]) Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting the aid under this Communication.

([********]) Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

(*********) Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.'

58. The following section is inserted:

'3.14 Solvency support

98. Member States may envisage supporting economic recovery by strengthening the solvency of undertakings. This may be especially the case where debt levels of companies have risen due to the economic crisis, which may hamper further investment and long-term growth. Such measures should be designed in a way that incentivises private investments into undertakings with growth potential.

99. The Commission will consider such measures compatible with the internal market under Article 107(3)(c) TFEU provided the following conditions are met:

a. Solvency support is provided as an incentive for private investments into equity, subordinated debt, or quasi-equity, including silent participations or participative loans.

b. The aid is granted on the basis of a scheme, in the form of public guarantees or similar measures for dedicated investment funds as an incentive to invest in final beneficiaries. Such investment shall be made via financial intermediaries in the form of such investment funds that are in principle selected in an open, transparent, and non-discriminatory procedure. The remuneration of the managers of those funds should in principle be based on the performance of the entire portfolio of the fund.

c. Eligible final beneficiaries are limited to SMEs and small mid-caps(*).

d. In as far as credit institutions act as financial intermediaries in relation to measures taken under this section, for example by securitising such investments in order to make them available to other investors, they must share an appropriate part of the risk. Keeping at least 10 % of the volume of such instruments on the balance sheet of the institution would likely be considered appropriate risk-sharing.

e. Eligible schemes leverage additional new investments from private investors. Investments decisions need to be taken in a profit-oriented manner based on business or investment plans demonstrating that eligible final beneficiaries are long-term viable undertakings.

f. All institutional investors, irrespective of their nature or geographical location, may invest on equal terms in the investment funds to be set up.

g. The aid ensures that an appropriate share of the risk is borne by investors to ensure profit-driven investments. In case of first losses covered by the State, such risk sharing can be achieved by limiting the value of such a guarantee or similar measure to no more than 30 % of the underlying portfolio, including only the principal amounts without interest or any ancillary liabilities.

h. The duration of the guarantee does not exceed eight years in total, regardless of the underlying instrument. In case of guarantees on debt, it must not exceed the maturity of the underlying debt instrument. For equity investments, the guarantee may not cover investments made by the financial intermediary after the date specified in point 101.

i. The mobilisation of the guarantee is contractually linked to specific conditions ("guarantee events") which may go as far as the compulsory declaration of bankruptcy of the beneficiary undertaking, or any similar procedure. These conditions will have to be agreed between the parties when the guarantee is initially granted. In case of guarantees provided for equity investments, eligible losses may only be covered by the guarantee at the moment when the fund is dissolved and all portfolio investments have been divested on market terms.

j. The risk taken by the State is reflected in an adequate, market-oriented return. Such return can take the form of direct remuneration in form of a guarantee premium or rights to participate in profits to be accumulated by such funds, depending also on the nature of the instrument (be it subordinated loans or equity). It must be calibrated considering the investment grade of the final beneficiaries, the types of instruments covered, and the duration of the protection granted.

k. Effective safeguards are implemented to ensure that the advantage is passed on to the final beneficiaries to the maximum extent possible.

l. The total amount of finance provided does not exceed for EUR 10 million per undertaking.

m. With appropriate justification provided by the Member State to the Commission and additional conditions to limit competition distortions, the Commission may accept alternative selection and remuneration methods, higher amounts of finance and/or intermediate size enterprises.

100. Financial institutions are excluded as final beneficiaries.

101. Aid under this section may be granted no later than 31 December 2023.

102. Aid under this section may be cumulated with other aid, provided the respective thresholds and other conditions for such other aid are complied with. However, aid under this section may not be granted to undertakings receiving support under section 3.11 of this Communication.

([*]) As defined in point 52 (xxvii) of the Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4.'

59. Points 88-96 are renumbered as points 103-111.

60. Point 90 is renumbered as point 105 and is replaced by the following:

'105. By 30 June 2022, Member States must provide the Commission with a list of measures put in place on the basis of schemes approved based on this Communication.'

61. Point 93 is renumbered as point 108 and is replaced by the following:

'108. The Commission applies this Communication from 19 March 2020, having regard to the economic impact of the COVID-19 pandemic, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after the dates specified herein. The Commission will review all sections under this Communication before 30 June 2022 on the basis of important competition or economic considerations. Where helpful,

the Commission may also provide further clarifications on its approach to particular issues.'

3. PROLONGATION OF THE REMOVAL OF THE LIST OF MARKETABLE RISK COUNTRIES FROM STEC

62. The Commission considers that all commercial and political risks associated with exports to the countries listed below are temporarily non-marketable until 31 March 2022.

Belgium	Cyprus	Slovakia
Bulgaria	Latvia	Finland
Czech Republic	Lithuania	Sweden
Denmark	Luxemburg	Australia
Germany	Hungary	Canada
Estonia	Malta	Iceland
Ireland	Netherlands	Japan
Greece	Austria	New Zealand
Spain	Poland	Norway
France	Portugal	Switzerland
Croatia	Romania	United Kingdom
Italy	Slovenia	United States of America

ANNEX

Information to be provided in the list of existing aid measures authorised under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, for which a prolongation of the period of application, an increase of the budget and/or other amendments to align those measures with the Temporary Framework, as amended by this Communication, is notified to the Commission.

Member States are invited to bundle their amendments using this list in the block notification, where applicable

List of existing measures and envisaged modification					
State aid number of the authorised measure[15]	**Title**	**Notified amendment (potentially to be sub-divided into modifications 1, 2, 3 etc.)**	**Relevant point in the Temporary Framework for the planned modifications**	**Confirm that there are no other changes to the existing measure**	**National legal basis for the amendment**

[15] If the measure has been amended, please indicate the State aid number of the initial authorising decision.