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PUBLIC VERSION

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**Subject: State aid SA.42665 (2016/N) – Portugal  
Extension of the remit of the Portuguese Development Financial Institution**

Dear Sir,

The Commission wishes to inform the Portuguese authorities that having examined the information notified on the matter referred to above, it has decided not to raise objections to the measure for the reasons set out below.

**1. PROCEDURE**

- (1) On 28 October 2014, the Commission approved in State aid case SA.37824 (2014/N) the establishment, capitalisation and remit of the Portuguese Development Financial Institution (the "IFD") (Instituição Financeira de Desenvolvimento, S.A.), as compatible with Article 107(3)(c) Treaty on the Functioning of the European Union<sup>1</sup> ("TFEU") (the "2014 Decision")<sup>2</sup>. The 2014 Decision approved the measure until 31 December 2020.
- (2) Since the exact details and parameters of all the planned activities of the IFD in the long run had not been defined yet by the Portuguese authorities, the 2014 Decision indicated that the Portuguese authorities wished to enlarge the activities of the IFD in several subsequent phases. The 2014 Decision indicated that the Portuguese authorities had committed to notify any extension of the remit of the IFD to the

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<sup>1</sup> OJ C 115, 9.5.2008, p. 47.

<sup>2</sup> OJ C 5 of 9.1.2015, p. 1.

S. Ex.<sup>a</sup> o Ministro dos Negócios Estrangeiros  
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Commission and not to commence any additional activities before obtaining approval from the Commission.<sup>3</sup>

- (3) By letter dated 12 October 2016, registered on the same day, the Portuguese authorities notified, according to Article 108(3) TFEU, the modification of the IFD's remit, in line with the requirement of the 2014 Decision. The only modifications to the measure approved with the 2014 Decision relate to the scope of the IFD's remit; no further support in any form whatsoever is provided to the IFD under the notified modification.
- (4) By letter dated 28 October 2016, Portugal agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958<sup>4</sup> to have the present decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Description of the beneficiary**

- (5) The IFD<sup>5</sup> was established in 2014 as a new integrated public financial institution whose main objective is to contribute to mitigating market failures in the access of small and medium-sized enterprises ("SMEs") to finance in Portugal.
- (6) The Portuguese government, through the Treasury, is the sole shareholder of the IFD and it is foreseen that the IFD will remain fully owned at all times by the Portuguese State.
- (7) The IFD's share capital, approved by the 2014 Decision, is EUR 100 million, totally subscribed and represented by 100 million shares with nominal value of 1 EUR.
- (8) The IFD is a finance institution subject to the Portuguese Banking Law (Regime Geral das Instituições de Crédito e Sociedades Financeiras). The IFD does not hold a banking licence. The IFD does not take deposits or other repayable funds from the public. The IFD is strictly prohibited from conducting business with the Portuguese public sector in general, including the Portuguese State, the regions and the municipalities. The IFD does not invest in debt issued or guaranteed by the consolidated public sector, including non-financial State-owned enterprises, local and regional authorities and their respective companies, nor lend or provide guarantees to that sector.
- (9) The IFD is subject to the supervision of the Bank of Portugal and the regular control of the Inspeção-Geral de Finanças and the Tribunal de Contas.
- (10) The legal basis<sup>6</sup> does not determine a concrete duration for the IFD. However, the approval for the IFD's First Phase activities (see recital 11 below) was granted until 31 December 2020 by virtue of the 2014 Decision.

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<sup>3</sup> See recitals 22, 30 and 31 of the 2014 Decision.

<sup>4</sup> Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>5</sup> See section 2.4 of the 2014 Decision.

## **2.2. Remit of activities of the IFD under the 2014 Decision<sup>7</sup>**

- (11) The 2014 Decision approved the remit of the IFD in its First Phase. In line with the submissions of the Portuguese authorities, that remit was defined as the management of the financial instrument programmes to support SMEs under the European Structural and Investment Funds ("ESIF") allocated to Portugal for the 2014-2020 financing period and their reimbursements, including, but not limited to the 2014-2020 period.
- (12) The IFD acts as a beneficiary entity in the context of the European rules for the management of financial instruments and manages holding funds or specialised funds with co-investment from private investors to address market failures related to SMEs' access to debt, equity and quasi-equity funding.
- (13) The IFD strictly follows the Partnership Agreement between Portugal and the Commission, the relevant operational programmes and the terms defined by the Portuguese managing authorities as regards the activities, funds allocated, duration, scope and terms of the programmes, eligibility criteria for the final beneficiaries, and the eligibility and selection criteria for the participating financial intermediaries. The IFD acts strictly in accordance with the rules on ESIF<sup>8</sup>.
- (14) Investments made by the IFD will be done from separate programmes with dedicated budgets, not from the initial capital injection.<sup>9</sup>

## **2.3. Modification of the remit of activities of the IFD**

- (15) According to the notification, the Portuguese authorities wish to extend the activities of the IFD to the following areas:
  - (a) Beyond SMEs, the IFD wishes to provide financing also to midcap companies as defined under the 2014 Risk Finance Guidelines<sup>10</sup>;
  - (b) The IFD would like to undertake 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 the IFD to financial institutions operating in Portugal, to finance companies that are within the remit of the IFD as described in recital (17);
  - (c) The IFD would like to undertake so-called arrangement activities whereby the IFD 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.

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<sup>6</sup> Council of Ministers' Resolution No. 73/2013 of 19 November 2013 and Decree Law 329/2014 of 11 September 2014.

<sup>7</sup> See section 2.6 of the 2014 Decision.

<sup>8</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320.

<sup>9</sup> See recital 20 of the 2014 Decision.

<sup>10</sup> Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 19, 22.01.2014.

These funds must then be used to finance companies within the remit of the IFD as described in recital (17), with impact control and coordination by the IFD;

- (d) Beyond financial instruments under the European Structural and Investment Funds, the IFD wishes to implement EU Financial Instruments, such as COSME, Horizon 2020, the SME Initiative; and the European Fund for Strategic Investments<sup>11</sup> ("EFSI").
- (16) The extension of the remit of the IFD allows participation in EU Financial Instruments, such as COSME and Horizon 2020 funds, both on aided and market economy operator ("MEO") terms. Those EU Financial Instruments are included in the remit as they pursue objectives set at EU-Level and are targeted towards *ex ante* proven market failures. In those situations, the IFD will act as a vehicle to channel and manage EU funds, or as a co-investor.
- (17) According to the Portuguese authorities the new activities described in recital (15) and the new activities on aided terms of recital (16) will fall within one of the following categories:
- (a) support of companies and projects provided for and in compliance with the General Block Exemption Regulation ("GBER")<sup>12</sup>;
  - (b) support to companies in line with the *de minimis* regulation<sup>13</sup>;
  - (c) existing SME access to finance State aid measures already approved by a Commission decision, as well as future measures to be notified and approved by the Commission. The market failures for existing measures were proven before the positive Commission decisions and will have to be demonstrated *ex ante* for future measures;
  - (d) support that is not in line with points (a), (b) or (c) of this recital, in which case the Portuguese authorities undertake to notify such measures, in particular under the 2014 Risk Finance Guidelines<sup>14</sup>.
- (18) According to the Portuguese authorities, operations within the categories described in recital (17) should be considered aid compatible with the internal market. Operations and schemes falling under the Risk Finance Guidelines will require a decision by the European Commission prior to their implementation.
- (19) The Portuguese authorities have indicated that in a further later stage, not covered by the present notification, existing public participations in financial entities dedicated to the financing of SMEs in Portugal may be regrouped in the IFD, giving those companies a better coordination and optimizing their operational structure. That may constitute an eventual third phase of activities of the IFD, which will be notified to the Commission separately before implementation.

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<sup>11</sup> Regulation (EU) 2015/2017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 – the European Fund for Strategic Investments, OJ L 169, 01.07.2015.

<sup>12</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Article 107 and 108 of the treaty, OJ L 187, 26.06.2014.

<sup>13</sup> 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 to *de minimis* aid, OJ L 352, 24.12.2013.

<sup>14</sup> Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 19, 22.01.2014.

## **2.4. Position of the Portuguese authorities**

- (20) According to the Portuguese authorities, the IFD will not grant credit directly to companies but will intervene in the market by providing funds to partner credit institutions so that they can lend these funds on to target companies.
- (21) The funding provided by the IFD is exclusively intended for the financing of companies, especially SMEs and mid-caps, in as much as they are within the categories mentioned in (17). Through the provision of funds to partner credit institutions, the IFD seeks to eliminate or minimize the disadvantages that SMEs and mid-caps face when compared with large enterprises, in particular comparing with the dimension of the EU or worldwide companies.
- (22) The IFD will provide funding to financial intermediaries on the condition that all advantages are passed on to the level of the final beneficiary. In addition the IFD funding will be available to all financial intermediaries and will be distributed based on a fair, open, transparent and competitive process.
- (23) Under the agreements / protocols to be concluded with partner institutions, the IFD 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.

## **3. ASSESSMENT OF THE PRESENCE OF STATE AID**

### **3.1. Legality**

- (24) By notifying the modification of the 2014 Decision before implementation, the Portuguese authorities have fulfilled their obligation under Article 108(3) TFEU.

### **3.2. Presence of State aid under Article 107(1) TFEU**

- (25) In its 2014 Decision, the Commission found that the notified measure constituted State aid to the IFD under Article 107(1) TFEU. In particular, the Commission concluded that the measure conferred an advantage to the IFD, as the State funding was not provided on market terms, it was going to be used for the IFD's initial capitalisation, and it was not excluded that the IFD would carry out an economic activity in competition with other market players.
- (26) In the light of the notified modification of the remit of IFD, the Commission has no reason to depart from its previous assessment that the measure constitutes State aid to the IFD, which therefore remains valid.
- (27) The present decision assesses only the presence of aid to the IFD itself. Whether the IFD's interventions provide State aid to the final recipients, financial institutions and co-investors is not within the scope of this decision. Such aid will be subject to a separate notification and separate decision(s) of the Commission.

## **4. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURE**

- (28) In the 2014 Decision, the Commission assessed the measure directly under Article 107(3)(c) TFEU and following the common assessment principles. In particular, it

analysed and concluded that the measure: (i) contributed to a well-defined objective of common interest; (ii) was necessary and appropriate; (iii) had an incentive effect; (iv) was proportionate; and (v) avoided undue negative effects on competition and trade between Member States.

- (29) The Commission notes positively that the IFD will only implement compatible State aid or *de minimis* aid measures. The IFD will not implement any other kind of measures, except for those included in the framework of an EU Financial Instrument, as described in recital (16).
- (30) None of the categories that the Portuguese authorities wish to add to the IFD's remit affects the compatibility assessment carried out in the 2014 Decision. The Portuguese authorities undertake to comply with the GBER or the *de minimis* Regulation or otherwise notify to the Commission their activities under the extended remit.
- (31) The Commission notes that the IFD will continue to operate solely as a wholesale entity and that the IFD will thus not invest directly in companies. The IFD will provide funding to commercial credit institutions and financial intermediaries that is exclusively intended for the financing of companies such as SMEs and mid-caps, within the categories mentioned in (17).
- (32) As mentioned in recital (22), the Portuguese authorities have undertaken to implement the necessary procedures and mechanisms to ensure that financial intermediaries participating in the selection process will be treated in a fair, transparent, open, non-discriminatory and objective manner and that the financial intermediaries fully pass on any advantage to the final beneficiaries. Moreover, that model of intervention encourages crowding-in, rather than crowding out of private finance providers, since private finance providers that otherwise would be reluctant to provide the financing on their own due to perceived risks, will be more likely to co-invest with a public finance provider where the risks are shared between them.
- (33) EU Financial Instruments are, according to Article 140(2)(f) of Regulation (EU) No. 966/2012<sup>15</sup> ("the Financial Regulation") established on the basis of an ex ante evaluation. Specifically with respect to COSME and Horizon 2020, their objectives are to enable access to finance for SMEs and innovative companies respectively, which is in line with the identified common interest.
- (34) In light of the above, the Commission has no reason to depart from its previous compatibility assessment.

## 5. CONCLUSION

- (35) The Commission concludes that the modified measure continues to constitute State aid within the meaning of Article 107(1) TFEU, the aid continues to benefit the IFD itself, and that the measure fulfils the conditions of Article 107(3)(c) TFEU and is therefore compatible with the internal market.

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<sup>15</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, OJ L 298, 26.10.2012, p. 1.

- (36) The Commission notes that the Portuguese authorities exceptionally accepts that the adoption of the Decision be in the English language.
- (37) The Commission reminds the Portuguese authorities that the Commission's approval by this decision is granted until 31 December 2020. Any extension beyond that period requires formal notification and approval by the Commission.

## **6. DECISION**

- (38) On the basis of the foregoing assessment, the Commission concludes that the modification of the measure approved by the 2014 Decision providing an initial capital injection of EUR 100 million for the setting up of the IFD is compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (39) The Commission reminds the Portuguese authorities that all plans to modify the measure, including but not limited to further funding or modifications to the remit and duration of the IFD must be notified to the Commission, in compliance with Article 108(3) TFEU.
- (40) This approval does not extend to any potential aid to undertakings and/or co-investors resulting from the IFD's interventions.

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:

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European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Commissioner

