



# Economic Stabilisation Fund

## Factsheet on recapitalisations: Silent partnerships and subordinated loans

### Objective

The purpose of the Economic Stabilisation Fund (ESF) is to stabilise companies in the real economy by helping them to overcome liquidity bottlenecks and by creating a policy environment conducive to strengthening the capital base of companies whose failure would have a significant impact on the economy, technological sovereignty, security of supply, critical infrastructure or the labour market. Companies can only receive assistance from the ESF if no other financing options are available. Beneficiaries of the stabilisation measures must have good prospects of economic self-reliance once the pandemic has been overcome.

The ESF addresses the financing needs of companies which meet the size criteria under Section 16(2) Stabilisation Fund Act (StFG) or the exemption criteria under Section 22(2) of the Act.

As a general rule, financing needs are covered via silent partnerships and/or subordinated loans under the conditions set out below.

The silent partnerships under the ESF make it possible to restore a company's equity ratio as of before the coronavirus crisis, and are aimed above all at enabling businesses to raise complementary debt capital on the credit and capital markets by restoring appropriate balance sheet structures.

In addition, companies can receive support in the form of subordinated loans. Although these are to be listed as liabilities in the balance sheet, they are only repayable after other debt has been paid and therefore usually do not have to be considered when determining an over-indebtedness status in the event of insolvency.

### Eligibility

Applications can be submitted by companies in the real economy.

In principle, companies are eligible for assistance if they met at least two of the following three criteria in the two financial years prior to 1 January 2020:

1. a balance sheet total exceeding €43 million,
2. sales revenues exceeding €50 million,
3. a workforce of more than 249 employees on an annual average.

Only companies may apply which did not fall into the category of 'undertaking in difficulty' as defined by the European Union on 31 December 2019 or have not done so – at least temporarily –

after that date (definition according to Article 2 point 18 of 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 of 26 June 2014, p. 1).

## Applications

Financing may be requested for investments and working capital. The recapitalisation measure is to be granted by 31 December 2021.

## Key points of recapitalisation measures in the form of silent partnerships or subordinated loans

Recapitalisations may take a form other than the one originally applied for. Silent partnerships are only granted if the company to be stabilised needs an equity injection. If the company in question only needs to meet its liquidity needs, the stabilisation measure is usually granted in the form of a subordinated loan.

The amount of support that can be given in the form of a recapitalisation measure must not exceed the sum needed to restore the company's creditworthiness. In addition, the maximum volume of a silent partnership is limited to the amount needed to restore the equity ratio as at 31 December 2019.<sup>1</sup>

As a general rule, loss sharing is possible for silent partnerships, but not for subordinated loans.

Silent partnerships are generally subordinated to other creditors in the event of insolvency or liquidation, but with priority over other equity components. Subordinated loans may be subordinated to single liabilities or even all liabilities except for liabilities to shareholders.

Repayment of a silent partnership is generally due in full by the end of the agreed term and after seven years at the latest<sup>2</sup> (six years for listed companies), subject to any necessary loss recovery; the nominal amount must be repaid in full irrespective of whether any losses have been offset in the meantime.

For subordinated loans, a term of up to six years can be agreed; repayment can be made in full or in instalments. Early partial repayment is possible.

In the case of silent partnerships, ESF profit participation is based on a fixed coupon that is composed of a minimum interest rate (4.0% in year 1, 4.5% in years 2 and 3, 5.0% in years 4 and 5, 7.0% in years 6 and 7, 9.5% in the years thereafter) and a surcharge depending on the individual risk structure. The remuneration is calculated based on the invested capital, i.e. independently of any offsetting of losses; the remuneration is only payable if the annual result is sufficiently positive; for loss-making years, a subsequent payment must be made in the years that follow.<sup>3</sup>

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<sup>1</sup> To be taken into account are the restrictions under EU State aid law: At the end of the forecasting period (here: 31 December 2021), the dynamic gearing ratio (net debt / EBITDA) must not be lower than 3.0x or the equity ratio higher than 15.0%.

<sup>2</sup> If and to the extent that the silent partnership remains in the company for more than seven years, a special payment of 20% of the nominal amount not yet repaid at this point is payable in two annual instalments, the first of which is due at the time of full repayment of the silent partnership.

<sup>3</sup> If coupon payments are not made, interest is to be paid on these until payment, charged at the respective coupon rate.

Subordinated loans are subject to a fixed interest rate composed of a minimum interest rate (2.5% in year 1, 3.25% in years 2 and 3, 4.5% in years 4 and 5, 5.5% in year 6)<sup>4</sup> and a surcharge depending on the individual risk structure. Interest is calculated on the basis of the amount that has been drawn from the subordinated loan and not repaid. Remuneration/interest is due on a quarterly basis. A repayment plan for the silent partnership must be submitted.

### Special conditions

The ESF implementing ordinance describes in detail the various conditions that apply during the term of a recapitalisation measure. These include:

- Repayment and amortisation structures for existing debt and mezzanine financing operations are to be adapted as needed in order to maintain an appropriate risk structure for all financing partners following the entry of the ESF. This also means that debt rescheduling is generally excluded and that existing lines of credit must be fixed until at least the end of 2022. Likewise, any termination rights in the event of a breach of existing financial covenants are to be suspended until at least 31 December 2022.
- During the term of the stabilisation measure, the borrower is prohibited from paying dividends or other capital distributions. Likewise, the company and its group companies are prohibited from repurchasing their own shares.
- During the term of the stabilisation measure, no bonuses or other variable or comparable remuneration components may be granted to members of executive bodies or executive directors of the company or its group companies, taking into consideration any remuneration received from other group companies. Likewise, no special payments in the form of share packages, gratuities or other separate remuneration in addition to fixed salaries, other compensation components placed at the discretion of the company or severance payments that are not legally required may be granted.
- Until at least 75% of the measure has been repaid, no executive board member of the company or its group companies may receive total compensation in excess of that member's base compensation as at 31 December 2019. For persons who become executive board members at the time of the measure or thereafter, the upper limit is the base compensation of executive board members at the same level of responsibility as at 31 December 2019.
- The Economic Stabilisation Fund is to be granted information rights from the contract on the recapitalisation measure.
- For the duration of the recapitalisation measure, the borrower undertakes not to pursue an aggressive expansion strategy.
- The company may only acquire participations of more than 10% in other companies in upstream or downstream activities if this is necessary to maintain the viability of the company, if no other buyer is available and if the European Commission has approved the acquisition of the participation before it is implemented.
- A shareholder contribution commensurate with the structures and financial circumstances is generally required.
- The company is required to submit a restructuring plan under the European Commission's Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty

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<sup>4</sup> For subordinated loans that are capped pursuant to Item 27 (b) of the Commission's approval letter, the following interest rates apply: 2.5% in year 1, 3.0% in years 2 and 3, 4.0% from year 4 on.

for approval by the Commission if, seven years (six years in the case of listed companies) after the stabilisation measure, the sum of recapitalisation funding paid out and not yet repaid and any other public equity instruments still in existence for stabilisation purposes is not less than 15% of the company's equity.

- The ESF reserves the right to include in the contract a right of termination in the event of a sale of the company (in whole or in part).

### Combining ESF stabilisation measures with funding programmes

It is possible to combine a stabilisation measure from the ESF with funding programmes, to the extent that this is compatible with the requirements of EU State aid law.

### State aid

The granting of recapitalisation measures by the ESF under the conditions described above is based on the approval given by the European Commission in its letter of 8 July 2020, 'COVID-19 measures of the Economic Stabilisation Fund' (State aid SA.56814)<sup>5</sup>.

### Legal entitlement

There is no legal entitlement to the stabilisation measure. The bodies under the Stabilisation Fund Act make their decisions in the due exercise of their discretion within the scope of the available funds.

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<sup>5</sup> [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56814](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56814)