



# Economic Stabilisation Fund

## Factsheet on start-ups und scale-ups

### 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.

The ESF addresses the financing needs of companies which meet the size criteria under Section 16(2) Stabilisation Fund Act (*Stabilisierungsfondsgesetz – StFG*) or the exemption criteria under Section 22(2) of the Act. The exemption criteria include companies that have been valued by private investors at a minimum of €50 million during at least one financing round concluded on or after 1 January 2017 (including the capital raised in the course of that round). This means that start-ups and scale-ups that meet this criterion are also generally eligible to apply.

Access to the ESF is subsidiary to funding under the Corona Matching Facility.

The stabilisation of start-ups and scale-ups through the ESF can take place in the following ways:

### 1. Stabilisation subject to approval under State aid rules

The stabilisation is carried out by means of stabilisation measures from the ESF (and existing shareholders) subject to approval under State aid rules, in accordance with the requirements of the EU approval<sup>1</sup>.

These stabilisation measures are available, provided that the company was on, or at least temporarily after 31 December 2019 not an undertaking in difficulty as defined by the European Union pursuant to Art. 2 No. 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, 26 June 2014, p. 1.

In this case, a start-up or scale-up can in principle apply to the ESF to receive all stabilisation instruments under Section 21 Stabilisation Fund Act (guarantees) and Section 22 (recapitalisation

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<sup>1</sup> For the content of the EU approval see:

[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) and [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_59433](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59433) (extension).

measures such as silent participations, ordinary equity investments and subordinated loans), as far as the size criteria in Section 16 (2) StFG are met. If these are not met but the start-up / scale-up is valued by private investors with at least 50 million Euros (§22 (2) StFG), it can only apply for recapitalisation measures (not for guarantees).

Investments by the ESF, including any subsequent obligations to make additional contributions, can be made until 30 June 2022 if they are designed in a way that they receive approval under State aid rules. Applications for ESF support can be filed until 30 April 2022.

## 2. Pari-passu stabilisation (not subject to approval under State aid rules)

In the case of pari-passu financing not subject to approval under State aid rules, stabilisation is carried out at market conditions through the ESF and by new private investors providing co-financing<sup>2</sup>, in which case a new, previously uninvested private third party or a group of new, previously uninvested private third parties (outside investors) must contribute at least 30% of the total of the financing round and the ESF's contribution may not exceed 50% of the financing round.

In the case of pari-passu financing, the recapitalisation of start-ups or scale-ups is generally carried out with the same structuring and on the same terms as those used by or agreed with the private pari-passu investors.

Pari-passu stabilisation measures can only be granted to companies that do not meet any of the following criteria as of 31 December 2019:

- The undertaking is subject to insolvency proceedings or fulfils the conditions under national law for the opening of insolvency proceedings at the request of its creditors or
- The company has received rescue aid and this has yet to be repaid or the corresponding guarantee is yet to expire or the company has received restructuring aid and is subject to a restructuring plan.

The payment by the ESF is made as of the closing of the financing round and at the same time as the payments promised by the private investors or dependent on the fulfilment of milestones.

Investments from the ESF, including any subsequent obligations to make additional contributions, can be made until 30 June 2022 if they are designed in a way that they do not constitute State aid (Section 26 Stabilisation Fund Act). Investments made after this period must also be tendered proportionately to the Federal Government (protection against dilution). Applications for ESF support can be filed until 30 April 2022.

Even in the case of pari-passu stabilisation measures, all conditions and requirements of the ESF Implementing Regulation must be complied with. This includes, in particular, the rules on remuneration caps, the ban on the payment of dividends, and transparency obligations (Section 9 ESF Implementing Regulation) as well as competition requirements (Section 11 ESF Implementing Directive).

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<sup>2</sup> Not constituting aid (“no-aid”) under point 4.2 of the Commission Notice on the notion of State aid (2016/C 261/01) or point 2.1 of the Guidelines on State aid to promote risk finance investments (2014/C 19/04).

## Prospects for continuing business

In order for a company to fulfil the criterion of having clear prospects that it will be able to continue its business independently once the pandemic has been overcome in accordance to Section 25(1)(2) Stabilisation Fund Act, the offer of funding from the ESF is limited to those start-ups and scale-ups which are generally characterised by the following criteria:

- The product or service has already been successfully positioned on the market for more than one year and generates sustainable turnover;
- They are recording a high two-figure growth rate;
- Growth is linked to ongoing optimisation of the product or service and/or marketing;
- The break-even point (in terms of cash or profit) is foreseeable (or, alternatively, a high level of “traction” can be shown as evidence of a sustained increase in customer demand).

## Conditions and requirements

All conditions and requirements of the Stabilisation Fund Act must be complied with for both pari-passu financing that is subject to approval under State aid rules as well as that which does not constitute State aid. Among other things, applicants must demonstrate the following:

- Failure of the company would have a significant impact on the economy, technological sovereignty, security of supply, critical infrastructures or the labour market (Section 16(1) Stabilisation Fund Act) and there is an important federal interest in stabilisation (Section 22(2) Stabilisation Fund Act).
- Proof that there are no other financing options available (Section 25(1)(1) Stabilisation Fund Act).
- Proof that previous investors are not economically able to provide the funds necessary to remedy the risk that the company will fail.
- There are still clear prospects that the business can be continued independently once the pandemic has been overcome, a guarantee of a sound and prudent business policy and, as a rule, a contribution to stabilising production chains and securing jobs (Section 25(1) and (2) Stabilisation Fund Act).

## 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.

## 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.