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**Subject: State Aid SA.58462 (2020/N) – Romania
COVID-19: Guarantees on factoring**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 11 September 2020, modified on 25 September and 10 November 2020, Romania notified aid in the form of guarantees on factoring products and direct grants to cover related fees (Programme IMM FACTOR - Commercial credit guarantee product and State aid scheme to support the activity of SMEs¹ associated to the Programme, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).²

¹ As defined in Annex I to 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, OJ L 187, 26.6.2014, p. 1.

² Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of 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

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- (2) Romania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Romania considers that the COVID-19 outbreak continues to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) Romania confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of Sections 2, 3.1 and 3.2 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of:
- (a) guarantees on factoring products with recourse against the seller⁴; and
 - (b) direct grants to cover fees related to the guaranteed factoring product.

2.2. Legal basis

- (7) The legal bases for the measure are the Government Emergency Ordinance no. 146/2020 regarding the SMEs FACTOR Program - Commercial credit guarantee product and its amendment via Emergency Ordinance.

2.3. Administration of the measure

- (8) The Romanian Ministry of Public Finance is the granting authority and the National Credit Guarantee Fund for SMEs (*Fondul Național de Garantare a Creditelor pentru Întreprinderile Mici și Mijlocii*, "FNGCIMM") is responsible for administering the measure.

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 340 I, 13.10.2020, p. 1.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁴ In order to simplify, all the references to factoring in the Decision will always refer to factoring with recourse.

2.4. Budget and duration of the measure

- (9) The Romanian authorities estimate a maximum guarantee ceiling related to the measure of RON 1 billion, approximately EUR 206.83 million.
- (10) The estimated budget for the direct grants is RON 43 million, approximately EUR 8.89 million.
- (11) Aid may be granted under the measure as from its approval until no later than 30 June 2021.

2.5. Beneficiaries

- (12) The final beneficiaries of the measure are small and medium enterprises (SMEs)⁵ active in Romania. Financial institutions are excluded as eligible final beneficiaries.
- (13) Aid may be granted under the measure to SMEs that on the date of application to receive aid cumulatively meet the following eligibility criteria:
 - (a) SMEs are not in dispute, as a defendant, with the Ministry of Public Finance and/or the factoring provider (“factor”);
 - (b) SMEs do not appear with overdue loans, in the last 6 months or if they register arrears in the database of the Romanian Credit Risk Center, those are classified in categories A, B and C of the Credit Risk Bureau⁶;
 - (c) SMEs are not prohibited from issuing checks and do not appear with major incidents with promissory notes in the last 6 months in the database of the Romanian Payment Incidents Bureau;
 - (d) SMEs are eligible according to the internal regulations of the factor;
 - (e) SMEs do not register active or suspended seizures on bank accounts;
 - (f) SMEs do not register outstanding fiscal obligations and other outstanding budgetary receivables administered by the central fiscal body;
 - (g) Absence of links with non-cooperative jurisdictions⁷;
 - (h) No decisions have been issued against the SMEs to recover state aid or if such decisions have been issued, they have already been executed;

⁵ As defined in Annex I to 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, OJ L 187, 26.6.2014, p. 1.

⁶ Category A arrears are considered loans for which overdue payments do not exceed 15 days, category B arrears are considered loans for which overdue payments exceed 15 days but are not greater than 30 days, category C arrears are considered loans for which overdue payments exceed 30 days but are not greater than 60 days.

⁷ In accordance with the Commission Recommendation of 14 of July 2020, C (2020) 4885 final, on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions.

- (i) SMEs are not in difficulty, within the meaning of the General Block Exemption Regulation (“GBER”), the Agricultural Block Exemption Regulation (“ABER”) or the Fisheries Block Exemption Regulation (“FIBER”)⁸, on 31 December 2019.
- (14) Aid is granted under the measure through factors as financial intermediaries. Credit institutions and other financial institutions may act as factors.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors except the financial sector, insurance, the real estate sector, gambling and betting activities, production or sale of weapons, ammunition, explosives, tobacco, alcohol (excluding wine and beer), nationally controlled substances, narcotic and psychotropic plants, substances and preparations, rental and leasing activities, investigation and protection activities.
- (16) The measure applies to the whole territory of Romania.

2.7. Basic elements of the measure

- (17) The measure only covers factoring products with recourse. More concretely, the beneficiary transfers the ownership of its receivables arising from the commercial invoices to the factor in order to obtain financing. In case of payment default, the factor shall recover the amounts not collected through the exercise of the right of recourse against the beneficiary, respectively by debiting the current account thereof or by capitalising the guarantees. In other words, recourse factoring is in essence a liquidity instrument which leaves the credit risk to a large extent with the beneficiary.
- (18) Newly offered factoring products between 26 August 2020 and 30 June 2021 can be eligible under the measure.
- (19) For aid in the form of guarantees for which Section 3.2 of the Temporary Framework applies:
 - (a) State guarantees may be granted up to a maximum of 50% of the value of the factoring product, excluding interest, commissions and other expenses related to the guaranteed factoring.
 - (b) The guaranteed factoring has an initial validity of 12 months and can be extended a maximum of three times, for periods up to 12 months, reaching a limit of 48 months. The initial guarantee agreement already foresees this possibility upon the request of the beneficiary and acceptance by the factor, without providing any discretion to the granting authority.

⁸ As defined in Article 2(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, OJ L 187, 26.6.2014, p. 1[, Article 2(14) of Commission Regulation (EU) 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, OJ L 193, 1.7.2014, p. 1, and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37.

FNGCIMM, as scheme administrator, will only verify that the guaranteed amount is not increased.

- (c) The guarantee ceiling is maximum RON 5 million per beneficiary (approximately EUR 1.03 million), and the maximum guarantee for a factoring facility, granted to the beneficiary for an assigned debtor, is maximum RON 750 000 (approximately EUR 155 000).
- (d) Guarantee fees are set for the guaranteed factoring transactions, considering the coverage ratio of 50%, and increase to reflect a longer duration of the guaranteed financing.

Beneficiary	For 1 st year	For 2 nd -3 rd year	For 4 th year
SMEs	15 bps	15 bps	25 bps

- (e) The overall amount of the factoring facilities per beneficiary shall not exceed:
 - i) Double the amount representing salary expenses, including mandatory social contributions due by the employer related to income from salaries and assimilated to salaries, recorded in 2019. In the case of enterprises established after 1 January 2019, the maximum amount of the factoring facilities may not exceed the estimated amount for the first two years of activity;
 - ii) 25% of the beneficiary's net turnover for 2019, respectively gross income for undertakings or annual income for individuals earning income from self-employment, as appropriate, according to the Single Declaration on income tax and social contributions due by individuals submitted to the competent fiscal bodies for 2019; or
 - iii) its liquidity needs; these may include both working capital costs and investment costs, provided that the beneficiary submits supporting documents, in which case the factoring amount may not exceed the liquidity needs from the time of granting for the next 18 months.

According to the Romanian authorities, the current situation of Romanian SMEs justifies the use of this latter threshold. Indeed, Romanian SMEs face average days for collection of receivables substantially above 90 days, as estimated by the Romanian authorities. Taking into account that liquidity needs are calculated on the basis of the amount of receivables and the number of days to collect them, the Romanian authorities argue that the significant delay for collecting receivables may imply liquidity needs for the beneficiary above both double the amount of the wage bill and 25% of the net turnover for 2019.

- (f) Guarantees are granted by 30 June 2021 at the latest.

- (g) Losses are sustained proportionally and under the same conditions by the factors (as financial intermediaries) and the State, in line with the 50% guarantee coverage. In addition, the guarantee amount is automatically adjusted to the outstanding amount of the factoring facility.
 - (h) The measure also foresees the use of movable and/or real estate mortgages as collateral for the guaranteed factoring.⁹
 - (i) The aid is channelled via credit and financial institutions (factors) with an expectation to enhance the factoring market in Romania. The final beneficiaries will benefit of higher and more diversified access to finance, obtaining liquidity in a fast and reliable manner. In addition, when enrolling in the SMEs FACTOR Program, the factors are required to issue a statement regarding compliance with maximum financing costs¹⁰ applied to final beneficiaries. To this aim Romanian authorities will set up capped rates for financing costs via secondary legislation, which will take into account the actual market rates in the first half of 2020 and apply a reduction, in order to ensure that the value will be below or at most equal to market rates. At the moment of enrolment, the FNGCIMM will then verify compliance with that secondary legislation.
 - (j) The mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between FNGCIMM and the factor when the guarantee is initially granted.
- (20) For aid in the form of direct grants under Section 3.1 of the Temporary Framework:
- (a) SMEs that have contracted the guaranteed factoring may benefit from a direct grant up to a maximum of the RON equivalent¹¹ of EUR 800 000 per company.
 - (b) The following conditions apply to the agriculture, fisheries and aquaculture sectors:
 - i) the aid shall not exceed EUR 120 000 for each enterprise engaged in the fisheries and aquaculture sector or EUR 100 000 for each enterprise engaged in the primary production of agricultural products; all amounts used must be gross, ie. before deduction of taxes or other charges;

⁹ The movable and/or real estate mortgages are in favour of Romania, represented by the Ministry of Public Finance, through FNGCIMM, and the factor, proportional to the risk assumed by each of the parties and are valid until the receivables due by the beneficiary are extinguished, within the contracted credit.

¹⁰ These maximum financing costs include interest rates and other fees applied to the financing amount.

¹¹ The EUR-RON exchange rate for calculating the maximum ceiling of EUR 800 000 is the exchange rate of the National Bank of Romania valid at the date of issuing the financing agreement.

- ii) the amount of aid granted to undertakings operating in the primary production of agricultural products shall not be determined on the basis of the price or quantity of products placed on the market;
 - iii) aid granted to undertakings operating in the fisheries and aquaculture sector shall not fall into any of the categories of aid referred to in Article 1 (1) (a) to (k) of Regulation (EU) No 717/2014¹².
- (c) The direct grants cover guarantee costs (risk and management fee) for the entire period of validity of the guarantee but the interest cost is covered (at 50%) only for a period of eight months.
 - (d) The direct grant is related to a guaranteed factoring facility and is granted until 30 June 2021.
 - (e) Where an undertaking is active in several sectors to which different maximum amounts apply, by appropriate means such as separation of accounts, for each of these activities the relevant ceiling is respected and the highest possible amount is not exceeded in total.
 - (f) The aid is channelled via credit and financial institutions (factors). The granting authority will pay directly to the factors 50% of the interest cost for the covered period of eight months, relieving final beneficiaries of this payment. The granting authority will calculate this amount on the basis of incurred costs during the previous month. When enrolling in the SMEs FACTOR Program, the factors are also required to issue a statement regarding compliance with maximum financing costs applied to final beneficiaries. To this aim Romanian authorities will set up capped rates for financing costs via secondary legislation, which will take into account the actual market rates in the first half of 2020 and apply a reduction, in order to ensure that the value will be below or at most equal to market rates. FNGCMM will verify compliance with that secondary legislation at the moment of enrolment and during the period of eight months when the aid in the form of direct grants is provided.

2.8. Cumulation

- (21) The Romanian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹³ or the Block Exemption

¹² 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 fisheries and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

¹³ 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, p. 1), Commission Regulation (EU) No 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013 p. 9), 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

Regulations (GBER, ABER and FIBER)¹⁴ provided the provisions and cumulation rules of those Regulations are respected.

- (22) The Romanian authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (23) The Romanian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other Sections of the Temporary Framework provided the provisions in those specific Sections are respected.
- (24) The Romanian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under Section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, will be respected. Aid granted under the measure or aid under other measures approved by the Commission under Section 3.1 of the Temporary Framework which has been reimbursed before 30 June 2021 shall not be taken into account in determining whether the relevant ceiling is exceeded.
- (25) The Romanian authorities confirm that aid granted under Section 3.2 of the Temporary Framework will not be cumulated with aid granted for the same underlying loan principal under Section 3.3 of that framework and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.
- (26) A beneficiary may benefit in parallel from multiple schemes under Section 3.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) of the Temporary Framework.

2.9. Monitoring and reporting

- (27) The Romanian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework. Romania commits to publish relevant information on each individual aid above EUR 100 000 granted under the measure, EUR 10 000 for the agricultural and

¹⁴ 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, OJ L 187 of 26.6.2014, p. 1, 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 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

fisheries sector, on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting.¹⁵

3. ASSESSMENT

3.1. Lawfulness of the measure

- (28) By notifying the measure before putting it into effect, the Romanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (29) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (30) The measure is imputable to the State, since it is administered by FNGCIMM, granted by the Romanian Ministry of Public Finance and is based on the Government Emergency Ordinance no. 146/2020 regarding the SMEs FACTOR Program - Commercial credit guarantee product and its amendment via Emergency Ordinance. It is financed through State resources, since it is financed by public funds.
- (31) The measure confers an advantage on its beneficiaries in the form of guarantees on factoring products and direct grants to cover related fees. The measure thus relieves those beneficiaries of costs which they would have had to bear themselves under normal market conditions.
- (32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular SMEs active in Romania. The measure does not cover all sectors but excludes the financial sector and other sectors.¹⁶
- (33) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (34) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Romanian authorities do not contest that conclusion.

¹⁵ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014. For guarantees and direct grants, the nominal value of the underlying instrument shall be inserted per beneficiary.

¹⁶ See recital (15) above for the complete list of excluded sectors.

3.3. Compatibility

- (35) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (36) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (37) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in Section 2) that *“the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”*. The Commission concluded that *“State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”*.
- (38) The measure aims at supporting SMEs to ensure availability of liquidity and access to finance, in a diversified manner, at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (39) The measure is one of a series of measures conceived at national level by the Romanian authorities to remedy a serious disturbance in their economy. In the absence of this measure, Romanian SMEs may face suboptimal financing conditions to perform their current activities. Furthermore, the measure has been designed to meet the requirements of specific categories of aid (*“Aid in the form of guarantees and direct grants”*) described in Sections 3.2 and 3.1 of the Temporary Framework and the requirements for aid in the form of guarantees channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.
- (40) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework.
- (41) The guarantees on factoring meet the conditions under Section 3.2 of the Temporary Framework for the following reasons:
 - (a) The measure sets minimum levels for guarantee premiums of 15 to 25 bps for SMEs on factoring facilities with a maximum maturity of the guarantee of four years (recital (19)(d)). The established guarantee premiums are below the guidance provided in point 25(a) of the Temporary Framework which is justified because they are modulated to account for a coverage ratio of 50%, while the aforementioned guidance refers to a coverage ratio of 90%. In other words, the lower guarantee coverage justifies lower guarantee premiums, in line with point 25(b) of the Temporary Framework.

- (b) Guarantees may be granted under the measure by 30 June 2021 at the latest (recital (19)(f)). The measure therefore complies with point 25(c) of the Temporary Framework.
- (c) The maximum amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (19)(e)). Regarding the threshold under point 25(d)(iii) of the Temporary Framework, the Romanian authorities provide an appropriate justification as the conditions of the factoring market in Romania imply significant liquidity needs for SMEs, which are in essence determined by the amount of receivables and the number of days to collect them. More specifically, according to the Romanian authorities, Romanian SMEs need - on average - more than 90 days for collection of receivables which is above the established 60 days for transactions between undertakings under the Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.¹⁷
- (d) The measure limits the duration of the guarantees to a maximum of four years (recital (19)(b)). Those guarantees cover 50% of the factoring facility and losses stemming from the transaction are sustained proportionally and under the same conditions by the credit institutions and the State. Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (19)(g)). The measure therefore complies with point 25(f) of the Temporary Framework.
- (e) Guarantees granted under the measure relate to working capital loans in the form of factoring (recital (17)). The measure therefore complies with point 25(g) of the Temporary Framework.
- (f) Aid may not be granted under the measure to SMEs that were in difficulty on 31 December 2019 (see recital (13)(i)). The measure therefore complies with point 25(h) of the Temporary Framework.
- (g) The measure limits the risk of possible indirect aid in favour of the factors which could lead to undue distortions to competition. The Romanian factoring market is still underdeveloped. In the COVID context, SMEs will benefit from the measure through faster and better diversified access to liquidity. Furthermore, as explained in recital (19)(i), the Romanian authorities will establish - in secondary legislation - limits to financing costs charged to final beneficiaries that are below or at most equal to market rates, based on actual market rates during the first half of 2020. Factors have to accept these limits in order to participate in the program. FNGCIMM will verify that financing costs do not exceed those limits established. This cap ensures that the factors, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (19)(i)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

¹⁷ OJ L 48, 23.2.2011, p. 1–10, Article 3 (5) of the Directive 2011/7/EU.

- (h) The cumulation rules set out in point 24bis of the Temporary Framework are respected (recitals (25) and (26)).
 - (i) The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (19)(j)).
- (42) The direct grants meet the conditions under Section 3.1 of the Temporary Framework for the following reasons:
- (a) The aid takes the form of direct grants and the overall nominal value shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework (see recital (20)(a)).
 - (b) Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 22(b) of the Temporary Framework.
 - (c) Aid may not be granted under the measure to SMEs that were in difficulty on 31 December 2019 (see recital (13)(i)). The measure therefore complies with point 22(c) of the Temporary Framework.
 - (d) Aid will be granted under the measure no later than 30 June 2021. The measure therefore complies with point 22(d) of the Temporary Framework.
 - (e) Aid granted to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers. The measure therefore complies with point 22(e) of the Temporary Framework.
 - (f) The overall nominal value of direct grants does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products (recital (20)(b)i)). The measure therefore complies with point 23(a) of the Temporary Framework.
 - (g) Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (20)(b)ii)). The measure therefore complies with point 23(b) of the Temporary Framework.
 - (h) Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (20)(b)iii)). The measure therefore complies with point 23(c) of the Temporary Framework.

- (i) Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, Romania will 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 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 120 000 is not exceeded per undertaking (recital (20)(e)). The measure therefore complies with point 23bis of the Temporary Framework.
 - (j) The measure introduces safeguards in relation to the possible aid in favour of factors to limit undue distortions to competition. As explained in recital (20)(f), Romanian authorities will establish limits to financing costs charged to final beneficiaries and factors have to accept these limits when enrolling in the program. Those limits are set below or at most equal to market rates, based on actual market rates during the first half of 2020. In addition, the granting authority will run calculations to ensure the correctness of incurred costs when paying 50% of interest cost. The requirement to the factors of submitting a statement with the maximum financing costs and the verification of compliance by FNGCMM will ensure that the necessary aid for covering financing costs will be transmitted to the final beneficiary. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (20)(f)). The measure therefore complies with points 28 to 31 of the Temporary Framework
- (43) The Romanian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (27)). The Romanian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the Sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (21) to (26)).
- (44) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

- (45) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“BRRD”)¹⁸ in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD.

¹⁸ OJ L 173, 12.6.2014, p. 190.

- (46) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.¹⁹ Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD.
- (47) Moreover, as indicated in recitals (41)(g) and (42)(j) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.
- (48) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

5. CONCLUSION

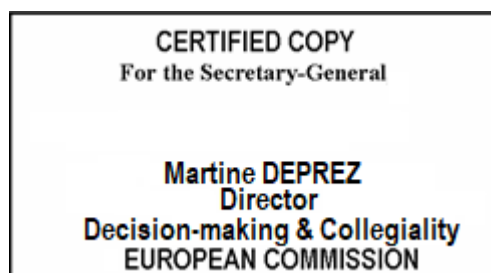
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President



¹⁹ Points 6 and 29 of the Temporary Framework.