The following scheme provides the legal cover for award of support inline with the General Block Exemption Regulation. The scheme does not provide any additional funding or budget

Llywodraeth Cymru
Welsh Government

Welsh Government – Wales Screen Fund - Update

State aid reference no: SA.49820

1. Member State

United Kingdom

2. Region

Wales

3. Title of aid Scheme

Welsh Government Wales Screen Fund

4. UK legal basis

Powers of the Welsh Ministers which allow the Welsh Government to support enterprises under the Scheme are contained in:

- the Welsh Development Agency Act 1975 (section 1) (as amended); and
- Sections 60, 61 and 70 of the Government of Wales Act 2006

The legislation which gives effect to EC Law in Wales is:

- the European Communities Act (1972) (section 2(1)); and
- the Government of Wales Act (section 80).

5. EC legal basis

The following scheme provides the legal cover for award of support inline with the General Block Exemption Regulation. The scheme does not provide any additional funding or budget

All aid provided under this Scheme will be within the limits set out in Articles 21 and 54 of Commission Regulation (EU) No 651/2014 of 17 June 2014 and amended by Commission Regulation (EU) No. 2017/1084 of 14 June 2017 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation). A full version of the Regulation can be found at:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG

A full version of the amending Regulation can be found at:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1084&from=EN

Summary information relating to the Scheme has been registered with the Commission under reference **SA.49820**.

6. Definitions

In this Scheme, the following expressions have the same meaning attributed to them as in the General Block Exemption. For ease of reference these have been replicated (definitions are presented alphabetically):

'agricultural product' means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) 1379/2013 of the European Parliament and of the Council of 11 December 2013;

"**aid**" means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;

"**aid intensity**" means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

"**Date of granting the aid**" means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

"Difficult audio-visual works" means the works identified as such by the UK on the basis of pre-defined criteria when setting up schemes or granting the aid and may include films whose sole original version is in a language of a Member State with a limited territory, population or language area, short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works.

"**Fisheries and aquaculture sector**" as covered by Regulation (EU) 1379/2013 on the common organisation of the market in fishery and aquaculture products, amending Council regulations (EC) 1184/2006 and (EC) 1224/2009 and repealing council regulation (EC) 1004/2000.

"Primary agricultural production sector" means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products

"**processing of agricultural products**" means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

"**reasonable profit**" shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable;

"**Repayable advance**" means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend upon the outcome of the project.

"**SME**" means an enterprise that falls within the criteria and parameters of the definition of micro, small and medium-sized enterprises contained in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC), which took effect on 1 January 2005[1];

"**Start of works**" means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs 'start of works' means the moment of acquiring assets directly linked to the acquired establishment;

"Undertaking in difficulty" means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for

[1] http://europa.eu/eur-lex/pri/en/oj/dat/2003/l_124/l_12420030520en00360041.pdf
See also the New SME Definition User Guide and Model Declaration
http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, "limited liability company" refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU34 and "share capital" includes, where relevant, any share premium..

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, "a company where at least some members have unlimited liability refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU..

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years: (1) the undertaking's book debt to equity ratio has been greater than 7.5 and (2) the undertaking's EBITDA interest coverage ratio has been below 1.0.

7. Objective of the Scheme

The Wales Screen Fund will provide support for scriptwriting, development, production, distribution and promotion of audio-visual works. The Wales Screen Fund will further develop and maintain a high quality audio-visual infrastructure in Wales, through supporting and promoting Welsh productions and attracting major foreign productions to Wales. This will provide a vehicle through which Welsh facilities, talent and culture can be promoted and contribute to the overall economic growth of the Sector.

8. Government body authorised to implement the Scheme

9. <u>Scope of the scheme</u>

The scheme will be open to all TV and film production companies excluding those active in the following sectors:

- Fisheries and aquaculture
- Primary agricultural production
- The processing and marketing of agricultural products when (1) the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the enterprise concerned; or (2) the aid is conditional on being partly or entirely passed on to primary producers.

When an undertaking is active in both an excluded sector and non-excluded sector, aid may be given to fund non-excluded activities with the condition that activities in the excluded sector do not benefit from aid granted under this scheme.

In addition, aid will not be allowed in the following circumstances:

- Aid to export related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;

- Aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787;

- Where aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State;

- Aid contingent upon the use of domestic over imported goods;

- Where the aid measure restricts the possibility for the beneficiaries to exploit the research, development and innovation in other Member States.

Aid shall not be given where the proposed recipient is:

- Subject to an outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the common market; or

- An undertaking in difficulty (see definition)

In addition aid cannot be awarded where:

- Aid is reserved exclusively for nationals
- Aid based on the requirement that the undertaking has to be established under national commercial law

Aid cannot be provided for the following:

- Specific production activities or individual parts of the production value chain;
- Film studio infrastructure
- Projects that are pornographic, or depict violence gratuitously or as a form of gratification, or to advocate the violation of human rights are not eligible.

10. Duration of the Scheme

Aid under this Scheme may be granted until 31 December 2020. This scheme, registered under the General Block Exemption Regulation, will supersede the current Welsh Government Culture and Heritage Conservation Scheme SA.32465.

11. Budget for aid under the Scheme

The total budget for the Scheme has been estimated at £5m per annum (total £15m) and will compromise a combination of domestic resources and European structural funds.

12. Form of aid

All aid awarded under the Scheme will be transparent and in line with criteria set out in Article 5 of the General Block Exemption Regulation. The following categories of aid may be awarded:

- Grants (capital, revenue and repayable capital);
- interest rate subsidies;
- loans; and
- Repayable advances.

13. Eligible activities to be supported under the scheme

The scheme supports aid for the following activities for audio-visual works:

- script-writing
- development
- production
- distribution
- promotion

Detailed descriptions of the eligible activities that can be supported are set out in schedule 1.

The scheme supports risk finance activities. A detailed description of the eligible activities that can be supported is set out in Schedule 2.

14. Incentive effect

Aid recipients must demonstrate that the aid is required for projects to proceed by submitting a written application before work on the project activity has started. The application will as a minimum contain the following information:

(a) Name and size;
(b) Description of the project, including its start and end dates;
(c) Location of the project;
(d) List of project costs;
(e) Form of and amount of public funding needed for the project.

15. Cumulation

In determining whether the individual notification thresholds and the maximum aid intensities are respected, the total amount of public support for the activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.

Aid provided under this Scheme will not be cumulated with other forms of aid nor with aid classed as de minimis aid in regard to the same eligible costs if the result would breach the applicable aid intensities.

A mechanism is in place as part of the application process to ensure that cumulation of aid does not exceed the maximum allowable aid intensities of the Scheme. Due diligence checks will be carried out during the awarding process.

The aid provided by the Wales Screen Fund can be cumulated with aid received from other local, regional or national schemes in the EU. However, the Welsh

Government will ensure that the maximum aid intensities set out in schedule 1 are not exceeded.

16. Monitoring and Reporting requirements

All recipients of aid under the Scheme will be informed that aid has been provided under the Scheme, registered under **SA.49820** pursuant to Articles 21 and 54 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 (General Block Exemption Regulation) and its amending Regulation Commission Regulation (EU) No 2017/1084.

Records will be kept for 10 years from the date the last award of aid under the Scheme. Records will be sufficiently detailed to establish that the conditions of the Scheme are met.

Details of any award exceeding €500,000 given under this scheme will be made publicly available via a State aid website within 6 months of granting.

An annual report on the expenditure under this Scheme will be provided to the Commission.

The Welsh Government shall provide the Commission with all the information and documentation the Commission considers necessary to monitor the application of this Regulation, within 20 days of such request from the Commission.

Contact information:

State Aid Policy Unit
Welsh Government
Cathays Park
Cardiff CF10 3NQ
United Kingdom

Tel: + 44 (0)3000 253568
E-mail: State.Aid@gov.wales

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Schedule 1: Support for Audio visual works

Aid can be provided for:

- the costs of producing audio-visual works;
- Pre-production costs; and
- Distribution costs

Cultural test

To successfully apply to the Wales Screen Fund, a project must pass the UK cultural test (as assessed by the European Commission in its decision in the UK Film Tax incentive on 22 December 2006[2]) i.e. it must be a culturally British production as defined by the UK Department for Culture, Media and Sport ("the UK Cultural Test").

In addition the production must make a significant contribution to one or more of the following Welsh specific criteria:

- Exposure of as broad range of images of Wales as possible.
- Exposure of the work of creative talent including but not limited to writers, directors and actors who are based in the region or informed by the region.
- The telling of indigenous stories simultaneously in English and Welsh.
- The exposure of the image of Wales to a wide international audience.
- The development of the skills base necessary to sustain film and television productions in Wales.

The scheme will provide support for difficult audio-visual works

A difficult audio-visual work will be one that meets the definition of a "difficult film" set out in the UK Film Notification (NN06/2006). A "difficult film" is defined by the UK authorities as one which would have little if any prospect of commercial success because of its experimental nature or because it represented a high level of creative risk.

A "difficult audio-visual work" would also need to contribute to achieving one or more of the following objectives:

1. Compromise a strong cultural and public service ethos; or

[2] State aid N461/2005 – United Kingdom – UK film tax incentive, available at http://ec.europa.eu/eu_law/state_aids/comp-2005/n461-05pdf

2. Contribute to the improvement of new technologies by, inter alia, exploring new digital delivery formats in an inventive and creative way, furthering the art or cinema and storytelling; or
3. Promote new and innovative challenges in the form and content of the films financed; or
4. Offer a clear alternative to commercial cinema and provide opportunities to film makers who have been rejected by, or have themselves rejected, the commercial film industries in Europe; or
5. Encourage film-makers and audiences to engage with minority languages; or
6. Support development of, and provide creative opportunities for businesses and individuals in areas of low economic or social development; or
7. Provide opportunities for organisations and individuals who have been excluded from the film industry as a result of, for example, race, gender, sexual orientation, poverty, disability, geographical isolation, religious belief or political opinion; or
8. Support the development of creative and effective film-making communities across a minimum of two European Union or European Economic Area countries; or
9. Involve first-time or inexperienced film-making, writing, directing or producing talent.

In addition the following eligibility criteria apply:

1. Projects will only be eligible for funding where they can demonstrate their potential to reach an audience both within Wales and elsewhere. Evidence of this potential will be specific to the project but is likely to include, for example the attachment of an experienced sales agent in relation to film applications or a broadcaster in the context of television projects;
2. Budget must be appropriate for the scale of the project, match funding be clearly evidenced and overall aid including the Wales Screen Fund in line with aid parameters;
3. The Wales Screen Fund will not compete with other financiers who have made as offer to a potential applicant. In practice this means that the Wales Screen Fund will not enter into a competitive bidding situation with any other funder.

For the avoidance of doubt, applications for retrospective funding are not eligible.

Eligible costs

The following costs are deemed to be eligible:

(a) For production aid: the overall costs of production of audio-visual works including costs to improve accessibility for persons with disabilities.
(b) For pre-production aid: the costs of script-writing and the development of audio-visual works.
(c) For distribution aid: the costs of distribution and promotion of audio-visual works.

Aid intensities

The maximum aid intensity allowable under the fund will normally be 50% of the overall budget of a production. This may be increased to 60% of eligible costs for cross-border productions funded by more than one Member State and involving producers from more than one Member State.

The scheme will award up to 100% of eligible costs to an audio-visual work if it is both "low budget" **and** meets the criteria of a "difficult audio-visual work". A "low budget film" will be classified as a film with a budget below £200,000 (as defined in the UK Film Notification (NNo6/2006)[3].

The aid intensity for pre-production shall not exceed 100% of the eligible costs. If the resulting script or project is made into an audio-visual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.

Territorial spending conditions

Aid will be awarded as a percentage of the expenditure on production activity in Wales. The percentage may vary depending on an assessment of the production and its overall impact on Wales.

Beneficiaries will not be required to spend more than 160% of the aid granted to the production of the supported audio-visual work in Wales.

The maximum expenditure subject to territorial spending obligations will not exceed 80% of the overall production budget.

[3] NN6/2006 – United Kingdom – UK film development and production funds, available at: http://ec.europa.eu/eu_law/state_aids/comp-2006/nn006-06.pdf

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Assessment of applications

Each application will be assessed by experts from within the Welsh Government's Creative Industries Sector Team. This will include the Senior Business Development Manager, who will be supported by Business Development Managers from the team.

The Business Development Team has significant knowledge of the film and television industry and all have expertise in assessing grant applications.

All applications approved by the Business Development Manager and Senior Business Development Manager will require authorisation by the Head of Creative Industries Sector, a higher executive band official with extensive experience of working in the creative industries as well as high level strategic experience within government. In addition applications will also require approval from the Welsh Government Investment Panel, a panel of high level executives from across the Economy, Science and Transport department. This panel is responsible for approving all projects from across all Sectors across the Department.

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Schedule 2: Support for Risk Finance

For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.

Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment it is granted. The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted.

Where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the discount rates applicable at the various times the tax advantage takes effect.

Eligible forms of Aid

At the level of financial intermediaries, risk finance aid to independent private investors may take one of the following forms:

a) equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings;
b) loans to provide risk finance investments directly or indirectly to eligible undertakings;
c) guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.

At the level of independent private investors, risk finance aid may take the forms mentioned directly above, or be in the form of tax incentives to private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings.

At the level of eligible undertakings, risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

Eligible Undertakings

Eligible undertakings shall be those which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:

a) they have not been operating in any market;

b) they have been operating in any market for less than 7 years following their first commercial sale;
c) they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7 year period mentioned in point (b) above, if the following cumulative conditions are fulfilled:

1) the total amount of risk finance mentioned in is not more than €15m from any risk finance measure;
2) possibility of follow-on investments was foreseen in the original business plan;
3) the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3(3) of Annex I of the GBER with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

Notification thresholds

The maximum support that can be provided under this scheme is €15 million per eligible undertaking. Any grant award exceeding these levels will need to be notified directly to the Commission.

Aid intensities applicable

i. For equity and quasi-equity investments in eligible undertakings:

   - a risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least **50%** of each investment round into the eligible undertakings;
   - no more than **30%** of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

ii. For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds:

- 10 % of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;
- 40 % of the risk finance provided to the eligible undertakings mentioned in bullet point (b) above;
- 60 % of the risk finance for investment provided to eligible undertakings mentioned in bullet point (c) above and for follow-on investments in eligible undertakings after the 7-year period mentioned in bullet point (b) above.

iii. Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in point ii) with no provision for private capital participation at the level of the eligible undertakings the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in point ii.

A risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfil predefined criteria objectively justified by the nature of the investments.

Additional Conditions

A risk finance measure shall fulfil the following conditions:

1) it shall be implemented via one or more financial intermediaries, except for tax incentives to private investors in respect of their direct investments into eligible undertakings;
2) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
3) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;
4) in the case of guarantees to cover losses from risk finance investment directly or indirectly to eligible undertakings, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage

of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled:

1) Financial intermediaries shall be established according to the applicable laws.
2) the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
3) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex-ante* financial viability;
4) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:

1) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
2) their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;
3) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
4) they shall set out an investment strategy, criteria and the proposed timing of investments;
5) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:

1) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;
2) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of the notification threshold;
3) in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount for the purposes of the notification threshold. The guarantee shall not exceed 80 % of the underlying loan.

Risk finance aid for SMEs that do not fulfil the conditions laid down to be considered eligible undertakings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that:

1) at the level of the SMEs, the aid fulfils the conditions laid down in Regulation (EU) No 1407/2013; and
2) all the conditions laid down in Article 21 (Risk Finance Aid), with the exception of those set out under ‘eligible undertakings’, ‘notification thresholds’ and points ii and iii above, are fulfilled; and
3) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60 % of the risk finance provided to the SMEs.