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Subject: State Aid SA.102007 (2022/N) – Portugal
RRF - Share capital increase of Banco Português de Fomento

Excellency,

1. PROCEDURE

(1) On 4 August 2020, the Commission approved in State aid case SA.55719 (2020/N) a measure to set up the national promotional bank Banco Português de Fomento, S.A. ("BPF"), BPF's capitalisation, and its remit of financing activities ("the Original Decision").[1]

(2) On 9 March 2022, following a number of pre-notification contacts since February 2022, the Portuguese authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), an increase of BPF's share capital by EUR 250 million ("the current measure").

(3) By letter dated 9 March 2022, Portugal agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958[2] to have the present decision adopted and notified in English.

[1] OJ C 294, 4.9.2020, p. 5.

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

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2. THE MEASURE

2.1. Description of the measure

(4) The Portuguese authorities notified an increase of BPF's share capital amounting to EUR 250 million by way of cash contributions of EUR 250 million. The budget of the notified measure is wholly made available through the Recovery and Resilience Facility (RRF)[3].

(5) The funds will be channelled through the Agency for Competitiveness and Innovation ("IAPMEI") that will act on behalf of the State to implement the current measure. IAPMEI is a specialised public agency answerable to the Ministry for the Economy.

2.2. The beneficiary

(6) BPF has as the main objective to promote the growth of the Portuguese economy by improving the access to finance mainly for SMEs. The remit of BPF addresses market failures. BPF has been relying exclusively on market failures already identified in the Commission's State aid Guidelines, Communications, and Frameworks.

(7) As described in recital (10) of the Original Decision, in order to achieve its main objective, BPF is focusing on financing or facilitating access to finance in the following areas:

(a) projects in research and innovation, facilitating taking research results to the market, digitisation, scaling up innovative companies, artificial intelligence, inter alia;

(b) projects in the sustainable infrastructure segment, such as decarbonisation and energy transition, sustainable energy, digital connectivity, transport and mobility, circular economy, water, waste and other environment infrastructure; in particular, BPF intends to develop a green bank with the aim of providing financial capacity and accelerating the various existing sources of financing dedicated to investing in carbon neutrality and circular economy projects;

(c) projects in the social investment and skills segment, covering in particular the health sector, long-term care, education and training at all levels, employment and social inclusion, affordable and/or social housing and similar initiatives, territorial cohesion, inter alia;

(d) projects increasing the competitiveness of Portuguese companies;

(e) long-term financing of investment projects to be developed by the public sector, at central, regional and municipal levels.

[3] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.

(8) Sections 2.2, 2.3 and 2.4 of the Original Decision describe in detail respectively BPF's objectives, its setup, and its remit of activities. While BPF's objectives and remit of activities[4] remain unchanged, the Portuguese authorities state that due to the current measure the description of BPF's setup in recitals (13) and (14) of the Original Decision changes as follows:

(a) BPF's share capital will be equal to EUR 505 million and total assets are expected to be around EUR 1 150 million[5]. These total assets amount to less than 0.55% of Portugal's gross domestic product;

(b) the Portuguese Directorate-General for Treasury and Finance is expected to hold 20.85% of the share capital, IAPMEI 73.25%, Turismo de Portugal, I.P. 4% and the Agency for Investment Foreign Trade in Portugal, E.P.E. 1.9%;

(c) the Portuguese authorities clarify that the entire share capital increase should be subscribed by IAPMEI. However, the Portuguese authorities may decide to re-allocate up to 10% of the share capital increase to the Autonomous Regions of Madeira and Azores, which would signify a share equivalent to EUR 12.5 million for each of them and would reduce the shareholding of IAPMEI accordingly;

(d) the total equity of BPF in the first half of 2022 will be around EUR 545 million as a result of this capital increase, including other reserves and retained earnings of EUR 24 million as well as the consolidated net income of EUR 16 million for 2021.

2.3. The objective of the measure

(9) The current measure has been included in Portugal's Recovery and Resilience Plan ("RRP"), as endorsed by the Commission and approved by the Council[6].

(10) According to the assessment of the RRP by the Commission services, "*the proposed increase in the bank's capitalisation is expected to facilitate access to finance, particularly for SMEs affected by the crisis, and to boost competitiveness and job creation on a long-term basis*"[7].

(11) Portugal states that, as detailed in the aforementioned RRP of Portugal, the current measure belongs to the public policy scope of BPF's activities. This policy scope is focussed on public promotion of corporate sector capitalisation, on capital markets stimulation, and fostering of productive investment, as well as

[4] This remit of activities includes the market economy operator ("MEO") activities and the respective non-crowding-out measures.

[5] *Pro forma* calculations 2022, from EUR 255 million share capital and EUR 441 million total assets in 2021.

[6] Council of the European Union: REVISED ANNEX to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Portugal. Interinstitutional File: 2021/0154 (NLE), 7 July 2021.

[7] Recital (41) of Proposal for a COUNCIL IMPLEMENTING DECISION on the approval of the assessment of the recovery and resilience plan for Portugal COM/2021/321 final. Interinstitutional File: 2021/0154 (NLE), 16 June 2021.

investments aligned with Union and national strategic priorities, such as the twin climate and digital transitions, innovation, R&D, and labour force qualifications, among other priorities.

(12) Portugal's RRP establishes the increase of BPF's capital also as a necessary and enabling condition for BPF to become Portugal's national implementing partner of the InvestEU Programme.

(13) Portugal argues that the increase of BPF's share capital creates the financial capacity for a full-fledged development of the Portuguese national partnership for the implementation of the InvestEU Programme. Accordingly, BPF forecasts an expansion of its balance sheet as a result of the expected growth of the co-lending and on-lending business segments, which will be the core channels for InvestEU financial instruments provided/guaranteed by BPF.

(14) BPF's participation in this programme was already described as an option in the Original Decision in recital (21)(b) and assessed in recitals (99) and (107) of the Original Decision as regards EU Financial Instruments in general. The Portuguese authorities state that BPF's participation in the InvestEU Programme does not change BPF's remit of activities as set out in the Original Decision.

(15) For these EU Financial Instruments, including the InvestEU Programme, Article 209 of the Financial Regulation[8] applies, which states that "*Financial instruments and budgetary guarantees shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives*".

(16) Portugal claims that , mostly through the granting of public guarantees, BPF will ensure that private sector players are crowded in, leveraging investments in all of the four strategic windows of InvestEU: (1) sustainable infrastructure; (2) research, innovation and digitalization; (3) social investment and skills; (4) and small and medium enterprises, which overlap with the areas to be supported by BFP as described in recital (7).

(17) Furthermore, as noted in Portugal's RRP, devoting the enlarged financial capacity of BPF to the national implementation partnership of the InvestEU is at the core of the Recovery and Resilience pillars 1, 2 and 3[9] and provides a material contribution to pillar 5. In addition, the current measure is also referred to in Portugal's integrated response to address the following Country Specific Recommendation ("CSR") addressed to Portugal for 2020 as adopted by the Council[10]:

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[8] See Financial regulation applicable to the general budget of the Union, as available on https://op.europa.eu/en/publication-detail/-/publication/e9488da5-d66f-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-86606884.

[9] The political agreement reached by co-legislators of the RRF in December 2020 and approved by the European Parliament structures the scope of the RRF around six pillars: (1) green transition; (2) digital transformation; (3) economic cohesion, productivity and competitiveness; (4) social and territorial cohesion; (5) health, economic, social and institutional resilience; (6) policies for the next generation.

[10] Recommendation for a COUNCIL RECOMMENDATION on the 2020 National Reform Programme of Portugal and delivering a Council opinion on the 2020 Stability Programme of Portugal, COM(2020) 522 final of 20.5.2020.

"*implement the temporary measures aimed at securing access to liquidity for firms, in particular small and medium-sized enterprises. Front-load mature public investment projects and promote private investment to foster the economic recovery. Focus investment on the green and digital transition, in particular on clean and efficient production and use of energy, rail infrastructure and innovation.*"

2.4. Legal basis

(18) *Decreto-Lei* (Decree Law) nr. 63/2020 of 7 September 2020 regulates the activity and functioning of BPF. The current capital increase is regulated by the draft shareholder's resolution of BPF provided by Portugal as part of the notification.

3. ASSESSMENT OF THE PRESENCE OF STATE AID

3.1. Existence of State aid

(19) By virtue of Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*."

(20) To constitute State 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, the measure has to confer a selective advantage on its recipients. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

(21) The present decision assesses only the presence of aid to BPF related to the EUR 250 million share capital increase provided by its public shareholders, ("Level I aid"). Whether BPF's financing activities involve State aid to the final recipients ("Level II aid"), financial institutions and co-investors, is not within the scope of this decision.

(22) The Commission assessed the existence of State aid in recitals (47) to (61) of the Original Decision. The same reasoning applies to the current measure notified by the Portuguese authorities.

(23) In particular, the share capital increase is financed with State resources as it is subscribed by IAPMEI, which is a specialised public agency answerable to the Ministry for the Economy of Portugal. Furthermore, it is supported by the Recovery and Resilience Facility which are Union funds deployed to Member States and which are imputable to the State, as Portugal decided on how to spend these funds when preparing its RRP.

(24) The Commission therefore considers that the current measure constitutes aid within the meaning of Article 107(1) TFEU.

3.2. Legality

(25) By notifying the increase of BPF's share capital by the current measure before putting it into effect, the Portuguese authorities have respected their obligation under Article 108(3) TFEU.

4. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURE

4.1. Scope and criteria for assessing the compatibility

(26) The Commission has already assessed BPF's objectives and remit of activities in the Original Decision (see sections 5.2 – 5.8 of the Original Decision). Therefore, in the present decision, the Commission will limit its assessment to the current measure, as described in recital (4). All the other elements assessed in the Original Decision, in particular the remit of activities, remain the same. As stated in recital (14), the activities to be performed with the resources from the capital increase will fall within the already approved remit of activities.

(27) As stated in recitals (12) to (17), the current measure has been designed to create the financial capacity for a full-fledged development of the national partnership for the implementation of the InvestEU Programme. This is at the core of three Recovery and Resilience pillars (i.e. 1, 2 and 3) and provides a material contribution to pillar 5. In addition, this measure is also a relevant part of Portugal's integrated response to address a Country Specific Recommendation of the Council of the European Union.

(28) Article 107(3)(c) TFEU provides that "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered compatible with the internal market.

(29) The Commission has examined whether any secondary State aid act could be applicable to the measure, but concludes that the measure does not fall within any existing Commission Communications, Guidelines or Frameworks setting out the rules for implementing Article 107(3)(c) TFEU.[11]

(30) In light of the above, the Commission will assess the current measure directly under Article 107(3)(c) TFEU, following the Commission's extensive case practice in the field of development banks[12].

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[11] For a more detailed analysis on this matter, see recitals (96) to (101) of the UK Business Bank Decision, OJ C 460, 19.12.2014, p. 1.

[12] See for example, Commission Decision of 17 October 2012, SA.33984 Green Investment Bank, United Kingdom, OJ C 370, 30.11.2012, p.2; Commission Decision of 15 October 2014, SA.36061 UK Business Bank, United Kingdom, OJ C 460, 19.12.2014, p.1; Commission Decision of 24 August 2016, SA.39793 Malta Development Bank, Malta, OJ C 471, 16.12.2016, p.1; Commission Decision of 28 October 2014, SA.37824 Portuguese Development Institution, Portugal, OJ C 005, 09.01.2015, p.1; Commission Decision of 9 June 2015, SA.36904 MLB development segment and creation of the Latvian Single Development Institution, Latvia, OJ C 25, 22.01.2016, p.1; Commission Decision of 6 June 2019, SA.47821 Invest-NL, The Netherlands, OJ C 268, 9.8.2019, p.1; Commission Decision of 29 May 2020, SA.55465 Invest International, The Netherlands, OJ C 326, 2.10.2020, p.3; Commission

(31) In particular, the Commission will analyse whether the current measure contributes to facilitating the development of an economic activity and at the same time avoids undue negative effects on competition and trade between Member States. In the below, the Commission will assess whether the current measure corresponds to these criteria.

4.2. Facilitating the development of an economic activity

4.2.1. Identifying the economic activity supported by the aid

(32) As described in recital (7), BPF focuses on financing or facilitating access to finance in a number of areas. All those areas face difficulties in obtaining sufficient finance due to market failures such as externalities or asymmetric information. In certain circumstances, allocation via markets may result in a suboptimal equilibrium, and State aid can help to maximise welfare in those areas.

4.2.2. The aid effectively facilitates the development of the economic activity

(33) Under Article 107(3)(c) TFEU, the measure must facilitate the development of a certain economic activity[13].

(34) BPF's main objective is to overcome market failures, which impede the growth of the Portuguese economy, by means of targeted funding (see recital (9) of the Original Decision). As mentioned in recital (11), the current measure belongs to BPF's public policy scope focused on public promotion of corporate sector capitalisation, capital markets stimulation, and fostering of productive investment, as well as investments aligned with Union and national strategic priorities, such as the twin climate and digital transitions, innovation, R&D, and labour force qualifications, among other priorities. As noted in recital (10), the proposed increase in the bank's capitalisation is expected to facilitate access to finance, particularly for SMEs affected by the crisis, and to boost competitiveness and job creation on a long-term basis as a result of which the Portuguese authorities facilitate the development of economic activities linked to *inter alia* the areas described in recital (7).

(35) In that respect, the Commission has examined whether the capital increase to BPF will provide an incentive effect. The Commission considers that the assessment in the Original Decision (recitals (93) to (101)) is also valid for this capital increase as the conditions of the funding and the activities remain the same. This means that in the absence of the aid (i.e. the additional capital provided by the Portuguese State), BPF would not be able to engage in the additional financing activities, which in turn support *inter alia* the economic activities described in recital (7). The Commission notes in particular, with respect to BPF's financing activities, funded from EU Financial Instruments (such as InvestEU), the Commission finds that there is an incentive effect for the following reasons. First,

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Decision of 5 November 2020, SA.54780 Scottish National Investment Bank, United Kingdom, OJ C 439, 18.12.2020, p. 1.

[13] Case C-594/18 P *Austria v Commission* EU:C:2020:742, paras 20 and 24.

such instruments also aim to address market failures or suboptimal investment situations. Second, according to Article 209 of the Financial Regulation, the principles of additionality, non-distortion of competition in the internal market and consistency with the State aid principles apply to them. Therefore, the Commission concludes that BPF's interventions, funded from EU Financial Instruments, ensure the incentive effect of the measure.

(36) Against this background, the current measure in favour of BPF can be considered necessary for the effective facilitation of the development of BPF’s economic activity.

(37) The interventions to be carried out by BPF (Level II aid) aim at the development of economic activities. Therefore the current measure of aid in favour of BPF (Level I aid) will facilitate the development of the economic areas which fall under the public policy scope of BPF (see recital (11)) through increasing BPF’s capacity to provide financing.

(38) In light of these elements, the Commission is satisfied that the current measure in favour of BPF facilitates the development of certain economic activities as required by Article 107(3)(c) TFEU.

4.2.3. The aid complies with relevant EU laws

(39) The Commission is not aware of any breach of other relevant EU law provisions concerning the current measure.

4.3. The aid does not adversely affect the trading conditions to an extent contrary to the common interest

4.3.1. Markets potentially affected by the aid

(40) As stated in recital (6) and in more detail described in section 2.4 of the Original Decision, the activities of BPF address market failures by providing financing and facilitating the access to finance. As described in recital (7), BPF’s remit therefore covers a variety of respective economic sectors (such as sustainable infrastructure, health, transport and mobility, waste and other environment infrastructure), projects (covering areas such as research and innovation, education and training, employment and social inclusion, affordable and social housing) and categories of beneficiaries, in particular SMEs. All of those beneficial sectors, projects or undertakings face difficulties in obtaining sufficient finance due to market failures such as externalities or asymmetric information. As noted in recital (6), the market failures addressed by Portugal are presumed by the General Block Exemption Regulation[14] (“GBER”) and State aid guidelines (such as the Guidelines on State aid to promote risk finance investments[15]) or are to be assessed in a notified measure where applicable.

[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 on the Functioning of the European Union, OJ L 187 26.6.2014, p. 1.

[15] OJ C 508, 16.12.2021, pp. 1–36.

4.3.2. The aid measure minimises the distortions on competition and trade

Necessity

(41) Effectively facilitating the development of an economic activity is a legitimate goal of an aid measure such as the State providing a share capital increase in favour of its development bank, whenever its activities address market failures so that the State aid for it is necessary and, therefore, justified.

(42) As described in recital (8), the remit of BPF remains unchanged and therefore the resources of the current measure address market failures (as assessed in recitals (78) to (88) of the Original Decision).

(43) In light of the above, the Commission concludes that the remit of BPF, which remains valid for the activities to be performed with the current capital increase, is limited to activities that address market failures and therefore the current measure is necessary to facilitate the development of such activities.

Appropriateness

(44) The State aid measure must be an appropriate policy instrument to facilitate the development of a certain economic activity. In the original decision, the Commission concluded that creating a development bank with BPF's remit with the help of the capital provided was an appropriate tool to address the identified market failures (recitals (89) to (92) of the Original Decision).

(45) The increase of BPF's share capital has been included in Portugal's RRP that establishes the increase of BPF's capital as a necessary and enabling condition for BPF to become Portugal's national implementing partner of the InvestEU Programme (see recitals (4) and (12)).

(46) Therefore, the Commission concludes that the current measure is an appropriate tool to address the identified market failures and to facilitate the development of a certain economic activity, as assessed in section 4.2.1.

Proportionality

(47) The State aid measure must be limited to the minimum necessary to induce the additional investments or activity by the undertakings concerned, i.e. it is not possible to reach the same outcome with a lesser amount of aid.

(48) The Commission notes that, with the EUR 250 million of additional capital provided, BPF estimates to increase its total assets to EUR 1 150 million by the end of 2022, which correspond to 0.55% of Portugal's gross domestic product (see recital (8)(a)) which seems to be a proportionate size (smaller on a relative basis than most other development banks in the Union).

(49) The assessment performed by the Commission in the Original Decision (recitals (104) to (109)) concerning the proportionality of BPF's financing activities remains valid in the context of the current measure. This applies in particular to BPF's financing activities supported by the InvestEU Programme, for which Article 209 of the Financial Regulation applies, which states that "*Financial instruments and budgetary guarantees shall be used in accordance with the*

principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives".

(50) In light of those elements, the Commission concludes that the current measure in favour of BPF is proportionate.

Transparency

(51) Information on the aid awards is considered a tool to minimise the impact on the internal market since stakeholders will be able to react against possible unlawful aid. The monitoring and evaluation of BPF as described in recitals (16) and (37) of the Original Decision is considered an appropriate tool in this respect.

4.3.3. Distortions of trading conditions but avoidance of undue negative effects

(52) Any aid measure, even if it effectively facilitates the development of a certain economic activity and is necessary, appropriate and proportionate, can distort competition and affect trade between Member States.

(53) However, as assessed in the Original Decision (recitals (110) to (114)), the establishment of BPF has limited crowding out risk for a number of reasons. These reasons remain valid for the current measure. In particular, all interventions carried out by BPF at the level of final beneficiaries will limit potential negative effects on competition to the minimum. In particular, where BPF will conduct its activities in line with State aid rules, this by itself ensures that potential negative effects are limited to the minimum. Moreover, BPF's financing activities on MEO terms will be subject to no-crowding-out measures (see recital (26) of the Original Decision), whereby BPF intervenes only when market funding is not sufficient or not available. This will be ensured by a set of mandatory steps that BPF will follow before investing in an entity. The investee will have to demonstrate that it tried to obtain the required financing from the market, but was unable to secure part or whole of the required financing.

(54) In light of the above elements, the Commission concludes that the current measure will not lead to undue distortions of competition. Therefore, the current measure facilitates the development of certain economic activities while not adversely affecting trading conditions to an extent contrary to the common interest, as required by Article 107(3)(c) TFEU.

4.4. Weighing up the positive effects of the aid with the negative effect on the internal market

(55) As described in recitals (33), (36) and (37), the Commission finds that the current measure contributes to the development of certain economic activities as required by Article 107(3)(c) TFEU. In comparison with these positive effects, the potentially negative effects on competition are limited, since the current measure will allow BPF to implement its activities in compliance with State aid rules, as described in recitals (40) to (50).

4.5. Conclusion on the compatibility of the current measure

(56) On the basis of the foregoing assessment, the Commission concludes that the current measure (i.e. the share capital increase of EUR 250 million) is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

5. DECISION

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)(c) of the Treaty on the Functioning of the European Union.

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: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
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Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION