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**Subject: State Aid SA.62229 (2022/N) – Malta
The Malta Development Bank**

Excellency,

1. PROCEDURE

- (1) On 24 August 2016, the Commission approved the Malta Development Bank's ("MDB") remit decision under number SA.39793 (2016/N)¹ ("the first remit decision") for a period of 3 years, i.e. until 31 August 2019.
- (2) A number of meetings and electronic mail exchanges took place between the Commission and the Maltese authorities in which information was requested and submitted between February 2019 and January 2021.
- (3) On 25 February 2021, the Maltese authorities sent a revised pre-notification document to the Commission. In follow-up of that document, a number of pre-

¹ Commission Decision C(2016) 5382 final of 24 August 2016 on State aid SA.39793 (2016/N) – Malta - The Malta Development Bank, OJ C 471, 16.12.2016, p. 5.

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notification contacts took place between the Maltese authorities and the Commission services between February 2021 and September 2022.

- (4) By electronic notification of 12 October 2022 the Maltese authorities notified to the Commission, according to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), new aid measures, alongside a modified set-up of the MDB’s remit of activities (“the notified measures”).
- (5) Malta exceptionally agrees to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958² and to have the present decision adopted and notified only in English.

2. DESCRIPTION OF THE MEASURES

2.1. Legal basis for the Malta Development Bank

- (6) The MDB is a body corporate having a distinct legal personality and was established by the Malta Development Bank Act (CAP 574 of the Laws of Malta) (“the Act”). The Act was passed on 5 May 2017, (through Act XXI of 2017) and came into force on 24 November 2017 through Legal Notice No 340 of 2017. It was subsequently amended by Legal Notices No 355 of 2017 and Act VII of 2019.
- (7) According to the Act, the MDB is a body corporate having a distinct legal personality and its operation is subject to the provisions of the Act. The operation of the MDB is furthermore regulated by the ‘Supervisory Board Regulations’ of the MDB, which is annexed to the Act as the Second Schedule. According to Article 35 of the Act, the supervising “*Minister shall have the power to determine by regulation that the Bank [MDB] shall be required to conform mutatis mutandis with certain banking supervisory laws and regulations, in whole or in part, in order to safeguard the conduct of proper business operations by the Bank*”.

2.2. The first remit decision

- (8) As stated in recital (1), the first remit decision expired on 31 August 2019. The main objective of this decision was to establish the MDB and to define its remit of intervention. The aid measures of the first remit decision included: (i) an initial share capital to be subscribed by the government amounting to EUR 200 million; (ii) government guarantees to be provided for funding purposes amounting to EUR 49 million and EUR 5.3 million arising from the government guarantee on the EUR 80 million of MDB loans and guarantee facilities, equivalent to the amount of capital that the MDB would have to hold against these facilities if they were not backed by the government guarantees; and (iii) an exemption from tax on the assets, property, income, operations and transactions of MDB amounting to around EUR 10 thousand; altogether (“the measures of the first remit decision”).
- (9) The maximum funding that could be provided by Malta to the MDB on non-commercial terms for the first three years of its operation, i.e. 2016 to 2019, via the measures of the first remit decision was around EUR 255 million.

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

- (10) The Commission’s decision not to raise objections for the measures described in Decision C(2016) 5382 covered the period between 24 August 2016 and 31 August 2019.

2.3. The objective of the notified measures

- (11) The main objective of the notified measures is to reinforce the operation of the MDB by providing more funding and to broaden its remit of intervention.
- (12) According to Malta, since its establishment, the MDB was engaged in a broad consultation process with potential stakeholders with a view to identifying gaps in the financing of viable and productive initiatives, exploring financing opportunities with financial intermediaries and other stakeholders and developing financial instruments to improve access to financing, particularly for small and medium-sized enterprises (“SMEs”) and infrastructure projects.
- (13) The MDB continues to aim to address market failures and has a twofold objective: (i) to improve access to finance for SMEs operating in Malta, particularly the smaller firms, those in innovative areas, and those in their early firm lifecycle; and (ii) to provide adequate funding for infrastructure projects of a public nature which contributes to important regional or national development particularly those having long-term maturity and lacking sufficient direct financial returns.
- (14) According to the Maltese authorities, the market in Malta does not secure the necessary funding in those particular instances as a result of various factors characterizing the Maltese economy including (i) its small size, (ii) the typical micro-size of firms (which are mainly family businesses), (iii) the lack of alternatives to bank financing (often based on a collateralized model) and (iv) the under-capitalisation of companies located in Malta.
- (15) The higher risks related to the type of companies and projects targeted by the MDB are mainly perceived to be associated with the following aspects:
- (i) a lack of collateral;
 - (ii) a long processing period for obtaining loans;
 - (iii) lack of credit history;
 - (iv) innovative business;
 - (v) under-capitalisation of companies located in Malta.
- (16) The operation of the MDB within the extended remit is considered by the Maltese authorities to be the best approach to improve the supply of investment finance in the areas affected by market failures. The MDB is also expected to play an important role in catalysing long term finance and supporting economic development in Malta.
- (17) The MDB will promote entrepreneurship, innovation, investment, and sustainable economic growth by filling financing gaps through various initiatives and tools. In filling the SME financing gap, the MDB will continue to develop broad guarantee schemes as well as provide tailored facilities for specific projects. MDB’s facilities

to fill the infrastructure financing gap will take the form of direct lending and co-lending with commercial banks.

- (18) The MDB also aims to play a critical role as an enabler in bridging social gaps as well as gaps in horizontal sectors such as digital and green transition to help the country achieve very ambitious targets. This is also applicable to other priority areas such as social investment and upskilling. In addition, subject to public policy, the MDB will provide a counterbalance to the decline in commercial banking activity during a downturn in economic activity or during periods of higher risk aversion in the banking sector.

2.4. The granting authority

- (19) The aid granting authority is the Ministry for Finance and Employment.

2.5. Duration and review clause

- (20) The legal base does not determine a concrete duration for the MDB. However, the Maltese authorities seek the Commission's approval for the MDB's activities and aid measures for a period starting from the adoption of this decision and ending on 31 December 2027. Any prolongation should be notified to the Commission sufficiently in time and approved before the expiry of the authorisation in this decision on 31 December 2027.

2.6. The notified measures

- (21) According to the Maltese authorities, the total additional funding (compared to the EUR 255 million funding approved in the first remit decision³) that may be provided by Malta to the MDB on non-commercial terms for its operation in the form of guarantees and tax measure for the period ending 31 December 2027 is EUR 422.9 million, consisting of EUR 409 million government guarantee on the MDB borrowings, EUR 12.9 million of State guarantees on the MDB assets and EUR 1 million aid in the form of tax benefits.
- (22) The notified measures take the following forms: (i) government guarantees for the liabilities of the MDB (i.e. borrowings of the MDB to fund its operations), (ii) government guarantees for the assets of the MDB, and (iii) an exemption from tax on the assets, property, income, operations and transactions of the MDB ("tax measure").

Guarantees for funding purposes

- (23) The MDB is benefitting from an unconditional, irrevocable and a first demand government guarantee for funding purposes.

³ EUR 255 million consisting of (i) EUR 200 million authorised share capital of the MDB (of which by June 2022 EUR 60 million was paid); (ii) EUR 49 million in the form of guarantees for the funding of the MDB; EUR 5.3 million aid related to guarantees on the assets of the MDB; and EUR 0.7 million aid in the form of tax exemptions.

- (24) In particular, according to Article 5(1)(a) of the MDB Act, the government guarantee will cover all obligations of the MDB in respect of the following:
- (i) the aggregate of loans extended to the MDB;
 - (ii) debt securities issued by the MDB;
 - (iii) forward transactions or options entered into by the MDB;
 - (iv) other credits extended to the MDB;
 - (v) credits extended by licensed credit and financial institutions or other publicly-owned entities to third parties to the extent that the said transactions, options or credits are expressly guaranteed by the MDB.
- (25) For the first three years of the MDB's operation the maximum amount of government exposure arising from such guarantees was estimated to be approximately EUR 49 million⁴.
- (26) By 2027 the government guarantees on the MDB borrowings are projected at EUR 458 million of which EUR 387 million⁵ on bilateral loans from international institutions (such as the European Investment Bank ('EIB'), and Council of Europe Development Bank ('CEB')) or other foreign banks, like KfW Development Bank ('KfW'); and EUR 71 million on local bond issuance (assuming 20% of the projected EUR 355 million local borrowing would be covered by a Government guarantee). Compared to EUR 49 million government guarantees on the MDB borrowings included in the first remit decision, this means an increase of EUR 409 million.

Guarantees on assets

- (27) Where the MDB intends to operate on aided terms through loans, financing facilities and guarantees, the government may provide an asset guarantee⁶ instead of the capital that would be needed to be held by the MDB in line with capital adequacy requirements to grant those loans, financing facilities and guarantees. Such an arrangement will allow the MDB to avoid any obligation to hold a level of capital equivalent to its exposure pursuant to such loans, financing facilities and guarantees. The State guarantee will provide for more capital relief and lower provisions for expected credit losses. As a consequence, the MDB will be in a position to apply lower guarantee fees, lower interest rates and/or lower collateral requirements, passing on this benefit to the final beneficiary.

⁴ Which was equivalent to 20% of the total projected borrowing of EUR 245 million.

⁵ EUR 387 million corresponds to 100% of the total funding to be raised (EUR 387 million) from international institutions or other foreign banks.

⁶ Which shall be unconditional, irrevocable and at first demand.

- (28) Malta estimated that by 2027 the government guarantees on assets could reach up to EUR 228 million (equivalent to 28% of total direct lending of EUR 819 million). Malta has calculated in approximation an amount of EUR 18.2 million⁷ as the amount of aid arising from those guarantees, equivalent to the amount of capital that the MDB would have to hold to grant the budgeted loans, financing facilities and guarantees if they were not backed by the government guarantees. If the government guarantees are triggered, the equivalent-capital amount that the MDB should have held to grant those loans, financing facilities and guarantees has to be counted in the total budget of the MDB.
- (29) For the first three years of operation the guarantee on assets was estimated to reach up to an amount of EUR 5.3 million, therefore the additional aid is estimated to reach up to EUR 12.9 million.
- (30) Malta has committed not to provide asset guarantees for those activities for which the MDB will not operate on aided terms.

Tax measure

- (31) According to Article 32 of the Act “[t]he Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation under the Income Tax Act and duty on documents and transfers under any law for the time being in force”. VAT, however, is payable on relevant transactions. In view that the MDB is still in the capacity building phase, so far it has been experiencing operating losses (accumulated losses of EUR 3.7 million till end of 2021) and is not likely to operationally break even before 2023. The aid from the tax measure is therefore estimated to remain marginal, and not exceed EUR 1 million.
- (32) The corresponding aid from tax measures was estimated to be around EUR 0.7 million for the first three years of operation.

2.7. The set-up of the MDB, its legal status and purpose

- (33) According to Article 4 of the MDB Act, the MDB’s corporate purpose is that of supporting entrepreneurship and socio-economic development in Malta by the following:
- (a) providing promotional investment and financing, financial and advisory services;
 - (b) issuing securities or otherwise raising funds or capital in support of those services.

⁷ By way of example, if the MDB has provided a guarantee at a rate of 100% covering a EUR 29.30 million infrastructure loan portfolio, the maximum amount that the MDB may be liable pursuant to this guarantee is EUR 29.30 million (100% *EUR 29.30 million). In order to cover the EUR 29.30 million, the MDB would (in absence of a State guarantee) have had to hold EUR 2.34 million of capital (EUR 29.30 million * 8% depending on the risk weighting and capital requirements). As it is currently not required to do so, the EUR 2.34 million would be the equivalent aid in form of capital for this loan portfolio.

- (34) The MDB will, in general, act as a wholesale intermediary in coordination with and via commercial banks, private investors and other private financial intermediaries. A limited part⁸ of its activities will be performed directly on its own with the final beneficiary, meaning in turn that the MDB will, for the overwhelming part of its activities, provide financing indirectly to the final beneficiary or in conjunction with credit institutions.
- (35) With regard to the financial intermediaries that will be selected to act as the MDB's partners, the Maltese authorities have committed that the selection process of those intermediaries will be organised in an open, non-discriminatory and transparent manner.
- (36) With regard to the aided activities of the MDB, the Maltese authorities have committed that the financial intermediaries will not benefit themselves from such measures. The full pass-through of the advantage by the intermediaries to the final beneficiaries will be incorporated in the contractual arrangements between the MDB and the financial intermediaries and will be duly monitored to ensure compliance.
- (37) It is important to outline that even if the MDB has been intervening at "non-aided terms", i.e. on market terms, those interventions cannot be considered to be "commercial terms", as the MDB is not engaged in financing entities or projects which can obtain funds in the normal market. The MDB has not been competing with other banks as the MDB provides funding where market failure exists.
- (38) According to the Maltese authorities, the Minister responsible for the MDB is the Minister responsible for Finance and Employment ("the Minister"). The Minister ensures that the MDB complies with the Laws of Malta, the MDB's bye-laws and other regulations.
- (39) From an institutional point of view, the MDB takes the form of a body corporate with a distinct and autonomous legal personality. It is entirely State-capitalised, State-owned, and supervised by an autonomous supervisory board set up in terms of the MDB Act.
- (40) The MDB is not permitted to take retail deposits from the public. It is not envisaged that the MDB will take any deposits from institutional investors albeit there might be the possibility of some short/medium term borrowing from the interbank market.
- (41) The MDB's decision-making bodies are comprised of a Board of Directors, a Chairperson and a Chief Executive Officer.
- (42) The Minister has appointed a Supervisory Board to oversee the policy pursued by the management of MDB, the implementation of this policy and the general affairs of MDB. The Supervisory Board consists of a maximum of six members, one of whom is an officer from the MFSA, one from the Central Bank of Malta, one from the Ministry for Finance, one from the Ministry responsible for MDB and two independent members with regulatory and/or banking experience. The Supervisory

⁸ Direct financing on its own shall not exceed 25% of the overall lending of the Bank (Article 8(1) of the MDB Act).

Board has no executive powers whatsoever over MDB, its officers, management and employees.

2.8. Funding and profitability of the MDB

- (43) Apart from its initial funding, which has been provided by the government in the form of capital, part of the MDB's financial resources has been and will be borrowed from external creditors such as the KfW and the EIB through the issuance of bonds (with or without the backing of a government guarantee) and bilateral loans and, to a much lesser extent, by short term credits. The MDB will also use funds provided through the repayment of loans or guarantees made or returned to the MDB.
- (44) Although profitability is only a secondary objective, the MDB is expected to register an operating profit as from 2023 and be financially self-sustainable without having to rely on government subsidies or transfers for the funding of its operations.

2.9. The MDB's remit of activities and conduct of business

- (45) The MDB intervenes through the following instruments: loans, investments and guarantees, underwriting of securities, equity participation, hybrid instruments, and any other instruments as may be necessary to cover market gaps. All instruments to be implemented with the help of the notified measures will be compatible with the internal market pursuant to the General Block Exemption Regulation⁹ ("GBER"), the *de minimis* Regulations¹⁰, the Agricultural Block Exemption Regulation¹¹ ("ABER"), the Fishery Block Exemption Regulation¹² ("FIBER"), Guidelines on State aid for climate, environmental protection and energy¹³ ("CEEAG"), or any other State aid guidelines, or by way of a notification, unless offered on terms consistent with market conditions.

⁹ 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.

¹⁰ 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, OJ L 352, 24.12.2013, p. 1, as amended; 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, as amended; and 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, as amended.

¹¹ 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 on the Functioning of the European Union OJ L 193, 1.7.2014, p. 1.

¹² 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.

¹³ Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1.

- (46) The present decision does not assess the compatibility of the aid at the level of the final beneficiaries. Malta will have to verify that there is a legal basis that would allow the Commission to conclude on the compatibility of that aid and ensure notification of such aid, unless it is exempted from the obligation to notify.
- (47) Within that broad remit, the MDB will carry out both aided and non-aided (but not commercial) activities as explained in recitals (48) to (60) below.
- (48) First, the MDB will continue implementing State aid measures that are compatible under the GBER. Such measures will comply with all the requirements of the GBER. The market failure for those block-exempted measures is presumed. GBER measures include for example guaranteed co-lending schemes and SME Guarantee schemes.
- (49) With regard to investment aid to mid-caps¹⁴ and large companies, Malta considers that the following GBER provisions¹⁵ will be resorted to:
- (a) Articles concerning the regional investment aid, in particular Articles 13, 14, 15 and 16;
 - (b) Section 7 related to aid for environmental protection including Articles 36, 36b, 37, 38, 41, 42, 43, 47 and 48;
 - (c) Article 55 concerning aid for sport and multifunctional recreational infrastructures;
 - (d) Articles 56, 56b and 56c concerning investment aid and more specifically aid for maritime ports and for inland ports.
- (50) Where the intervention of the MDB is needed to bridge the investment gap, the investments examined in accordance to the GBER provisions listed in recital (49) will in particular include:
- (a) manufacturing-related investment and provision of industrial services and solutions to manufacturing operations – i.e. investment in the setup of manufacturing companies including the purchase of machinery or the construction of industrial parks;
 - (b) management of waste and other environmental solutions;
 - (c) development of digital services and systems intended for international markets;
 - (d) infrastructural projects for private schools;
 - (e) infrastructural projects for private retirement homes; and

¹⁴ Small mid-caps as defined in point 35(30) of the Risk finance guidelines, innovative mid-caps as defined in point 35(20) of the Risk finance guidelines.

¹⁵ In this context Malta pointed out that most of the projects undertaken by private investors in Malta do not exceed the thresholds as listed in Article 4 of the GBER.

- (f) infrastructure of sports facilities and recreational space.
- (51) Second, the MDB will implement measures in line with the *de minimis* Regulation.
- (52) Third, the MDB will provide financing facilities in terms of the agriculture and fisheries *de minimis* Regulations¹⁶, ABER and FIBER and other relevant agricultural and fisheries State aid regulations to address market failures that are faced by the agriculture and fisheries sectors and to incentivise food production.
- (53) Fourth, the MDB will implement measures that are compatible under the CEEAG. Most of the investments foreseen related to energy infrastructure and environmental projects are considered as falling within the category of being fully subjected to internal energy market legislation, where the market failures in terms of coordination problems are such that financing by means of tariffs may not be sufficient and State aid may be granted.
- (54) Malta submitted that it foresees supporting projects for energy infrastructure and environmental protection which mainly concern offshore electricity grids; gas pipeline and storage of gas; photovoltaic systems on factory roofs¹⁷; improvement of the energy and environmentally friendly performance of buildings; waste management systems and clean mobility¹⁸.
- (55) Fifth, the MDB will implement State aid measures which were approved by a Commission decision, as well as future measures to be notified and approved by the Commission, in line with applicable State aid rules, with respect to potential aid at the level of the final beneficiary. The market failure for those measures would have already been demonstrated at the time the respective Commission decision was taken or will have to be proven for future measures in the notification.
- (56) Sixth, the remit of the MDB will cover specific activities providing financing to SMEs on market economic operator (“MEO”) terms, i.e. terms consistent with market terms. To ensure that the MEO financing addresses SMEs access to finance market failures, the MDB’s MEO financing activities will target investments eligible under the GBER except for the conditions relating to aid intensities or notification thresholds. In particular the MDB will provide loans and guarantees on MEO terms to SMEs that fall within any of the categories defined in Articles 17 and 22 of the GBER. To ensure that financing is provided on MEO terms, Malta commits that it will either invest on *pari passu* terms with private investors; or if *pari passu* investments are not possible, the MDB will use one of the alternative

¹⁶ 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 190/45, 28.6.2014.

¹⁷ Normally the cost of such systems would be between EUR 1 million to EUR 5 million. Due to the capital cost involved at the outset, the feed-in tariff may not be considered as a sufficient incentive for the business concerned to go ahead with the investment. In addition, local banks may not be inclined to provide financial support based on future feed-in tariff income, even if the latter is secured by a contract. Hence, there would be the need for the MDB intervention.

¹⁸ Clean mobility for the acquisition and leasing of clean vehicles including private and commercial vehicles, retrofitting of vehicles such as changing petrol and diesel engines to gas, for the deployment of recharging stations for clean vehicles, and inland waterways.

methodologies referred to in the Commission Notice on the Notion of State aid¹⁹, such as benchmarking with private investments in a comparable situation. For loans for which there is no sufficient evidence to establish the precise level of their market-conform interest rate, the MDB will also use as market proxy the table with interest rates set out in the Commission Communication on the revision of the method for setting the reference and discount rates²⁰ or independent, third party advice on setting a market comparable rate for investment which a commercial operator would deem appropriate in the circumstances. In such cases, the MDB may also provide the full funding.

- (57) Seventh, the remit of the MDB will also include financing to infrastructure and other projects on MEO terms. The MDB's MEO financing activities will target infrastructure projects eligible under the GBER, except for the conditions relating to aid intensities or notification thresholds. To ensure that financing is provided on MEO terms, Malta commits that for each such project financed by the MDB, the participation of private investors will be at least 50% on *pari passu* terms with the MDB. Therefore the funding provided at MEO terms by the MDB will in principle be additional to the significant private funding.
- (58) Eighth, the remit of the MDB allows participation in EU Financial Instruments, such as under InvestEU²¹. Those EU Financial Instruments are included in the remit as they also target market failures (recital (13)) and pursue objectives set by the Commission. In those situations, the MDB will act as a vehicle to channel and manage EU funds, or as a co-investor. The MDB will also be able to act as a co-guarantor using its own resources to cover liabilities. When participating in EU financial instruments in these capacities, MDB will provide financing in compliance with *de minimis* regulations (recitals (51) and (52)), GBER, ABER, or FIBER (recitals (50) and (52)), existing aid schemes, or State aid guidelines (recital (55)) or in line with market terms, within the remit described in recitals (56) and (57).
- (59) Ninth, the MDB will provide financial and project advisory services, to any type of entity. To the extent that the provision of such services constitute State aid, MDB will provide such advisory services in accordance with the GBER and *de minimis* Regulation. The Maltese authorities have indicated that those types of activities will probably represent a relative small proportion of the MDB's total activities.
- (60) Tenth, the MDB may also be authorised by the Maltese government to act as an implementing body and/or agent in the development, implementation, distribution, administration, monitoring and operation of schemes and aid projects compatible with the purposes and policies of MDB that are in line with State aid rules.

¹⁹ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.

²⁰ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14/6, 19.01.2008 p. 6.

²¹ Regulation (EU) 2021/523 of the European Parliament and of the Council establishing the InvestEU Programme and amending Regulation (EU) 2015/1017, OJ L 107, 26.3.2021, p. 30.

- (61) In addition to the activities described in recitals (48) to (60) above, the MDB in 2020 was entrusted by the Government of Malta with a EUR 350 million Government guarantee to develop, administer and operate schemes under the Temporary Framework²² to support businesses impacted by the COVID-19 outbreak. Moreover, in 2022, this guarantee was utilised by Malta to entrust the MDB to develop, administer and operate urgent liquidity support schemes under the Temporary Crisis Framework²³ to assist businesses adversely impacted by the Ukraine/Russian crisis.
- (62) The MDB will apply, on all MEO activities, no-crowding-out measures²⁴ to ensure that only the SMEs and infrastructure projects which can prove they could not obtain sufficient market funding can receive funding from the MDB.
- (63) The MDB will keep the scope of its remit under regular review and in the event that private investment has been sufficiently leveraged in a particular area, so that there is no further need for the MDB to intervene, it will not introduce any further measures in relation to those areas.
- (64) The Maltese authorities have committed to notify and obtain prior Commission's approval before they introduce any new activity that falls outside the parameters of the MDB remit and in any case before 31 December 2027 to review the entirety of the remit under a new notification.

2.10. Operating principles

- (65) According to Article 14 of the MDB Act, the MDB is guided by sound banking principles in its operations, including paying due regard to prospects for the repayment of the loans and suitable compensation for risk.
- (66) The MDB will approve projects only if they are viable in nature. Moreover, companies in difficulty as defined in Article 2(18) of the GBER will not be eligible for support from the MDB unless specifically approved by the Commission.

2.11. MEO activities and no-crowding-out measures

- (67) To ensure avoidance of distortion of competition the MDB will intervene on MEO terms only when market funding is not sufficient or not available or only available on substantially unfavourable terms.
- (68) In particular, the MDB will apply the following no-crowding-out measures for its MEO activities catered for SMEs:
- (a) the MDB will require the MDB investees to demonstrate that they tried to obtain the required financing from the market but were unable to secure part or whole of the required financing. Such 'investees' will have to provide the MDB with documentary evidence that at least two market operators did not provide them with the required financing or quoted interest charges and

²² Communication from the Commission on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91 I/1, 20.3.2020, p. 1, as amended.

²³ Communication from the Commission on the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 426/1, 9.11.2022, p. 1.

²⁴ See section 2.11 of this decision.

other terms, which were significantly out of line from prevailing market rates for comparable operations;

- (b) if market operators were prepared to provide only part of the required funding, the pricing of any supplementary financing by the MDB to meet the funding gap will not be more favourable than the pricing of the most onerous market operator that was prepared to provide (insufficient) funding;
 - (c) in the event that it is not feasible for the MDB to match the interest charges quoted by the most onerous market operator because the latter was significantly out of line with prevailing market rates for comparable operations, the rate applied by the MDB will be equivalent to the weighted average of the rate quoted by other market operators;
 - (d) if market operators are not willing to provide any financing, the MDB will calculate a hypothetical market rate equivalent to the implied market rate, taking into account the average base rate of the banks plus an adequate risk margin that ensures that its pricing is at MEO terms;
 - (e) the MDB will ensure market conformity for the various instruments, including by observing the Reference Rate Communication²⁵ for loans and the Guarantee Notice²⁶ for guarantees.
- (69) With respect to the MDB's intervention in infrastructure projects at MEO terms, the MDB's financing policy will rely on the principle of additionality ("top-up" investment approach) by avoiding crowding out and working to 'crowd in'. The MDB will seek to always finance projects alongside private co-investors according to the following principles:
- (a) the MDB will intervene either directly or indirectly via financial intermediaries to incentivise private finance providers to provide more financing to infrastructure projects.
 - (b) the MDB will strictly adhere to its remit and will seek to complement private funding of at least 50% at *pari passu* terms in a given infrastructure project before it intervenes in this project as a lender of last resort. This implies that in order to close a funding gap for infrastructure, the following will be respected: i) the MDB will require financial intermediaries to demonstrate that they undertook to obtain the required financing from the market but were unable to secure more than 50% of the required total financing. Such financial intermediaries will have to provide the MDB with documentary evidence that at least two market operators did not provide them with the required remaining 50% of the total financing; (ii) the MDB will only contribute financing at the same terms and conditions as a private participation of at least 50% of the total financing. Alternatively, the MDB will finance infrastructure under the GBER or following an approval by the Commission decision.

²⁵ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6.

²⁶ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

- (70) In addition, the MDB will set up a monitoring procedure, which will serve the purpose of ensuring better oversight of infrastructure projects processed and approved. Through this monitoring procedure, a record will be maintained on the following information for each project financed on market terms: the beneficiaries, the size of the projects, the terms of financing, the private participation ratio, the proof of a funding gap in the private market and the necessity for the MDB's intervention. The demonstration that insufficient financing was available for a fully privately financed operation will include inter alia evidence supplied by market participants that are active in financing infrastructure projects (as described in recital (69)), the respective sector and market.

2.12. Reporting and Monitoring

- (71) In order to enable the Commission to monitor the implementation of this decision as well as related aid schemes and individual aid, Malta undertakes the following:
- (a) annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589²⁷;
 - (b) maintain for at least 10 years from the date of award of the aid (individual aid and aid granted under schemes) detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

3. POSITION OF THE MALTESE AUTHORITIES

- (72) Malta states that the scope of its notification is limited to the modified set-up of the MDB's remit of activities compared to the first remit decision and to the extended aid measures in its favour, namely the increased provision of the government guarantees and the tax measure. It does not encompass potential aid to projects/beneficiaries, financial intermediaries and/or co-investors that will be subject to an independent notification, if applicable.
- (73) Malta considers that the provision of the increased government guarantees as well as the tax measure constitute State aid to the MDB. However, it submits that the notified measures are compatible under Article 107(3)(c) TFEU, since they are aimed at a well-defined objective of common interest, they are necessary, appropriate and proportionate and have an incentive effect.
- (74) Accordingly, Malta is seeking the Commission's approval for the aid measures outlined in recitals (21) to (32) and for the remit of the MDB.

²⁷ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

4. ASSESSMENT OF THE EXISTENCE OF STATE AID

4.1. Legality

- (75) By notifying the notified measures before implementation, the Maltese authorities have fulfilled their obligation under Article 108(3) TFEU.

4.2. Existence of State aid under Article 107(1) TFEU

- (76) 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.”*
- (77) The Commission will therefore assess in the following recitals whether the measures fulfil the following criteria laid down in Article 107(1) TFEU, namely whether: (i) the measures are granted by a Member State or through State resources; (ii) the measures confer an advantage to certain undertakings or the production of certain goods; (iii) those measures are selective; and (iv) the measures distort or threaten to distort competition and have the potential to affect trade between Member States.
- (78) As noted in recital (46), this decision assesses only the existence of aid to the MDB itself (“level I aid”). Whether the MDB’s interventions provide State aid to the final recipients, financial institutions and co-investors (“level II aid”) is not within the scope of this decision. To the extent that MDB’s activities constitute level II aid, this aid will be subject to a separate notification and separate decision(s) of the Commission or will be block-exempted from the obligation to notify to the Commission in accordance with the applicable legal provisions.
- (79) As the notified funding of approximately EUR 422.9 million in the form of State guarantees will be provided directly by the Maltese government to the MDB, the Commission concludes that the envisaged measures stem from State resources.
- (80) As regards the tax measure, the tax revenue foregone by the State also constitutes a loss of State resources. Therefore, the condition of State resources is fulfilled also for that measure.
- (81) With respect to EU Financial Instruments, resources coming from the Union are considered as State resources if national authorities have discretion for the use of those resources (in particular the selection of beneficiaries).
- (82) The State’s intervention is considered to confer an economic advantage within the meaning of Article 107(1) TFEU if it would not have been provided by a market economy operator under the same market conditions.
- (83) As regards the guarantees provided to the MDB by the Maltese government, the Commission notes this will be done on non-commercial terms, i.e. the guarantees are provided without remuneration (guarantee fee) or, if there is one, then it is below market level. Therefore, a market economy operator would not have provided guarantees on along those terms. As a result, the Maltese government is

not acting as a market economy operator. Therefore, the State guarantee provided to the MDB constitutes an advantage for the MDB.

- (84) As regards the tax measure, the Commission cannot exclude that such an arrangement confers an economic advantage to the MDB which will exercise economic activities. Specifically, the measure enables the MDB to potentially enlarge its reserves and to thus reinforce its capital position, whereas other undertakings operating under normal market circumstances would be taxed. Therefore, the tax measure provided to the MDB constitutes an advantage for the MDB.
- (85) The Commission notes that both measures are selective in nature as the increased State guarantees and the tax measure are provided only to the MDB and therefore confer an advantage only to the MDB.
- (86) The measures must be likely to distort competition and affect trade between Member States. As the MDB will provide financing for SMEs and infrastructure projects, it could enter into competition with other financial institutions in the market. Financial services are global markets and by their nature affect trade between Member States. Therefore this condition is fulfilled.

Conclusion

- (87) On this basis, the Commission considers that the measures consisting of an increased funding of up to EUR 422.9 million to the MDB involve State aid, within the meaning of Article 107(1) TFEU.

5. ASSESSMENT OF THE COMPATIBILITY OF THE NOTIFIED MEASURES

5.1. Scope and legal basis for assessing the compatibility: Assessment under Article 107(3)(c) TFEU

- (88) As mentioned in recital (21), the notification relates to the modified set-up of the MDB's remit of activities in comparison to the first remit decision and aid measures in its favour, namely the increased provision of the government guarantees and the tax measure, which constitute State aid within the meaning of Article 107(1) TFEU. Therefore, the Commission has assessed the State aid compatibility of those measures only. The existence of aid and the compatibility of aid at the level of co-investors, financial institutions acting as intermediaries and final beneficiaries are outside the scope of this decision.
- (89) 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.
- (90) The Commission has examined whether any specific legal act governing State aid could be applicable to the measure, and has concluded that the notified measures do not fall within any existing Commission Communications, Guidelines or Frameworks setting out the rules implementing Article 107(3)(c) TFEU.

- (91) In light of the above, the Commission will assess the notified measures directly under Article 107(3)(c) TFEU, following the Commission’s extensive case practice in the field of development banks²⁸.
- (92) In particular, the Commission will analyse whether the notified measures contribute to facilitating the development of an economic activity and at the same time avoid undue negative effects on competition and trade between Member States. In the below, the Commission will assess whether the notified measures correspond to these criteria.

5.2. Facilitating the development of an economic activity

5.2.1. Identifying the economic activity supported by the aid

- (93) As described in sections 2.3 and 2.9, the MDB 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.

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

- (94) Under Article 107(3)(c) TFEU, the measure must facilitate the development of a certain economic activity²⁹.
- (95) The MDB’s main objective is to overcome market failures, which impede the growth of the Maltese economy, by means of targeted funding (see sections 2.3 and 2.9). As mentioned in recital (13), the notified measures’ aims are as follows: (i) to improve access to finance for Maltese SMEs, particularly the smaller firms, those in innovative areas, and those in their early firm lifecycle; and (ii) to provide adequate funding for infrastructure projects of a public nature, particularly those having long-term maturity and lacking of any direct financial returns. As noted in recital (13), the intended MDB’s funding is expected to facilitate access to finance, particularly for SMEs active in innovative areas and early firm lifecycle and for infrastructure projects of a public nature which contribute to important regional or national development.
- (96) In that respect, the Commission has examined whether the State guarantees to the MDB and the tax measure will create an incentive effect for the MDB to carry out financing that it would have not carried out in the absence of these measures. The Commission considers that in the absence of the aid (i.e. the guarantees provided

²⁸ 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 Decision of 5 November 2020, SA.54780 Scottish National Investment Bank, United Kingdom, OJ C 439, 18.12.2020, p. 1.

²⁹ Case C-594/18 P *Austria v Commission* EU:C:2020:742, paragraphs 20 and 24.

by the State of Malta and the tax measure), the MDB would not be able to engage in the additional financing activities, which in turn support *inter alia* the economic activities described in section 2.3. The Commission notes that the MDB's financing activities aim to address market failures or suboptimal investment situations (recitals (13) to (18)).

- (97) Against this background, the notified measure in favour of the MDB can be considered necessary for the effective facilitation of the development of the MDB's economic activity (recital (33)).
- (98) The interventions to be carried out by MDB (level II aid) aim at the development of economic activities within the Maltese economy. Therefore the notified measures in favour of MDB (level I aid) will facilitate the development of the economic areas (recitals (48) to (61)) through increasing MDB's capacity to provide financing.
- (99) In light of these elements, the Commission considers that the notified measures in favour of the MDB facilitate the development of certain economic activities as required by Article 107(3)(c) TFEU.

5.2.3. The aid complies with relevant EU laws

- (100) The Commission is not aware of any breach of other relevant Union law provisions concerning the notified measures.

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

5.3.1. Markets potentially affected by the aid

- (101) As stated in recital (13), the activities of the MDB address market failures by providing financing and facilitating the access to finance. As described in recital (13) and section 2.9, the MDB's remit covers a variety of economic sectors, projects and categories of beneficiaries, in particular SMEs. All of those sectors, projects or undertakings face difficulties in obtaining sufficient financing due to market failures such as externalities or asymmetric information. As noted in recital (48), the market failures addressed by Malta are presumed by the GBER, ABER and FIBER, are in line with other State aid regulations and guidelines, or will be assessed by the Commission when examining a notified measure, where applicable.

5.3.2. The aid measures minimise the distortions on competition and trade

Necessity

- (102) Effectively facilitating the development of an economic activity is a legitimate goal of an aid measure such as the State providing guarantees in favour of its development bank³⁰, whenever its activities address market failures.

³⁰ See decisional practice in recital (91).

- (103) With respect to MDB's provision of financing in compliance with the GBER, ABER and FIBER (recitals (50) and (52)), the existence of market failures in specific areas and the necessary but limited degree of public support, are defined and recognised by these regulations.
- (104) In case of notified State aid, the Commission, when approving such aid, verifies the necessity and the existence of market failures identified in the relevant State aid framework such as the applicable guidelines (see recital (55)). Therefore, there will be no need to re-notify the remit of MDB when already approved aid measures are added to MDB's activities.
- (105) In case of activities on MEO terms, these activities will only address the market failures identified by the GBER (see recitals (56) and (57)). These activities will target exclusively undertakings that are eligible for State aid under the respective provisions of the GBER. The GBER defines areas in which the Commission recognises the existence of market failure, therefore implying the existence of such market failures.
- (106) To the extent that the financing falls under the GBER, ABER, FIBER or an approved scheme (recitals (50), (51), (52) and (55)) or MEO activities of described in this decision (recitals (56) and (57)), the activities of MDB implementing EU financial instruments equally address market failures, with the same reasoning described in recitals (103) to (105).
- (107) The Commission values positively the fact that the Maltese authorities will review the remit of MDB on a regular basis as described in recital (63).
- (108) In light of the above, the Commission concludes that the remit of the MDB is limited to activities that address market failures. The notified measures are necessary to enable MDB to contribute to the development of such activities.
- (109) Finally, MDB may also provide financing and co-financing under the *de minimis* regulations, including connected to EU financial instruments (recitals (51) and (52)). This limited amount per undertaking is not liable to affect competition or trading conditions between Member States. The Commission considers that the fact that MDB also carries out activities under the *de minimis* Regulation does not alter the Commission's conclusion that the aid measures to MDB are necessary.

Appropriateness

- (110) The State aid measure must be an appropriate policy instrument to facilitate the development of a certain economic activity. In the first remit decision, the Commission concluded that creating a development bank with the remit of the MDB with the help of the capital provided was an appropriate tool to address the identified market failures (recitals (8) and (9)).
- (111) The objective of the notified measures is to enable MDB to expand the scope of its economic development activities. Given the extended mandate of the MDB and considering the fact that the share capital authorised previously has not yet been fully paid in (see footnote 3), the Commission considers that the provision of funding in the form of State guarantees and tax exemption is the most appropriate to increase the financing capacity of the MDB.

- (112) The Commission also considers that the notified measures to MDB are appropriate as MDB's activities are limited to addressing market failures and therefore limiting potential distortion of competition. The notified measures are accompanied by measures not to crowd out competing providers of financial services.
- (113) Therefore, the Commission concludes that the notified measures are appropriate tools to address the identified market failures and to facilitate the development of a certain economic activity, as assessed in section 5.2.1.

Proportionality

- (114) 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.
- (115) The Commission notes that the objective of the notified measures is to finance the aided activities of MDB. These aided activities will be deemed proportionate, either because they will be based on one of the block-exemption regulations, or on the basis of the *de minimis* regulations, or in a Commission decision authorising notified aid.
- (116) With regard to the MEO measures, the Commission notes that since those interventions are limited to addressing established market failures (recitals (56) and (57)) and since MDB will respect the non-crowding out measures (recitals (67) to (69)), the financing provided by MDB can be deemed proportionate to the established needs. In turn, the aid measures in favour of MDB are therefore proportionate.
- (117) In light of those elements, the Commission concludes that the notified measures in favour of the MDB are proportionate.

Transparency

- (118) 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 the MDB as described in recitals (70) and (71) is considered an appropriate tool in this respect.

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

- (119) 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.
- (120) The establishment of the MDB has limited crowding out risk for a number of reasons. In particular, all interventions carried out by the MDB at the level of final beneficiaries will limit potential negative effects on competition to the minimum. More specifically, where the MDB conducts its activities in line with State aid rules, this by itself ensures that potential negative effects are limited to the minimum. Moreover, the MDB's financing activities on MEO terms will be subject to no-crowding-out measures (recitals (67) to (70)), whereby the MDB intervenes only when market funding is not sufficient or not available. This will be ensured

by a set of mandatory steps that the MDB 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.

- (121) In light of the above elements, the Commission concludes that the notified measures will not lead to undue distortions of competition. Therefore, the notified measures facilitate 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.

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

- (122) As described in recitals (94) to (99), the Commission finds that the notified measures contribute 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 notified measures will allow the MDB to implement its activities in compliance with State aid rules, as described in recital (101).

5.5. Conclusion on the compatibility of the notified measure

- (123) On the basis of the foregoing assessment, the Commission concludes that the notified measures (i.e. the State guarantees and tax measure of EUR 422.9 million) are compatible with the internal market pursuant to Article 107(3)(c) TFEU.

6. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified measures 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:

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Directorate-General Competition
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B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

