

30 March 2026

EAPB comments on the EC Guarantee Notice

The Guarantee Notice of 2008 ('the Notice') aims to give Member States more detailed guidance about the principles on which the Commission intends to base its interpretation of Articles 87 and 88 and their application to State guarantees.

In order to facilitate the assessment of whether the market economy principle is fulfilled, Section 3.2 of the Notice sets out four cumulative conditions, the fulfilment of which will be sufficient to rule out the presence of State aid. The Notice states in support of condition 3.2(c) that the guarantee does not cover more than 80% of the outstanding loan :

"if a financial obligation is wholly covered by a State guarantee, the lender has less incentive to properly assess, secure and minimise the risk arising from the lending operation, and in particular to properly assess the borrower's creditworthiness. Such risk assessment might, due to lack of means, not always be taken over by the State guarantor. This lack of incentive to minimise the risk of non-repayment of the loan might encourage lenders to contract loans with a greater than normal commercial risk and could thus increase the amount of higher-risk guarantees in the State's portfolio."

We ask the Commission to reconsider condition **3.2(c)** and clarify par. **3.6** for the following reasons:

1. No clear linkage to the objective of State Aid rules

The objective of State aid rules is to prevent the distortion of competition. We therefore note that the concern raised by the EC that a full guarantee may incentivize risk taking by lenders is not a concern which falls in the scope of State aid rules.

2. No lack of incentive

Article 194 of the Capital Requirements Regulation No 575/2013 dated 26 June 2013 obliges banks to undertake a full credit risk assessment of the guaranteed exposure, meaning a credit risk assessment of the exposure ignoring the guarantee.¹ This mandatory full credit risk assessment also means that the words 'not always be taken over by the State' in the next sentence do not apply. Taken over means after all that you take over what has not been undertaken by another, which is not the case.

3. What matters for the MEI-test is only if the State acted like a market economy investor (MEI)

For the assessment of the MEI-test which the EC seeks to clarify to avoid any doubts it does not matter whether the risk assessment 'might not always be taken over' or undertaken by the State, but only if in the specific case at hand the State acted like a MEI with regard to the

¹ Notwithstanding the fact that credit risk mitigation has been taken into account for the purposes of calculating risk[1]weighted exposure amounts and, where applicable, expected loss amounts, institutions shall continue to undertake a full credit risk assessment of the underlying exposure and be in a position to demonstrate the fulfilment of this requirement to the competent authorities

guarantee. To determine whether a market oriented price is paid for the guarantee, the State must take into consideration all that is mentioned under condition 3.2 (d) of the Notice. This includes the security given by the borrower, the probability of default and other economic conditions. If that assessment is done in the case at hand, it is not relevant if the risk assessment 'might not always' be taken over.

4. The State, acting as a MEI, can grant a loan up to the full 100% without state aid issues

Furthermore, we would like to point out that as an alternative to providing a guarantee for a loan granted by a third party, the State may provide a loan directly to the borrower on market terms². The position of the borrower and the governments risk position on borrower is exactly the same: the borrower obtains a loan on market terms and the government carries the risk. When providing a direct loan the 80% requirement is not applicable. It is difficult to see why, because of the same position of the borrower and the same risk position for the government, this should be the case for a loan for which a government provides a guarantee.

5. Notification only if all cumulative condition of article 107 of the Treaty are met

Finally we would like to address par. 3.2 (c) of the Notice stating that if a State wishes to provide a guarantee above the 80 % threshold and claims that it does not constitute aid, it should duly substantiate the claim, for instance on the basis of the arrangement of the whole transaction, and notify it to the Commission so that the guarantee can be properly assessed with regards to its possible State aid character.

The underlined words and the cumulative nature of the conditions suggest that a government guarantee covering more than 80% of a loan must always be notified to the EC. This would be inconsistent with the case law that the notification obligations provided for in Article 108(3) of the Treaty only apply if all the cumulative conditions for state aid in Article 107 have been met. Because the cumulative conditions for state aid are not met when the State guarantor acts as MEI, it would be helpful to clarify for the avoidance of doubt at the end of par. 3.6 that the Notice is without prejudice to Article 108(3) of the Treaty and that notification only applies if all cumulative conditions for state aid have been met, and not (in line with par. 3.1 that state guarantees which don't bring any advantage to an undertaking constitute no state aid) when the State without any doubt acts as MEI.

Another issue our members have encountered in practice concerns lenders as potential aid beneficiaries. It would be helpful to clarify that where the lender's activities constitute non-economic activities, the lender cannot be an aid beneficiary of a public guarantee. These concerns are further highlighted here.

² This can be done through State resources or by borrowing the loan from a lender. In both cases there is no credit assessment of the undertaking and the risk assessment must then indeed be taken over by the State.

Need for simpler and more proportionate methodologies

Furthermore, we would like to note that, following the Guarantee Notice of 2008, increasingly sophisticated calculation methodologies have been approved, characterized using advanced market parameters and complex statistical models, leading to a significant increase in administrative burdens. The external study commissioned by the European Commission³ from independent experts has raised concerns about these methodologies. Therefore, we believe that the revision of the Guarantee Notice should be based on the principles of proportionality and simplification, calibrating the level of complexity of the methodologies according to the size of the beneficiary company, the amount of the financial operation, and the availability of objective and accessible data and information.

To this end, we propose that the new Notice provide guidelines for different methodologies:

- Simplified methodologies (as safe-harbour premiums) based on standardized parameters (such as rating classes and minimum premiums), to be applied primarily to SMEs, Small Mid-Caps, and transactions of small amount (e.g. up to 5 million euros).
- Risk-based methodologies, based on a simplified structure of the guarantee premium (costs of normal risks, administrative costs of a scheme and yearly remuneration of capital), generally applicable also to mid-cap enterprises and transactions of larger amounts, without systematic use of complex methodologies.
- More sophisticated methodologies, based on market indicators (such as credit default swaps or synthetic indices) or complex statistical models, which are to be considered optional, do not constitute the standard of reference, and are applicable exclusively to transactions of higher amounts—generally exceeding 10 million euros—and in any case only where there is adequate data availability. Below this threshold, the use of more sophisticated methodologies does not appear proportionate to the nature of the transactions and entails unjustified administrative burdens and costs.

In addition to these considerations, the European Commission should in any case establish rules for a safe-harbour premiums or a simplified methodology to calculate the GGE guarantees for large enterprises or, at the very least, for mid-cap and small-mid-cap enterprises.

About the risk of aid to lenders, it would be appropriated that the new Notice clarify the conditions under which such risk can be considered excluded, particularly in cases of adequate risk-sharing, proper remuneration of the guarantee, while avoiding excessively complex verification mechanisms.

Moreover, considering the introduction of increasingly sophisticated financial instruments, we suggest retaining the specific provision concerning debt securities, already included in the 2008 Notice, confirming that the percentage of coverage limitation does not apply to guarantees for such transaction's instruments. In line with this consideration, it would be appropriate to maintain at least the definition of "debt securities" set forth in Article 2(1)(b) of Directive 2004/109/EC even though this definition should clearly refer also to bonds (e.g. mini bonds). This provision would be useful to

³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, Brussels, 13.10.2025 SWD(2025) 330 final.

ensure the full functioning of financing instruments alternative to bank credit, which are playing an increasingly important role in supporting enterprises investment.

Finally, we believe that where a State guarantee has been granted initially under an approved State aid scheme (including de minimis), the extension of the guarantee's duration or the adjustment of its parameters as part of a bank-driven restructuring of the underlying loan should **not** constitute new State aid, provided that a) the modification is strictly necessary for the implementation of the restructuring; b) the revised maturity does not exceed the maximum maturity permitted under the original scheme; and c) that no terms more favorable than those applied at the time of the initial issuance of the guarantee are introduced. From the perspective of a newly established national promotional institution preparing to implement future guarantee instruments, clarity on this point is essential for ensuring predictable and efficient portfolio management. A clear provision would prevent divergent interpretations across Member States and reduce unnecessary administrative workload for schemes expected to cover large numbers of beneficiaries. Such a clarification would also ensure consistency with market-standard restructuring practices aimed at preserving value and support a more efficient and uniform application of the EU State aid rules.