**Question:**

*We would like to thank the Commission services team for the answer (of 23.06.2017) to the question related to Art. 4, para. 5 and Recital (19) of the Preamble of the Commission Regulation (EU) No 1407/2013. However, in order to ensure proper interpretation in our practice, it would be of great benefit to receive more detail on the following statement included in your answer:*

*“as provided for in Article 4(5) of that Regulation, the de minimis ceiling is respected for all single undertakings, meaning also on the level of co-investors (including fund managers co-investing)”.*

*In the context of your answer, does the public equity investment at the level of the financial instrument need to be within the thresholds specified in Article 4(5) of the Regulation? It is worthwhile noting that the public equity investment will be in the investment fund (the investment vehicle) and not in the equity of the fund manager?*

*For the sake of clear and objective illustration of the combination of state aid regimes we are exploring to apply in one of our products, we would like to specify that they are consistent with the approach applied in the Call for Expression of Interest No. JER-009/8 to select Financial Intermediaries that will receive resources from the reflows of the JEREMIE Holding Fund for Bulgaria to implement Early Stage Fund(s) with an Acceleration Compartment. EIF is duly mandated to manage this Call, where the indicative public funding foreseen is EUR 40m and the fund manager will be required to commit at least 2% of the total fund size (at pari passu terms). The Summary of Transactions Terms in Annex II of the Call, provides for the following state-aid relevant details:*

-     *Investments of up to EUR 200,000 are subject to the state aid regime defined by Commission Regulation (EC) No 1407/2013.Investments and Follow-on Investments above EUR 200,000 and up to EUR [1,500,000] p.a. are subject to art. 2.1.1 of the Guidelines on State aid to promote risk finance investments (2014/C 19/04)Each investment or Follow-on Investment exceeding EUR 200,000 requires at least 30% private co-investors at the Eligible SME underlying level in accordance with art. 2.1.1 (31 to 35) of the Guidelines on State aid to promote risk finance investments (2014/C 19/04). JHF [a company wholly-owned by EIF] could be the only investor in the Fund besides the management team own commitment.*

*То conclude the argument, do you think a structure consistent with the one objectively described above could be considered compliant with the concept presented in your answer?*

**Reply:**

*1) The public equity at the level of the fund does not have to be within the thresholds specified in Article 4(5) of the Regulation if there is no aid to the co-investors in the fund. In the case at hand, based on the information provided, the public equity will be co-invested with the fund manager on pari passu terms, i. e. it does not appear to confer an advantage on the fund manager.*

*2) From the information provided above, we understand the following:*

*Investments below EUR 200,000 would be made in line with the de minimis regulation. This means, the investments would not be market-conform and confers an advantage on the target recipients, however, the advantage does not constitute State aid (it is de minimis aid).*

*investments above EUR 200,000 would be made on pari passu terms with private co-investors on a project-by-project basis. Provided the public investment is carried out* pari passu *with min 30% genuine independent private investors in line with point 2.1.1 of Risk Finance Guidelines and 4.2.3.1(i) of the Notice of the Notion of Aid, it could be considered market-conform. However, it market-conformity cannot be ensured, it must be designed in line with the risk finance rules (the GBER or the Risk Finance Guidelines).*

*As a general principle, it is possible to have a construction whereby some investment activities of the fund are carried out on market terms and others not, in which case this may constitute State aid (unless it is de minimis aid) and need to comply with the relevant State aid rules.*

Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.