

## ÁLLAMI TÁMOGATÁS – EGYESÜLT KIRÁLYSÁG

### Támogatás C 17/04 (ex N 566/03) – „Enterprise Capital Funds (ECF's)”

#### Felhívás az EK-Szerződés 88. cikk (2) bekezdése alapján megjegyzések benyújtására

(2004/C 225/02)

(EGT vonatkozású szöveg)

A Bizottság, az ezen összefoglalót követő oldalakon található és az ügyre vonatkozó hiteles nyelven megfogalmazott, 2004. május 7-én kelt levele útján értesítette az Egyesült Királyságot arról a döntéséről, hogy a fent említett támogatási program tekintetében kezdeményezi az EK-Szerződés 88. cikk (2) bekezdésében meghatározott eljárást.

Az érdekelt felek azon intézkedéssel kapcsolatban teendő megjegyzéseiket, amelyek tekintetében a Bizottság az eljárást kezdeményezi, ezen összefoglaló és az alábbi levél közzétételének napjától számított egy hónapon belül nyújthatják be az alábbi címre:

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E megjegyzéseket továbbítjuk az Egyesült Királyságnak. A megjegyzéseket benyújtó érdekelt fél azonosságának bizalmas kezelését írásban, a kérés indokainak megjelölésével kérheti.

#### AZ ÖSSZEFOGLALÓ SZÖVEGE

2003. november 25-i, a Bizottságnál 2003. november 26-án nyilvántartásba vett levelükkel az Egyesült Királyság hatóságai az EK-Szerződés 88. cikk (3) bekezdése értelmében értesítést adtak a „Vállalkozási Tőkealapok” (ECF) programról. A D/58191 számú, 2003. december 19-i levelével a Bizottság további információkat kért a fent említett intézkedést illetően. Az Egyesült Királyság hatóságai ezen információkat 2004. január 30-i és 2004. március 19-i leveleikben nyújtották be, amelyeket a Bizottságnál 2004. február 3-án és 2004. március 25-én vettek nyilvántartásba.

##### 1. A program célkitűzése

A program célja, hogy javítsa a kis- és középvállalkozásoknak (KKV-k) a növekedést segítő tőkéhez való hozzájutását az Egyesült Királyság egész területén. A 250 000 GBP (357 000 EUR) és 2 millió GBP (2,9 millió EUR) összeghatár közötti kezdőtőke finanszírozást kereső KKV-k engedéllyel rendelkező ECF-eket keresnek meg, amely tőkealapokat a szóban forgó program alapján hoznak létre. Az engedélyezési folyamatot az Egyesült Királyság Kereskedelmi és Ipari Minisztériumának Kisvállalkozási Osztálya felügyeli majd.

##### 2. A program kedvezményezettjei

A program kizárólag a tőzsdén nem jegyzett kis- és középvállalkozásokat<sup>(1)</sup> célozza meg az Egyesült Királyságban. A „nehézséggel küzdő cégek megmentése és átszervezése céljából nyújtandó állami támogatásokra vonatkozó közösségi iránymutatásokban”<sup>(2)</sup> meghatározott nehézséggel küzdő cégek ki

<sup>(1)</sup> A kis- és középvállalkozások Egyesült Királyság hatóságai által a program céljaira alkalmazott meghatározása mindig összhangban van az EK-Szerződés 87. és 88. cikkeinek a kis- és középvállalkozások részére nyújtott állami támogatásokra történő alkalmazásáról szóló 70/2001/EK bizottsági rendelet (HL L 10., 2001.1.13., 33. o.) I. mellékletében megadott meghatározással.

<sup>(2)</sup> HL C 288., 1999.10.9., 2. o.

vannak zárva a befektetésből. Az ECF-ek nem fektetnek be az állami támogatások korlátozásai alá eső érzékeny ágazatokba vagy olyan ágazatokba, amelyekre „Az állami támogatásokról és a kockázati tőkéről szóló bizottsági közlemény”<sup>(3)</sup> nem alkalmazandó.

##### 3. A program finanszírozása

A bejelentés szerint a programnak középtávon önfelfinanszírozónak kell lennie. A program kezdeti elszámolása tekintetében az Egyesült Királyság egy meghatározott összeget [...] (\*) irányított elő a kezdeti tőkeáttétel cash-flow költségeinek fedezetére.

##### 4. A program időtartama

Az Egyesült Királyság a jóváhagyást 10 éves kezdeti időszakra kéri.

##### 5. A befektetési eszközök

Az ECF számára előírják majd, hogy a kis- és középvállalkozásokba tulajdoni részesedést megtestesítő eszközök, vagy kvázitulajdoni részesedést megtestesítő eszközök útján fektessenek be.

##### 6. A támogatás kumulálódása a program keretében

Az Egyesült Királyság hatóságai elkötelezték magukat arra, hogy a kedvezményezett KKV-k egyéb közpénzekből finanszírozott támogatásokra, kölcsönökre, vagy a befektetési támogatás ezen értesítés hatályán kívül eső egyéb formáira szóló jogosultsága az egyébként megengedhető támogatási intenzitásnál 30 %-al kisebb mértékre korlátozódik majd.

<sup>(3)</sup> HL C 235., 2001.8.21., 3. o.

(\*) A támogatás összege üzleti titok részét képezi.



## A LEVÉL SZÖVEGE

„The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

## 8. PROCEDURE

By letter dated 25 November 2003, registered at the Commission on 26 November 2003, the UK authorities notified, pursuant to Article 88(3) EC, the »Enterprise Capital Funds« scheme. By letter D/58191 dated 19 December 2003 the Commission requested additional information concerning the above-mentioned measure. This information was submitted by the UK authorities by letter dated 30 January 2004 and letter dated 19 March 2004, registered at the Commission on 3 February 2004 and 25 March 2004.

## 9. DESCRIPTION OF THE AID MEASURE

## 2.1. General background of the scheme

## 1.1.1. Objective of the scheme

The scheme intends to improve access to growth capital for small and medium-sized enterprises (SMEs) throughout the UK. SMEs seeking to raise initial equity funding of between £ 250,000 (EUR 357,000) and £ 2 million (EUR 2.9 million) will approach licensed *Enterprise Capital Funds* (ECFs) to be set up under the scheme. The licensing process will be overlooked by the Small Business Service (SBS) of the UK Department of Trade and Industry.

## 1.1.2. Legal basis of the scheme

The legal basis of the scheme is section 8 of the »*Industrial Development Assistance Act 1982*«.

## 1.1.3. Beneficiaries of the scheme

The scheme is exclusively aimed at unquoted small and medium-sized enterprises <sup>(7)</sup> in the United Kingdom. Firms in difficulty as defined by the »Community guidelines on State aid for rescuing and restructuring firms in difficulty« <sup>(8)</sup> are excluded from investment. *Enterprise Capital Funds* (ECFs) will not invest in sensitive sectors under State aid restrictions or in sectors to which the »Commission Communication on State Aid and Risk Capital« <sup>(9)</sup> does not apply. Low-risk sectors including property, land, finance and investment companies, or finance-type leasing companies will not be eligible for investment under the scheme. *Enterprise Capital Funds* will also be prevented from investing in other ECFs.

## 1.1.4. Administration of the scheme

The UK Department of Trade and Industry (DTI) will have statutory responsibility through its executive agency Small Busi-

<sup>(7)</sup> The definition of small and medium-sized enterprises applied by the UK authorities for the purposes of the scheme is always in line with the definition given in Annex I to the Commission Regulation No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

<sup>(8)</sup> OJ C 288, 09.10.1999, p. 2.

<sup>(9)</sup> OJ C 235, 21.8.2001, p. 3.

ness Service (SBS). It will monitor ongoing investments undertaken by ECFs without having any direct control over ECFs' individual investment decisions. It will also ensure that each ECF complies with its business plan and adheres to the terms of its successful bid.

## 1.1.5. Funding of the scheme

The notified scheme is intended to be self-financing over the medium term. In terms of accounting for the scheme in its initial phase, the UK has allocated [...] <sup>(\*)</sup> to cover the cash-flow cost of the initial leverage.

## 1.1.6. Duration of the scheme

The UK seeks approval for an initial period of 10 years.

## 2.2. The mechanics of the scheme

## 1.1.7. The role of the Enterprise Capital Funds (ECFs)

The *Enterprise Capital Funds* (ECFs) foreseen under the scheme will combine private and public money for investment into SMEs. Following a licensing process attributing ECF status, the funds will then be entitled to receive public leverage at market rates or above.

## 1.1.8. Restrictions on public leverage and repayment obligations

Leverage to licensed *Enterprise Capital Funds* will be limited to no more than two times the private capital raised by the fund. The leverage, interest on the leverage and a profit-share for the public contribution will need to be repaid by the *Enterprise Capital Funds*, thereby ensuring that over the medium term the programme will be self-financing.

## 1.1.9. Minimising public intervention

The exact amounts of leverage, profit-share and repayment priorities will be determined by a competitive bidding process, thereby ensuring minimal public support to attract private capital. Open invitation for applications through publication of the scheme in the *Official Journal of the European Union* and the relevant trade press will safeguard this general principle. As part of applying for ECF status, applicants will be asked to specify how much leverage (maximum two times private capital) they wish to use, the profit share with the public and the prioritisation of repayments of:

- Interest on the leverage
- Leverage
- Private capital
- Profit distribution.

<sup>(\*)</sup> Business secret

### 1.1.10. Conditions for ECF eligibility

Potential ECF operators will be asked to submit a robust business plan including:

- The proposed management team, their relevant experience and evidence that they possess the competencies necessary to run an ECF effectively
- The amount of private capital to be raised and the intended sources of capital
- Evidence of investor interest for the proposed ECF business plan
- The proposed ECF's investment strategy, including the proportion of the fund which is intended to be invested in early stage and start up companies
- Repayment arrangements, including the sequencing of repayments of leverage, interest repayments on the leverage, profit distribution, as well as the public's profit share.

ECFs will be required to abide by British Venture Capital Association (BVCA) guidelines on accounting standards.

### 1.1.11. Assuring profit-driven investment decisions

The public administrative body will not accept bids in which the public leverage is exposed to greater risk than the private capital. At the same time, private investors in *Enterprise Capital Funds* may be exposed to greater downside risk than the public. This will ensure commercial best practice in the operation and decision making of the *Enterprise Capital Funds*.

### 1.1.12. Drawing down leverage

Once an *Enterprise Capital Fund* has been approved and has started to make investments, it will be eligible to receive public leverage in proportion to the amount of capital drawn down from private investors in the form of a participating stake in the *Enterprise Capital Fund*. The size of the leverage entitlement will be capped at up to two times the private capital committed for *Enterprise Capital Funds*.

### 1.1.13. Investments in SMEs

*Enterprise Capital Funds* will invest in eligible SMEs and will be allowed to participate in initial equity funding rounds of up to £ 2 million (EUR 2.9 million) in total. Follow-on investments will be permitted so long as the total equity funding raised by any beneficiary SME is no greater than the £ 2 million (EUR 2.9 million) limit. After a period of at least 6 months from the *Enterprise Capital Fund's* initial investment in an SME, follow-on investments in excess of the £ 2 million (EUR 2.9 million) limit will also be permitted where necessary to prevent dilution. This will be subject to an upper limit of 10 % of each ECF's committed capital that may be invested in any single company, to ensure a satisfactory level of portfolio diversity.

### 1.1.14. The investment instruments

*Enterprise Capital Funds* will be required to invest in small and medium-sized enterprises by means of equity or quasi-equity instruments.

## 2.2. Cumulation of aid under the scheme

The UK authorities have committed themselves that the beneficiary SMEs' eligibility for other publicly funded grants, loans or other forms of investment aid outside of this notification will be restricted by 30 % of the aid intensity that would otherwise be permissible.

## 10. ASSESSMENT OF THE SCHEME

In accordance with Article 6(1) of Council Regulation 659/1999 of 22 March 1999, the decision to initiate proceedings shall summarise the relevant issues of fact and law, shall include a preliminary assessment from the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

### 3.1. Legality

By notifying the scheme, the UK authorities respected their obligations under Article 88(3) EC.

### 3.2. Existence of State aid

The Commission considers, at this stage of the procedure, that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty. According to the provisions of the »Commission Communication on State Aid and Risk Capital«<sup>(10)</sup>, the assessment of the presence of State aid must consider the possibility that a measure may confer aid on at least three different levels:

- Aid to investors
- Aid to any fund or other vehicle through which the measure operates
- Aid to the companies invested in.

At the *level of investors*, the Commission considers that there is State aid within the meaning of Article 87(1) EC. The involvement of state resources is demonstrated by the fact that the UK authorities will provide up to two times the amount provided by private investors in *Enterprise Capital Funds* as public leverage. Private investors in *Enterprise Capital Funds*, who may be undertakings within the meaning of the EC Treaty, receive an advantage as the measure allows them to raise capital provided by the public. In the absence of public participation in the *Enterprise Capital Funds*, the private investors would not have been able to raise the same amounts of capital at the same conditions. Furthermore, in the case of profits earned by the *Enterprise Capital Funds*, private investors are entitled to higher returns than the public. Even though no person or organisation is debarred from investing in the funds, the limited size of the funds will not guarantee that all potential investment will be accepted and the Commission therefore considers that there is selectivity. Finally, the scheme affects trade between Member States, as investment in capital is an activity that is the subject of considerable trade between Member States.

<sup>(10)</sup> OJ C 235, 21.8.2001, p. 3.

At the *level of the fund*, the Commission in general tends to the view that a fund is a vehicle for the transfer of aid to investors and/or enterprises invested in, rather than being an aid beneficiary itself. However, in certain cases, notably measures involving transfers in favour of existing funds with numerous and diverse investors, the fund may have the character of an independent enterprise. Under the present scheme, the *Enterprise Capital Funds* will be newly created and will be prevented from diversifying into other activities than those intended by the scheme. The Commission therefore does not consider the *Enterprise Capital Funds* to be separate aid beneficiaries. This principle is in line with the Commission decisions on the »Viridian Growth Fund«<sup>(11)</sup>, the »Coalfields Enterprise Fund«<sup>(12)</sup> and the »Community Development Venture Fund«<sup>(13)</sup>.

At the *level of the companies* invested in, the Commission considers that there is State aid within the meaning of Article 87(1) EC as risk capital would not be available to SMEs in the same amounts and at the same conditions in absence of the scheme. The stated objective of the scheme is to extend the opportunity to access risk capital to SMEs in the United Kingdom and the scheme is therefore considered to be selective.

### 3.1. Preliminary assessment of conformity of the measure

#### 1.1.15. Conformity with the positive elements of the Commission Communication

##### 1.1.15.1. Restriction of investments

ECFs will be restricted to investments in small and medium-sized enterprises within the Commission definition. In addition, there will be restrictions preventing investments within specified sectors, including low risk firms as described under point 2.1.3 above.

##### 1.1.15.2. Focus on risk capital market failure

ECFs will be required to invest capital in SMEs by means of equity or quasi-equity instruments. Investments that are composed wholly of debt instruments with no equity features will not be permitted.

##### 1.1.15.3. Decisions to invest should be profit driven

The public authorities will have no involvement in the investment choices and decision making of any ECFs apart from setting restrictions to ensure that investments are limited to SMEs. The administrative body SBS will only approve ECFs where operators have a clear incentive to maximise returns. The terms on which the public authorities will invest in ECFs will give private investors very strong incentives to ensure that their funds are profit-driven and perform successfully. These incentives arise because private investors will have to pay interest on the public capital, and fully repay capital to both the public and private investors, before any profits can be distributed. As a result, private investors will bear at least a propor-

tionate share of any losses made by ECFs. Investment decisions will be taken by commercial managers of the ECF funds with an interest in ensuring a maximum return for the fund. ECFs or their operators will be required to act in line with industry standards (BVCA guidelines).

##### 1.1.15.4. Minimisation of level of distortion

The UK authorities will ensure that the ECF scheme is publicised and that applications are invited from across the EEA with notices in the *Official Journal of the European Union* and the relevant trade press. There will be no restriction on location for any investor or operator.

##### 1.1.15.5. Sectoral focus

*Enterprise Capital Funds* (ECFs) will not invest in sensitive sectors under State aid restrictions or in sectors to which the »Commission Communication on State Aid and Risk Capital«<sup>(14)</sup> does not apply. Low-risk sectors including property, land, finance and investment companies, or finance-type leasing companies will not be eligible for investment under the scheme.

##### 1.1.15.6. Avoidance of cumulation

The UK authorities have committed themselves that the beneficiary SMEs' eligibility for other publicly funded grants, loans or other forms of investment aid outside of this notification will be restricted by 30 % of the aid intensity that would otherwise be permissible.

##### 1.1.16. Evidence of market failure

Point VI.5 of the »Commission Communication on State Aid and Risk Capital« stipulates that the Commission will require evidence of market failure for risk capital measures. It may however be prepared to accept the case for market failure when each tranche of finance for an enterprise from risk capital measures which are wholly or partially financed through State aid will contain a maximum of EUR 500,000, or EUR 750,000 in regions qualifying for assistance under Article 87(3)(c) or EUR 1 million in regions qualifying for assistance under Article 87(3)(a) EC.

Taking into account that the UK consists of non-assisted areas as well as Article 87(3)(c) and Article 87(3)(a) areas as outlined in the Regional Aid Map 2000–2006 for the United Kingdom<sup>(15)</sup>, and bearing in mind that the UK authorities intend to grant tranches of investment aid of up to £ 2 million (EUR 2.9 million) regardless of the location of the beneficiary enterprise, the Commission concludes that the existence of market failure cannot be taken for granted without further evidence. The intended tranche size under the present scheme significantly exceeds the thresholds outlined in the »Commission Communication on State Aid and Risk Capital« and the Commission must therefore require provision of evidence for the existence of market failure.

<sup>(11)</sup> State Aid C 46/2000.

<sup>(12)</sup> State Aid N 722/2000.

<sup>(13)</sup> State Aid N 606/2001.

<sup>(14)</sup> OJ C 235, 21.8.2001, p. 3.

<sup>(15)</sup> Commission decision of 26 July 2000 (OJ C/272/2000).

## 1.1.16.1. Provision of evidence of market failure

In order to demonstrate the existence of market failure, the UK authorities have submitted a paper »Assessing the Scale of the Equity Gap« in the UK Economy« written in 2003, as well as a paper »Assessing the Finance Gap«. The key finding of these papers is that there is a gap in the provision of venture capital for SMEs in the deal size range of £ 250,000 (EUR 357,000) to £ 2 million (EUR 2.9 million) for the following reasons:

- A failing in the provision of equity-type growth finance in the UK that has persisted at least since 1999 as evidenced from the most recent 2003 UK survey.
- Although access to finance, particularly debt finance, has improved for the majority of businesses in the UK, small businesses with the potential for high growth still have problems in attracting equity capital. They can fall between the scope of individual business angels to provide sufficient financial backing and the desire of formal venture capitalists to incur the relatively higher costs of investing in SMEs.
- A larger level of demand for equity type finance than is presently being met exclusively by professional investors. If the supply of equity finance would be increased, particularly in the equity gap region, awareness of equity could be raised overall and firms would be more willing to use external sources as a mechanism for financing growth.
- A perception that many of the firms which do not succeed in accessing growth finance are unsuccessful because they are not (as yet) suitable recipients for professional finance. Many, if not a majority, of the new businesses seem to be un-financable in their present state. A supply of seed and start-up finance would increase investor awareness over time.
- Qualitative evidence that there are shortfalls in the funding for small entrepreneurial and high growth businesses. This equity gap has the greatest impact for firms wishing to attract initial investments between approximately £ 250,000 and £ 2 million (EUR 357,000 and EUR 2.9 million).
- Capital rationing does exist within the UK economy and particularly affects SMEs seeking small amounts of external finance for early stage, firm growth and development. The availability of external finance, and particularly sources of equity from professional investors, is particularly problematic below an investment size in the region of £ 1.5 to £ 2 million (EUR 2.17 million to EUR 2.9 million).
- A majority of UK professional equity providers are not interested in investments which are smaller than £ 3 million (EUR 4.35 million). While smaller tranches of money from informal investors/business angels and government/private schemes such as the regional venture capital funds are helping to address funding sources below

£ 500,000 (EUR 725,000), the UK does not yet have a system in operation that would allow the provision of »tiered« or »escalator« funding to attractive but capital constrained businesses.

- The evidence also points to a gap that has been growing over time, driven in part by the success of the private equity industry moving to larger size investments. The prognosis is that this gap is likely to grow in scale as fixed cost issues will encourage professional venture capital firms to increase the size of both their funds and their minimum acceptable deal sizes.

The Commission, after a first preliminary assessment of the measure, has doubts if the arguments presented above can sufficiently justify the granting of risk capital investment tranches up to 5.7 times than the maximum investment tranches foreseen by the »Commission Communication on State Aid and Risk Capital«. The Commission is of the opinion that a more thorough analysis of this alleged market failure is necessary. The Commission wishes to collect information from other interested parties, notably from potential providers of risk capital to SMEs in the United Kingdom on this complex question. In order to do so, the Commission must, for legal reasons, open the procedure provided for in Article 88(2) ECT. It is only with the help of such observations that the Commission can decide whether such aid is necessary and does not adversely affect trading conditions to an extent contrary to the common interest.

## 11. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid scheme, within one month of the date of receipt of this letter.

The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipients.

The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.”