Brussels, 09.10.2015
C(2015) 6841 final

In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of 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, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid n° SA.40991 (2015/N) - United Kingdom Amendments to the existing aid scheme "Enterprise Investment Scheme" and "Venture Capital Trust scheme" (previously SA. 33849)

Sir,

The Commission wishes to inform you that it has decided to raise no objections to the amendments of the above mentioned measures, for the reasons set out below.

1. PROCEDURE

(1) On 18 February 2015, the UK authorities pre-notified under the new Risk Finance Guidelines (RFGs)[1] a number of amendments to an existing risk finance scheme (hereafter the "EIS/VCT scheme") comprised of two different measures, namely the

[1] OJ C 19 22.1.2014, p. 4.

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Enterprise Investment Scheme (hereafter the "EIS") and the Venture Capital Trust (hereafter the "VCT").

(2) The EIS/VCT scheme was originally approved in April 2009[2], and amendments thereof were authorised by the Commission in September 2011[3] and in 2012[4] under the Risk Capital Guidelines(RCGs)[5].

(3) During the pre-notification procedure, the UK authorities submitted information on the amendments on 10 March 2015, 13 March 2015, 19 March 2015, 25 March 2015 and 18 May 2015.

(4) On 12 June 2015, the UK authorities notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (hereafter "TFEU"), the mentioned amendments.

(5) The Commission asked for supplementary information on 25 June 2015 and on 23 July 2015. On 8 July 2015 and 30 July 2015 the UK authorities complemented the information provided in the notification. On 9 September 2015, in accordance with Article 4(5) of Regulation 659/1999, the Commission asked to the UK authorities for an extension of the original period of two months within which the Commission is required to adopt a decision on the case. On 15 September 2015, the UK authorities agreed with this request.

2. OBJECTIVE OF THE EIS /VCT SCHEME

(6) The aim of the amended EIS/VCT scheme is to support the growth of certain SMEs and knowledge-intensive SMEs and mid-caps[6] which due to their early developments stage, would otherwise struggle to have access to finance due to an insufficient track record and/or poor collaterals. For this purpose, tax incentives are provided under the scheme to private individuals (natural persons) investing in qualifying companies (EIS), or in financial intermediaries (VCT), which carry out the eligible investments. Private individuals (natural persons) need to be subject to income tax in the UK, although they do not have to be resident there.

(7) To help reducing the funding gap faced by the targeted companies in the long term, the EIS/VCT scheme also seeks to stimulate a culture of entrepreneurship and greater risk-taking amongst investors. Finally, the focus of the scheme on knowledge intensive undertakings is expected to lead to an increase in R&D and patent applications and, as a result, have a general positive effect on the economy at large.

3. DESCRIPTION OF THE CONDITIONS OF THE EXISTING EIS/VCT SCHEME

(8) The existing EIS/VCT scheme was prolonged by the Commission's decision SA. 33849 (2012/N) until 31 March 2017.

(9) Under the EIS measure, investments are made by private individuals directly into a qualifying company (hereafter "target company"). In addition, investments can be made via collective investment schemes managed by specialised fund managers that

2 State aid cases NN42a/2007 and NN42b/2007 (OJ C 145, 25.06.2009, p. 6).

3 State aid case SA.33376 (OJ C 343, 23.11.2011, p. 12).

4 State aid case SA.33849 (OJ C 196, 4.07.2012, p. 4).

5 OJ C 194, 18.08.2006, p. 2-22.

6 For the definition of knowledge-intensive companies see the following paragraph (31) of the present decision.

invest on behalf of investors in a portfolio of target companies. An EIS fund is a transparent vehicle and not a legal entity in its own right. The ownership of underlying shares in the target companies remains with the individual investors, thus satisfying the requirement of investing directly into individual companies. There is no residence requirement regarding the establishment of EIS funds.

(10) Under the VCT measure, investments are made collectively by individuals via investment funds, whose managers invest on behalf of investors in a portfolio of companies. VCTs may be formed by legal trust or by statute and are managed by independent fund managers. VCTs are approved by HM Revenue & Customs (hereafter "HMRC") and supervised by the Financial Conduct Authority. There is no government intervention to appoint the VCT fund managers. There is no residence requirement regarding the establishment of VCTs. VCT's ordinary share capital must be admitted to trading on an EU regulated market throughout the relevant period. A VCT being admitted to trading on an EU regulated market will need to identify the market concerned and confirm that it has been designated as such by the competent authority of the country concerned. Moreover, there are no limits regarding the region in which the investee company must be based in, the only requirement being the presence of a permanent establishment in the UK.

(11) The investors that benefit from the tax incentives provided by these measures must be independent from the target company. In particular, the tax incentives are not available to individuals or associates of individuals who possess more than 30% of the company or who work for the company.

(12) The tax reliefs are granted automatically, on a non-discretionary basis, by HMRC once the qualifying objective criteria are fulfilled.

(13) The tax incentives provided by the EIS/VCT scheme are the following:

i. An income tax relief at 30% of the amount invested in new full-risk ordinary shares in target companies. The amount of the tax relief is set off against the investor's UK income tax charge for the same tax year in which the investment is made. For EIS relief, some or all of the relief may be carried back to be set against the income tax charge of the year preceding the tax year in which the investment was made. Under the EIS rules, tax relief is given for investments of maximum GBP 1,000,000 per year and per investor at certain conditions and eligible shares must be held for at least 3 years. Under the VCT rules, investments of maximum GBP 200,000 per year and per investor can be eligible and the shares must be held for at least 5 years.

ii. Relief from capital gains tax on gains from shares that have qualified for income tax relief (set out above) and which are disposed of at least 3 years (EIS) or at least 5 years (VCT) after the investment.

iii. Capital gains tax deferral. Where the investor has made a taxable capital gain on the disposal of any other asset, the tax charge arising on this gain can be deferred if the gain is invested in shares under the EIS/VCT.

iv. Dividends received on shares held in a VCT fund are free from tax.

(14) The target company must be an unquoted company with gross assets of maximum GBP 15 million (pre-investment) and with fewer than 250 full-time employees. It must have a permanent establishment in the UK and its business can be all types of trade, except for certain activities included in a continuously updated "excluded activities list"[7] covering activities which are considered less risky and thus less affected by a market failure.

(15) The UK authorities have also confirmed that all target companies will fall within the Community definition of small and medium-sized enterprises[8].

(16) The annual investment tranche which each target company can obtain under the existing EIS and the VCT rules is limited to GBP 5 million. No limit exists, however, on the number of investment tranches per investee[9].

(17) The legal basis for the existing EIS/VCT scheme is in Parts 5 and 6 of the Income Tax Act (ITA) 2007 and Part C, Chapter 5 of the Income Tax (Trading and Other Income) Act 2005, both as last amended.

4. NOTIFIED AMENDMENTS TO THE EIS/VCT SCHEME

(18) The UK authorities have notified the following amendments to the EIS/VCT legislation which take into account the new rules set and the Commissions RFGs:

i. the extension of the duration from 2017 to 2025 and a new budget allocation;

ii. new eligibility criteria for investees and the maximum volume of investments into each final investee;

iii. the extension of the application of the "gross asset test" to all eligible companies;

iv. a new definition of "independent investor" aligned with the requirement of the new RFGs; and

v. the introduction of a growth and development rule.

(19) The objective of these amendments is twofold. On the one hand to continue the operation of the scheme beyond 2017 (their current expiry date), so as to provide the appropriate incentives to investors acting as physical persons to invest in firms which, due to their early stage of development or to the innovative nature of their activities, are deemed to be affected by a persistent failure in business finance markets. As acknowledged in the new RFGs, such a market failure is linked to an asymmetry of information problem preventing the traditional funding channels from supplying the volumes of finance necessary to support the growth of such firms. On the other hand, the envisaged amendments were designed to align the scheme to the

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7 E.g. dealing in land, commodities, shares, securities or other financial instruments, banking, insurance, money lending, debt factoring, hire purchase financing or other financial activities, providing legal or accountancy services, property development, operation of nursing homes.

8 See paragraph 17) of the Commission decision SA.33849 (OJ C 196, 4.07.2012, p. 4) and the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36-41.

9 This maximum amount, which is designed to ensure the proportionality of the measure, was found compatible with the 2008 RCGs on the basis of detailed economic studies presented by the UK authorities in connection with their notification back in 2012.

new compatibility conditions set out in the newly adopted RFGs. In this regard, the UK authorities, in the explanatory note to the published draft legislation[10], warn investors that they should not go beyond the General Block Exemption Regulation[11] (GBER) limits, until the approval of the new draft legislation by the Commission.

(20) Moreover, the UK authorities have confirmed that apart from the notified amendments, all the other conditions of the existing EIS/VCT legislation remain unchanged.

(21) In order to justify these amendments, and in accordance with the requirements set out in point 47 of the RFGs, the UK authorities have notified an ex-ante assessment, conducted with the help of independent consultants, addressing the following: i) the definition of the relevant market failure; ii) the identification of the characteristics of the firms that suffer from this specific market failure, including their age (based on the number of years following their first commercial sale) and the knowledge-intensive nature of their core activities; iii) the quantification of the funding gap for this category of companies; iv) the demonstration that the design of the measure is appropriate to address the relevant market failure and covers the specific funding gap affecting the target companies.

4.1. The extension of the duration from 2017 to 2025 and the new budget allocation

(22) The UK authorities are seeking an approval for the prolongation of the EIS/VCT scheme until 5th of April 2025.

(23) The cost of the scheme is forecasted to be around GBP 580 million in 2015, GBP 530 million in 2016, GBP 570 million in 2017, GBP 600 million in 2018, GBP 630 million in 2019, GBP 660 million in 2020, GBP 690 million in 2021. Past this date, forecasts of the costs of the schemes rely on basic estimates which are likely to need future revisions in order to more accurately take account of macroeconomic effects and behavioural impacts. The provisional estimated cost is GBP 730 million in 2022, GBP 765 million in 2023 and GBP 805 million in 2024 and 2025. However, this data will be refined as the macroeconomic forecasts for 2020-21 to 2024-25 become available.

(24) The Commission notes that the notified budget exceeds the threshold defined in the Article 1(2)(a) of the GBER (EUR 150 million) for ‘large schemes’. Accordingly, in line with points 170 and 171 of the RFGs, the EIS/VCT scheme is subject to the obligation for the UK authorities to notify to the Commission an adequate Evaluation plan.

4.2. New eligibility criteria for investees and maximum volume of investments into each final investee

(25) As regards the eligibility criteria for investees, the UK authorities notified an amendment to its EIS/VCT legislation replacing the previous criteria based on the

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10 https://www.gov.uk/government/consultations/tax-advantaged-venture-capital-schemes-draft-legislation-and-explanatory-notes

11 OJ L 187 26.6.2014, p.1.

concepts of seed/start-up and expansion capital[12] with two new categories of eligible investees, which are described below.

4.2.1. *Non-knowledge intensive SMEs up to* 7 *years after their first commercial sale*

(26) In details, the UK authorities propose to introduce a new total risk finance investment and age limit for investments targeting non-knowledge intensive SMEs, as follows:

i. Non-knowledge intensive SMEs will not generally receive their first EIS or VCT investment more than 7 years after their first commercial sale. However, the UK have proposed that in line with the requirement set by Article 21 (5) (c) of the GBER the scheme will benefit all SMEs requiring *"an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50% of their average annual turnover in the preceding five years"*.

ii. The total investment cap is increased to GBP 12 million, which is broadly equivalent to the GBER limit of EUR15 million based on a five-year average of exchange rates[13]. The UK authorities believe that any limit should be set in pound sterling so as to provide certainty and limit distortions.

(27) The Commission notes, that the above amendments applicable to investments made into non-knowledge intensive SMEs are in principle in line with the requirements set by the GBER.

4.2.2. *Knowledge intensive SMEs and mid-caps up to* 10 *years after their first commercial sale*

(28) The UK authorities want to enlarge the application of the EIS/VCT scheme to knowledge intensive SMEs and knowledge intensive mid-caps. In this regard, the UK authorities have defined mid-caps as companies that employ up to 499 employees[14] in line with the mid-cap definition set down by point 52 (xx) of the RFGs[15]

(29) Knowledge intensive companies (SMEs or mid-caps) supported under the EIS/VCT scheme may not receive their first EIS or VCT investment more than 10 years after their first commercial sale. However, the age limit will not apply where the initial risk finance investment, based on a business plan prepared in view of entering a new product or geographic market, is higher than 50% of the average annual turnover of the companies in the preceding five years, hereby extending the "no age-limit" rule of Article 21(5) (c) also to eligible mid-caps falling outside the scope of the GBER.

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12 The new risk finance aid rules (GBER and RFGs) have replaced the concepts of 'seed', 'start-up' and 'expansion' capital of the previous RCG with more operational criteria based on the age of the investees as a proxy for market failure.

13 See Statistical data Warehouse of the European Central Bank: average exchange rate GBP/EUR 0.826 over the period 15/06/2010 – 15/06/2015.

14 For the purpose of this aid scheme the UK authorities consider knowledge intensive mid-caps as companies that respect the condition in order to be defined as "knowledge intensive" (see paragraphs 31 and 32 of this decision) and which employ up to 499 employees.

15 Point 52 (xx) of the RFGs define "mid-cap" for the purpose of RFGs as "…*an undertaking whose number of employees does not exceed 1500, calculated in line with Articles 3, 4 and 5 of Annex I to the General Block Exemption Regulation.*"

(30) The total investment that can benefit knowledge-intensive SMEs and mid-caps amounts to GBP 20 million (broadly equivalent to EUR 24 million based on a five-year average of exchange rates[16]).

(31) The definition of knowledge intensive SMEs and mid-caps corresponds to the definition of 'innovative company' set out in the RFGs and is based on the following two alternative criteria:

i. R&D and innovation costs (which can include seeking patents, resources required to develop and test prototypes, other) represent at least 15% of total operating costs in at least one of the accounting periods ending in the three years preceding the accounting period in which the first investment under the risk finance State aid measure is made; or

ii. R&D and innovation costs represent at least 10% per year of total operating costs in each of the accounting periods ending in the 3 years preceding the accounting period in which the first investment under the risk finance State aid measure is made.

(32) In addition, one of the two conditions mentioned below needs also to be fulfilled:

i. At least 20% of the workforce is required to have a level 7 (Masters) or 8 (Doctoral) or equivalent qualification as defined by the Framework for Higher Education Qualifications (FHEQ) or an equivalent framework, and are engaged in R&D activity; or

ii. The company can demonstrate that it is intending to innovate, or develop new patents, where the exploitation of these innovations will represent the greater part of its business activity within the next 10 years – as validated by an external expert evaluating the company and confirming that the enterprise will in the foreseeable future develop new products, services or processes, or as evidenced where the company has already begun the process of making patent applications.

(33) The Commission notes that extending support to knowledge intensive SMEs and mid-caps, that are older than 7 years and establishing the total investment amount at GBP 20 million (i.e. beyond EUR 15 millions) are parameters of the measure that go beyond the conditions of the GBER requirements.

4.3. The extension of the application of the "gross asset test" to all eligible companies

(34) In defining the eligibility criteria for investees companies, the UK authorities have confirmed that the existing condition of the "gross asset limit" will remain applicable to all companies supported under the EIS/VCT scheme and, hence, also to knowledge intensive SMEs and mid-caps. The test establishes an upper limit on the size of the company invested in with reference to the size of its gross assets. Those limits are: i) GBP 15 million immediately before the issue of the shares or securities, and ii) GBP 16 million immediately after the issue. All forms of property that appear on a company's balance sheet are assets for the purpose of this rule. In the case of a

16 See Statistical data Warehouse of the European Central Bank average exchange rate GBP/EUR 0.826 over the period 15/06/2010 – 15/06/2015.

company with subsidiaries, the rule applies to the total of the gross assets of the company and its subsidiaries (excluding shares in and loans to those subsidiaries). For this purpose it is important to look at the assets of each separate company and not at those shown on the consolidated balance sheet for the group. For this purpose, no account is taken of : i) any assets which consist in rights against another company in the group, or ii) any shares in, or securities of, another such company.

(35) This additional limit is stricter than the eligibility requirements set out in the GBER and in the RFGs and is only aimed at ensuring that the application of the scheme is well-targeted to companies genuinely affected by a market failure.

4.4. New definition of "independent investor" aligned with the requirement of the new RFGs

(36) The UK proposes to introduce a change to the conditions for private investors qualifying for the tax relief offered through the EIS/VCT scheme. This will mean that individual investors can only qualify for tax relief where they do not have a share in the underlying company at the moment of their initial investment under the scheme. As regards indirect investments via VCTs, the independency of the private investors claiming the benefit of the tax relief is ensured by the fact that, under the VCT governance rules, such investors cannot exercise any decisive influence over the investment decisions taken by the fund manager.

4.5. The introduction of a growth and development rule

(37) The UK proposes to introduce a new rule to ensure that eligible undertakings demonstrate that they intend to use the finance that they seek under EIS and VCT to grow and develop the company. This recognises and seeks to mitigate the risk that tax-advantaged monies may be used for investment into relatively established companies without genuine growth prospects.

5. EVALUATION PLAN

(38) The RFGs provide[17] that certain categories of schemes may be subject to an evaluation, in order to further ensure that distortions of competition and trade are limited. The evaluation may be required, in particular, for large schemes and for schemes containing novel characteristics, which is the case for the amended EIS/VCT scheme. The evaluation must address (a) the effectiveness of the aid measure in the light of its predefined general and specific objectives and indicators; and (b) the impact of the risk finance measure on markets and competition. The UK authorities, in light of this provision, and taking into account the best practices recalled in the Commission Staff Working Document on Common methodology for State aid evaluation[18], have submitted an evaluation plan for the amended scheme, described in its main elements hereafter.

5.1. Evaluation questions and result indicators

(39) The evaluation plan submitted by the UK authorities includes a set of questions to assess. the scheme's direct impact, indirect impact and its appropriate and proportional character. In particular, the evaluation questions will aim at assessing the impact of the scheme on incentivising private investment into eligible companies (impact on investors), the development of eligible undertakings and their ability to access funding (impact on investees), the impact on the equity funding gap and the development of a VC market (impact on business finance markets), as well as the impact on competition in the sectors targeted by the EIS/VCT scheme (impact on competition and trade).

(40) The evaluation questions will generally be considered separately for EIS and VCT to allow the two to be compared. In addition, the evaluation will distinguish, whenever relevant, between the impacts of the EIS/VCT scheme on the targeted groups of eligible companies i.e. SMEs, on knowledge-intensive SMEs and on knowledge-intensive mid-caps.

Impact on investors

(41) To assess the incentive effect of the aid at the level of private investors, the evaluation will consider whether there has been a change in the investors' attitude to the provision of risk finance into the eligible companies.

(42) Result indicators that will be used to measure the impact of the scheme on investors will be the following: average investment size provided under EIS and VCT measures to each investee company; total investment provided under EIS and VCT measures; number of investments provided under the EIS and VCT measures; number of investors; investor demographics/types of investors benefiting from EIS and VCT measures; level of additional investment owing to the scheme; willingness to invest in small businesses.

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[17] See Section 4, paragraph 170 and 171 of the RFGs.

[18] Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

Impact on investees

(43) To assess the impact of the scheme at the level of final beneficiaries, the evaluation proposed by the UK authorities will investigate whether the EIS/VCT scheme supports SMEs access to finance, how it has supported this and how the risk position of the recipient has changed. Furthermore, the evaluation will control whether the EIS/VCT scheme has had the expected impact, to what extent it has had an impact on the investments made and what changes to the aid instruments would have increased their effectiveness.

(44) For each of these questions, the evaluation plan submitted by the UK authorities presents relevant sets of result indicators including, in particular: number and size of eligible undertakings; amount of funds raised and investments made as a result of the EIS/VCT scheme; amount of investments sought and planned outside the EIS/VCT scheme; changes in turnover, profits and gross assets, time taken to raise investments and returns on investments; business demography (births and deaths of enterprises) and labour productivity; spread of firms by industry sector, number of firms and investments raised by firms in knowledge-intensive sectors (defined by the proportion of R&D and innovation expenditure relative to turnover for knowledge-intensive companies, number of issued patents, proportion of skilled employees engaging in the R&D), level of additional investments owing to the scheme.

(45) In particular, specific questions will consider the differences between EIS and VCT measures in terms of access to finance (e.g. additional investment provided under the EIS and VCT measures) and will compare the effectiveness of EIS and VCT measures (in the light of the relevant indicators) by distinguishing between SMEs, knowledge-intensive SMEs and knowledge-intensive mid-caps.

Impact on business finance markets

(46) The evaluation of the scheme's impact on the development of a more efficient risk finance market will aim at identifying whether the equity gap experienced by firms changed in size among the targeted population of businesses, whether the scheme had an impact on the underlying market failure, whether the scheme had the expected impact on the development of the market for risk finance and whether further intervention is needed.

(47) The relevant result indicators will include the following: investment needed by SMEs, investment obtained by SMEs, availability of further rounds of investment, availability of bank or alternative finance, number of investee companies benefiting from the scheme, current equity gap experienced by companies in the targeted population, and level of additional investment from the private sector induced by the scheme.

(48) The evaluation will also aim at assessing the impact of the measure on financial intermediaries. In this regard, the result indicators that will be considered are the change in activities of VCTs and the VC market in terms of the total volume, frequency and type of funding rounds, diversification of portfolio, as well as the degree of the internationalisation of the VC market in the UK.

Impact on competition and trade

(49) The evaluation of the scheme's impact on competition and trade will focus on the top three downstream markets, corresponding to the sectors where the EIS/VCT

interventions have been the most frequent and/or involving the highest volume of investments. For this purpose the result indicators will detect the relative level of support in each sector, a degree of market power enjoyed by the supported firm, estimated on the basis of market concentration indicators such as the Herfindahl-Hirschman Index, and the age distribution of firms in the selected sectors (supported and unsupported). In addition, the impact of the scheme on employment will be measured through changes in the number of employees.

5.2. Evaluation methods

(50) The specific methods envisaged in the evaluation plan submitted by the UK authorities are described below. In addition, the Commission takes note of the commitments by the UK authorities that the evaluation report will include a discussion regarding the robustness of the study's results and possible bias due to unobservable characteristics. Matching techniques will be used only as an auxiliary tool for the purpose of establishing suitable control groups in a Difference-in-Differences approach.

Impact on investors

(51) A key objective of the evaluation will be to assess whether the scheme has led to an increase in the amount of investment in the targeted companies. In order to establish a counterfactual for comparison, a matched sample of potential investors who did not invest in the EIS/VCT scheme will be identified by means of the propensity score matching method.

(52) Thereafter, in the regression analysis a Difference-in-Differences linear regression framework will be employed assessing the impact of the measures, comparing between three investor groups (single time EIS/VCT investors, multiple EIS/VCT investors and non EIS/VCT investors).

(53) Moreover, descriptive statistics will be used to provide supporting information on the characteristics of those investing in the EIS/VCT scheme.

Impact on investees

(54) In order to estimate the impact of the scheme on investees, a conditional Difference-in-Differences approach will be carried out to compare companies supported by EIS/VCT investments with a matched sample of those not supported, including separate comparisons of knowledge-intensive and non-knowledge intensive firm (based on R&D intensity), and of companies supported through EIS/VCT scheme.

(55) The population of potentially eligible firms including those SMEs meeting the gross assets limit and employee limit will firstly need to be identified. Companies meeting the knowledge-intensive firm criteria will also be identified. On this basis, a control group will be identified through matching on available variables. The variables potentially available for matching will include assets, turnover, capital allowances claimed, industry sector, receipt of other government support (e.g. grants) and the holding of patents.

(56) According to the UK authorities, using highly relevant matching variables can partially reduce the selection bias induced by the (unobserved) quality of a company’s management, the novelty of the product or service (assessed using the technology readiness levels), the degree of competition in the market (assessed by

reference to market concentration indicators and market power), and the methods planned to grow a business to a larger scale. For example, to account for the level of innovation, the ratio of R&D expenses divided by turnover will be used. In addition, a labour productivity measure will be applied (turnover divided by employment) as a proxy for the efficiency of the company.

(57) In order to assess the scheme's impact on the equity gap experienced by targeted firms, the evaluation will compare VC financed firms to similar non-VC backed firms, identified by using propensity score matching, before and after the injection of VC.

(58) Additional descriptive statistics will also be used in the framework of the evaluation and will draw on existing data sources. These statistics include the changes in turnover, profits and gross assets, as well as business demography data on the births and deaths of enterprises by industry.

(59) The UK authorities have also committed to consider the possibility of adopting a quasi-experimental method that exploits the modifications of eligibility criteria occurred in 2012 to assess the impact of the schemes on companies' performances[19].

Impact on business finance markets

(60) For the purpose of evaluating the impact of the scheme on financial intermediaries, descriptive statistics on the profile of the investments made by the UK venture capital funds will be employed to compare with those made by VCTs. This analysis will utilise published information from VCs on their investee companies, the size of the investment, and number of follow-on investments. It will also look at the investment holding structure and the return made on the investments. Information on investee companies will be linked to existing administrative sources to provide data on turnover, employment and age of the investee companies over time.

(61) The evaluation will also explore how the investment strategies of the VC funds have changed over time. In this regard, the evaluation will include a research exercise to gather data from published reports and accounts of other non-assisted venture capital funds. These will be considered within a number of comparison criteria e.g. amount of funds under management, size of companies, and type of companies invested in.

Impact on competition and trade

(62) To assess the impact on competition in final beneficiaries' markets, the evaluation plan foresees the selection of the main three sectors in which investee companies are active and, on this basis, will carry out a regression analysis to compare the performance of different groups within these industries. The evaluation will also compare those who made use of the scheme with a control group that is matched on firm characteristics (for example, turnover, location, age, growth rate), and the wider group of firms in the sector.

19 For more information please look at the ongoing work of London School of Economics: "Capital Structure and performance of early-stage companies: An evaluation of the Enterprise Investment Scheme, the Venture Capital Trust Scheme and the Seed Enterprise Investment Scheme in the UK".

5.3. Data collection

(63) For the purpose of evaluating the scheme, the UK authorities have confirmed that a combination of existing data sources and additional data collection will be used.

(64) Firstly, the UK authorities will collect data through self-assessments of tax returns, EIS and VCT applications, companies tax returns (providing details about both the investors and the eligible undertakings), as well as registration and accounts data collected by the UK's company registrar (Companies House).

(65) Secondly, where necessary, the above data will be complemented by data collected through ad-hoc surveys covered by the evaluation plan. Although the UK authorities recognise the potential limitations of such surveys, they have clarified that in some instances this will be the best available option for gathering the necessary data.

(66) The UK authorities have clarified that in each of the ad hoc surveys implemented as part of the evaluation, a minimum of 1000 individuals will be interviewed. Each survey will cover two groups: a treatment group of investors or investees who have used the schemes, and a counterfactual group of those who have not used them. The survey will be a combination of written responses and phone interviews, with the latter including the opportunity for detailed follow-up. The characteristics of non-respondents will be noted and compared with those of respondents to provide insight on the extent of selection bias. Concerning the specific risk of response bias, a requirement will be included to ensure that appropriate cognitive testing and piloting are undertaken to ensure the survey questions are correctly understood and potential bias can be considered.

(67) Additional sources will also be used to collect data on known private equity and venture capital transactions.

5.4. Independent body to conduct the evaluation

(68) The UK authorities have confirmed that the choice of evaluator will be made on the basis of an open, competitive and non-discriminatory tender procedure. The body conducting the evaluation is likely to be an independent research agency or an academic institution. Any conflict of interest will be considered and resolved. The evaluator will have the required experience and competence in the field of evaluation and will be responsible for the final sound evaluation of the EIS/VCT scheme in the form of a written report. The UK authorities have indicated that the external evaluator should be awarded in October 2017, following an invitation to tender launched in July 2017.

5.5. Proposed timeline of the evaluation

(69) Regular monitoring of the EIS/VCT scheme will be undertaken periodically throughout its implementation, with national statistics published each year and consultations undertaken on average every 2 years.

(70) Interim findings on the evaluation should be presented in July 2018. The final evaluation report should be prepared by January 2019 and the UK authorities have committed to submit it to the Commission by March 2019.

5.6. Publicity of the evaluation

(71) The UK authorities have confirmed that the evaluation report will be published in full on the relevant UK Government website, which is: https://www.gov.uk/government/collections/venture-capital-schemes.

(72) Taxpayer information held by HMRC are confidential and subject to various statutory provisions including the Data Protection Act. In order to undertake evaluations, HMRC will create an anonymous database of this information to allow further analysis, should it be needed for future policy decisions.

(73) Furthermore, the HMRC Datalab will allow the UK research community to access de-identified HMRC data for analytical purposes.

(74) The UK authorities have confirmed that the results of the evaluation will be taken into account when introducing amendments to the scheme or prolonging the scheme's duration beyond that agreed by the Commission.

6. ASSESSMENT OF THE AMENDMENTS TO THE SCHEME

6.1. Legality

(75) By notifying the modified scheme, the UK authorities have complied with their obligations under Article 108(2) TFEU.

6.2. Existence of aid

(76) The notified modification does not change the Commission's previous assessment with respect to the existence of aid, within the meaning of Article 107(1) TFEU[20], namely at the level of the target investees.

6.3. Compatibility assessment of the amendments

(77) Risk finance measures can be exempted from notification pursuant to Article 108(3) TFEU provided that they comply with the requirements of the GBER. However, certain parameters chosen by the UK in the scheme EIS/VCT exceed what is allowed under the GBER and the amendments therefore have to be assessed under the RFGs.

(78) Firstly, the Commission notes that the amendments concerning non-knowledge intensive SMEs are in principle in line with the Article 21 of the GBER as the envisaged support is limited to SMEs which are not older than 7 years after their first commercial sale and which, in total, can benefit from risk finance investments up to GBP 12 million, corresponding to the EUR 15 million ceiling provided for under the GBER. Taking into account possible exchange-rate fluctuations, the Commission considers that the GBP 12 million ceiling may occasionally exceed EUR 15 million without altering, however, the impact of the scheme on competition. Therefore, the Commission considers that the part of the EIS/VCT scheme providing for risk finance aid to SMEs with sale activities of a duration up to 7 years is conform to

20 State aid case SA.33849 (OJ C 196, 4.07.2012, p. 4).

Article 21 of the GBER. Should the EUR 15 million ceiling be exceeded due to monetary fluctuations solely, such change could not put into question the compatibility in itself of the scheme with Article 107 (3) (c) TFEU. In fact the impact on competition would result not from the risk finance amount itself but from the exchange rate of the currency of the risk finance amount.

(79) Secondly, the Commission has identified the following changes that go beyond the requirements set by the GBER and which require an assessment under the RFGs:

a) allowing risk finance support under the EIS/VCT scheme to knowledge intensive SMEs and mid-caps up to 10 years after first commercial sale[21];

b) increasing the total investment threshold beyond the EUR 15 million limit established by the GBER and up to GBP 20 million, in respect of knowledge-intensive SMEs and mid-caps.

(80) Furthermore, the Commission notes that, in line with article 21 (5) (c) of the GBER, no age limit will apply to investments made under the EIS/VCT scheme benefiting SMEs, which "*require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years*". However, as the UK authorities will also apply this condition to knowledge-intensive mid-caps, which goes beyond the limits set by the Article 21 (5) (c) of the GBER, this amendment is also subject to Commission's detailed assessment carried out in this decision.

(81) As regards these amendments going beyond the GBER requirements, the Commission has examined whether they are in line with the RFGs.

(82) In this regard, the Commission has analysed whether the design of the EIS/VCT scheme ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade between the Member States and competition. For this purpose the Commission will consider the notified measure (amendments introduced to the EIS/VCT scheme) compatible with the internal market pursuant to Article 107(3)c TFUE if it satisfies 7 common assessment principles listed in point 54 RFG.

6.3.1. Contribution to a common objective

(83) The UK authorities have explained that the amendments to the EIS/VCT scheme have been implemented in view of helping business finance and venture capital markets to operate more efficiently and competitively across the UK and the European Union. As a result, more SMEs and innovative mid-caps with growth potential should access the funding that they need to start-up and expand, stimulating growth of the company, higher levels of productivity and innovation, as noted in the RFGs.

21 Point 52 (xx) of the RFGs define "mid-cap" for the purpose of RFGs as "*…an undertaking whose number of employees does not exceed 1500, calculated in line with Articles 3, 4 and 5 of Annex I to the General Block Exemption Regulation*".

(84) The Commission finds that the above objective is in line with point 57 of the RFGs finding that risk finance aid can contribute to an effective access to finance for viable SMEs and innovative mid-caps with high growth potential. This can in turn contribute to an environment where new ideas and SMEs, as well as innovative mid-caps, in their early development stages, can flourish and ultimately achieve the objective of creating jobs and growth.

6.3.2. Need for state intervention

(85) The Commission firstly notes that under point 72 of the RFGs "*mid-caps, in certain circumstances, could also face financing constraints comparable to those affecting SMEs. Such may be the case for mid-caps carrying out R&D and innovation activities alongside initial investment in production facilities, including market replication, and whose track record does not enable potential investors to make relevant assumptions as regards the future market prospects of the results of such activities"*.

(86) Secondly, the Commission observes that, in point 73 of the RFGs, it is acknowledged that certain types of undertakings may be regarded as still being in their expansion/early growth stages, even after a 7-year period, if they have not yet sufficiently proven their potential to generate returns and/or do not have a sufficiently robust track record and collateral. In particular, the RFGs state that "*risk finance measure targeting eligible undertakings that have been operating on a market for more than seven years from their first commercial sale at the time of the first risk finance investment must contain adequate restrictions whether in terms of time limits (e.g. 10 years instead of 7) or other objective criteria of a qualitative nature relating to the development stage of the target undertakings*".

(87) Finally, in line with point 75 of the RFGs, the Commission acknowledges that "*in certain industries where the upfront research or investment costs are relatively high, for example in life sciences or green technology or energy*, [the GBER cap on the total amount of risk finance per eligible undertaking of €15 million] *may not be sufficient to achieve all the necessary investment rounds and set the company on a sustainable growth path*".

(88) Taking account of the above, the UK authorities have argued, on the basis of their ex-ante assessment, that in the UK the market failure affecting provision of finance extends beyond SMEs and also affects knowledge-intensive mid-caps. Within this targeted group of companies, the UK authorities have argued that not only SMEs up to 7 years from first commercial sale (as covered by the GBER) but also knowledge intensive SMEs and knowledge-intensive mid-caps at a growth stage until 10 years from first commercial sale are affected by the market failure.

(89) Moreover, the UK authorities have advocated in their notification that, due to the nature of business activities, knowledge-intensive companies up to 10 years from first commercial sale suffer from a much higher equity gap in comparison to non-knowledge intensive companies, raising their financing needs from GBP 12 million to GBP 20 million. In this regard, the UK authorities have claimed that the Commission should allow the total risk finance investment threshold to be raised beyond EUR 15 million (as set down by the GBER) to a level of GBP 20 million for investments carried out under the EIS/VCT scheme into knowledge-intensive SMEs and knowledge-intensive mid-caps.

(90) As explained below, the Commission has assessed the evidence provided by the UK authorities in the ex-ante assessment, as provided in its initial notification and subsequent submissions.

6.3.2.1. Extending the application of the EIS/VCT scheme to knowledge-intensive SMEs and mid-caps up to 10 years after first commercial sale

(91) In their notification the UK authorities have shown that the UK is particularly affected by problems faced by knowledge intensive companies, as the population of knowledge-intensive companies is higher in the UK than the European average. According to the European Commission report on the Innovation Union (2014)[22], the UK is particularly focused on knowledge intensive companies, with a score of 60.7 in 2012 compared to 51.2 of the EU average on the indicator of knowledge intensity. In the 2013 Flash Eurobarometer 369 report it is further indicated that UK SMEs invest heavily in R&D both using internal funds (third behind Finland and Netherlands) and external funds (fourth behind Finland, Cyprus and Poland).

(92) Moreover, in the ex-ante assessment, the UK authorities have drawn attention to the fact that the dominant feature of knowledge-intensive companies is that they have a high proportion of intangible assets (such as human capital, consumer or research networks or intellectual property rights), which are crucial for these companies' ability to build knowledge and consequently market value.

(93) The intangible assets do not typically constitute good collateral to obtain external funding as they would have limited value in case of bankruptcy (in contrast with physical assets). This issue is acknowledged by a OECD study where it is noted that "*traditional debt and equity markets are primarily designed to fund tangible assets that have well-defined market prices and can serve as collateral*"[23].

(94) The higher level of intangible assets and the innovative nature of activities undertaken by these knowledge-intensive companies also create more difficulties in valuing an undertaking. As a result of adverse selection and moral hazard, projects with positive net present value may not at all be successful in attracting sufficient external financing ("*equity gap*").

(95) In addition, knowledge-intensive companies need "*time to build the value of the knowledge, especially where the environment is complex and ownership of appropriable assets by incumbents constrains access to final customers*"[24].

(96) In their notification the UK authorities have emphasised that the growing complexities of the market and a growth trajectory of a knowledge intensive company, which often operate on the boundaries of several sectors, require further and increasing expertise from potential investors to properly understand the core activities and the market of knowledge-intensive companies before making the investment.

(97) For the above reasons, in comparison to companies operating according to traditional business models, knowledge-intensive companies at early growth stages have much

22 European Commission, *Research and Innovation performance in the EU: Innovation Union progress at country level*, 2014.

23 Policy lessons from financing innovative firms, OECD Science, Technology and Industry Policy Papers, 24 June 2015.

24 Wilson, N. and Wright, M., *The Equity Gap and Knowledge-based Firms,* 2015

more acute problems in accessing external finance and the number of years that such companies need to operate on the market before establishing a robust track record is bigger than for non-knowledge intensive firms.

(98) Moreover, under the EIS/VCT scheme, knowledge-intensive SMEs and mid-caps have to also fulfil the "gross asset test" as described in paragraphs (34) and (35) of this decision. This rule will de-facto reduce the potential group of companies that can benefit from support under the EIS/VCT scheme to companies that exceed the GBER definition of SMEs only with respect to the headcount number.

(99) Taking account of the above, the Commission considers that the knowledge-intensive undertakings eligible for the investments under the EIS/VCT scheme fulfil the requirements of point 73 of the RFG i.e. they are effectively small companies in their expansion/early stages, which are involved in innovative activities, characterized by high-risk and capital intensive nature. For this reason, the knowledge-intensive SMEs and mid-caps supported under the EIS/VCT measure require longer time on the market to sufficiently prove their potential to generate returns and/or robust track record. The UK authorities have therefore ensured that investments into these companies are eligible for EIS/VCT support within the first 10 years from first commercial sale, the time required for these companies to reach sustainable levels of operations, providing that access to external finance is facilitated.

(100) Therefore, on the basis of evidence provided by the UK authorities in their notification, the Commission finds that, limiting support to knowledge intensive SMEs and mid-caps up to 10 years from first commercial sale, appears in line with point 73 of the RFGs, taking into account the market failure which the measure is designed to address and the time required for these knowledge intensive companies to reach sustainable growth levels and a sufficiently robust track record to attract private financing.

6.3.2.2. Increasing the risk finance investment limit to 20 million GBP for knowledge-intensive SMEs and mid-caps

(101) Taking into account the capital intensive nature of knowledge-intensive mid-caps, the evidence presented by the UK authorities suggests that the problems affecting these companies in the UK are further aggravated by the funding constraints on the supply side.

(102) First, the UK authorities explain that an important contributing factor to this situation is represented by the specific characteristics of the banking sector in the UK which, in comparison to other EU countries, remains concentrated, thereby exacerbating the significant risk aversion of banks to lend to early-stage, knowledge-intensive companies. According to the OECD survey on UK "*the market for bank lending to SMEs suffers from insufficient competition (CMA and FCA, 2014), which could have increased credit constraints facing SMEs*". The study also considers "*that further structural reforms are needed to improve competition in the SME credit market and to boost credit provision to SMEs in the medium term*[25]".

25 OECD Economic Surveys: United Kingdom, 2015.

(103) In addition to the above, the effects of the crisis have been such that banks have continued to cut back net lending, making it difficult SMEs and small mid-caps to get funding[26].

(104) The Commission further observes that the access to funding for knowledge-intensive companies has deteriorated further due to changes affecting the venture capital industry, which is the usual source of finance for innovative growth-oriented companies. In this regard, the UK authorities point to the observations contained in the study Wilson and Wright (2015)[27], indicating that the "*the total value of venture capital investments has fluctuated over the last decade, but apart from a sharp rise in 2005, has remained low. Venture capital firms have tended to move to funding larger, later stage and buyout ventures in the light of the challenges associated with early stage businesses*". This has resulted in venture capital funds moving away from early stage financing into more advanced deals focused on the provision of private equity for businesses with turnaround and growth potential. In addition, as underlined in the notification, private equity investment has also a falling trend since the peak of the mid-90s.

(105) The Commission notes that particularly in the case of early-stage, knowledge-intensive companies, the finance constraints can significantly hamper further growth. In particular the lack of necessary follow-on finance leads to these companies not being able to implement the lessons learnt from initial market test, and hinder them from developing an innovative approach within a product or service market.

(106) In the framework of their ex-ante assessment, the UK authorities have combined a number of unique data sources to provide a comprehensive analysis of the corporate venture capital sector in the UK, including observed investments and the funding requirements for early-stage, knowledge-intensive companies. The descriptive results have led the UK authorities to conclude that knowledge intensive companies, for the reasons of longer incubation period and higher sunk costs linked to the R&D-intensive nature of their activities are in need of funding beyond the GBER requirements which the market cannot currently provide.

(107) Therefore, taking account of the particular features of early-stage and knowledge-intensive companies in the UK, their capital intensive nature and time required to reach a sustainable level of growth, in combination with the structural constraints currently affecting the UK business finance market, the Commission considers it justified to allow an overall investment ceiling of GBP 20 million per undertaking in the case of eligible companies carrying out innovative activities (as captured by the category of knowledge-intensive SMEs and mid-caps up to 10 years after their first commercial sale supported under the EIS/VCT scheme).

(108) It should be stressed that the UK authorities have committed to monitor the evolution of the equity gap affecting young knowledge-intensive companies in the UK market in 2 year periods and, where necessary, introduce the necessary amendments to the EIS/VCT scheme accordingly. Moreover, this particular issue will be the object of specific attention in the context of their future evaluation report, as set out in the commitments taken by the UK within the framework of their evaluation plan.

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26 OECD UK Economic Survey, February 2015.

27 See also footnote n.27.

(109) In light of the above, the Commission considers that the ceiling of GBP20 million is justified within the meaning of point 76 of the RFG taking into account the specific market failure affecting the knowledge-intensive SMEs and knowledge-intensive mid-caps in the UK, as targeted by the EIS/VCT scheme.

6.3.2.3.Application of the "no age limit" rule to knowledge-intensive mid caps

(110) The UK proposes that the "*no age limit*" rule applicable to SMEs fulfilling the requirement set by Article 21 (5) (c) of the GBER[28] applies also to knowledge-intensive mid-caps (see recitals 29-31 above).

(111) In this regard, the Commission notes that, under the EIS/VCT scheme, the definition of mid-caps goes beyond the GBER definition of SMEs only with respect to the headcount, as it covers mid-caps up to 499 employees. The scope of the rule at issue is furthermore limited by the application of the definition of "knowledge-intensive" mid-caps, as described in paragraphs (31) and (32) of this decision. Moreover, the UK authorities have emphasised that the EIS/VCT scheme has a gross asset limit of 15 million GBP pre-investment which further limits the scope of eligible mid-caps.

(112) For these reasons, the UK authorities consider that the limited extent to which the EIS/VCT scheme goes beyond the SME definition, justifies the application of the same approach underpinning Article 21 (5) (c) of the GBER also to the knowledge-intensive mid-caps.

(113) The Commission shares the views put forward by the UK authorities and considers that, given the specific restrictions and safeguards built into the notified scheme, this narrowly defined category of knowledge-intensive mid-caps, requiring an initial investment 50% higher than their yearly turnover and aiming at entering a new market, is likely to be affected by the same market failure which is presumed to affect, pursuant to Article 21 (5)(c) of the GBER, all SMEs envisaging such an ambitious turnaround of their business model. Therefore, the notified extension of the eligibility criteria to encompass this category of firms can be regarded as in line with the RFGs, which in line with point 72 of the RFG recognise the constraints faced by innovative mid-caps.

6.3.2.4.Conclusions on the ex-ante assessment provided by the UK authorities to demonstrate the necessity of amendments to the EIS/VCT scheme

(114) Taking account the descriptive evidence contained in the ex-ante assessment and the commitments taken by the UK authorities concerning both the continuous monitoring and the ex-post evaluation regarding the evolution of the depth and breadth of the relevant market failure in UK, the Commission concludes that the proposed amendments to the EIS/VCT scheme, as described in par (26) – (33) of the current decision, can be considered as compatible with Article 107(3)(c) TFEU having regard to the conditions set out in the RFGs.

[28] Article 21 (5) (c) of the GBER extends the benefit of the exemption to investments in SMEs which, irrespective of their age "*require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of thei average annual turnover in the preceding 5 years*".

6.3.3. Appropriateness of the aid measure

(115) According to point 89 of the RFGs, in order to address the identified market failures and to contribute to the achievement of the policy objectives pursued by the measure, the envisaged risk finance aid must be an appropriate instrument, while at the same time being the least distortive of competition.

(116) In their notified ex-ante assessment and in the follow-up explanations, the UK authorities have sufficiently demonstrated that the tax incentives provided under the EIS/VCT scheme are adequate to stimulate access to finance, have a wide effect in incentivising private investors in taking on the risks of investing in smaller and less-established companies, as well as stimulating the venture capital market.

(117) The appropriate character of the measure is further strengthened by the safeguard described in paragraph (37) of the decision aiming at ensuring that the finance provided under the EIS/VCT scheme is effectively used to support the growth and the development of the targeted companies.

(118) Moreover, as provided in point 126 of the RFGs, the tax relief is open to all investors fulfilling the required criteria, without discrimination as to their place of establishment and includes the necessary ceilings and caps defining the maximum advantage that each individual investor may draw from the measure, as well the maximum investment amount which can be made in individual eligible undertaking. In this regard, the Commission notes that the restrictions provided in the EIS/VCT schemes (maximum annual investment an individual can receive tax relief on, and the minimum holding period for the acquired shares, see paragraph (13) of this decision) further ensure that the measure is well-targeted.

(119) Furthermore, the Commission notes that, in accordance with point 124 of the RFGs, the EIS/VCT scheme limits the maximum duration of the scheme to10 years.

(120) Finally, the excluded activities list (see paragraph (14)) ensures that companies with collateral that generally do not face the same market failure as companies without a track record or without substantial assets are excluded from investments made under the EIS/VCT scheme.

(121) For these reasons, the Commission concludes that the tax incentives provided under the EIS/VCT scheme, are well targeted and have been appropriately designed to overcome the market failure demonstrated on the basis of the ex-ante assessment by the UK authorities.

6.3.4. Incentive effect of the aid

(122) According to point 131 of the RFGs, risk finance measures must incentivise market investors to provide funding to potentially viable eligible undertakings above the current levels and/or to assume extra risk. A risk finance measure is considered to have an incentive effect if it mobilises investments from market sources so that the total financing provided to the eligible undertakings exceeds the budget of the measure. Hence, a key element in selecting the financial intermediaries and fund managers should be their ability to mobilise additional private investment.

(123) The UK authorities have shown on the basis of an independent analysis[29] that [ ] (*)[30] of the proposed investment would not have taken place without the schemes. In fact, they consider that a significant proportion of funding for SMEs is made available as a result of the tax incentives.

(124) The Commission therefore concludes that the scheme has an effect on changing the investor's attitude towards investing into knowledge intensive companies and can play an important role in stimulating venture capital investments into these more risky companies. The Commission therefore finds that the incentive effect of the aid provided through the EIS/VCT scheme is assured.

6.3.5. Proportionality of the aid

(125) In line with point 133 of the RFGs, state aid must be proportionate in relation to the market failure being addressed in order to achieve the relevant policy objectives. It must be designed in a cost-efficient manner, in line with the principles of sound financial management. For an aid measure to be considered proportionate, aid must be limited to the strict minimum necessary to attract funding from the market to close the identified funding gap, without generating undue advantages.

(126) In this regard, the Commission firstly notes that investments made under the EIS/VCT scheme are made solely by private investors without any direct participation of public investors. All investment decisions are commercially driven by the individual decision of private investors or venture capital funds in which the latter invest.

(127) Secondly as described in paragraph (13)(i) of this decision, private investors providing finance to eligible undertakings under the scheme benefit from an income tax relief which is capped at 30% of the amount invested in eligible undertakings. Furthermore, as indicated in paragraph (11) of the decision, the relief is provided to investors who are independent from the company invested in. This is in line with the requirements of point 150 of the RFGs. Moreover, relief from capital gains tax and relief from tax on dividends on shares held in a VCT fund valid under the EIS/VCT scheme remains in line with points 151 and 152 of the RFGs.

(128) Thirdly, as pointed out in section 6.3.2.2 above, the overall ceiling on the total amount of risk finance investment into each knowledge-intensive SMEs or mid-caps is in line with the equity gap, determined on the basis of an ex-ante assessment assessed by the Commission in the framework of this decision.

(129) Therefore, the Commission considers that the proportional character of the measure is assured.

6.3.6. Avoidance of undue negative effects on competition and trade

(130) In line with point 155 of the RFG "*the State aid measure must be designed in such a way as to limit distortions of competition within the internal market. The*

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29 […](*)

30 (*) Confidential information

negative effects have to be balanced against the overall positive effect of the measure. In the case of risk finance measures, the potential negative effects have to be assessed at each level where aid may be present: the investors, the financial intermediaries and their managers, and the final beneficiaries".

(131) As explained in this decision the EIS/VCT measure is designed to assure its targeted character at growth-oriented companies which suffer from a market failure by providing a fiscal incentive to investors to enable the market to operate efficiently.

(132) In addition to the above, the Commission also notes that the State aid provided through fiscal incentives to individual investors, under the EIS/VCT measure, ensures that all resources invested under the EIS/VCT measure are private and that no crowding out of private investment takes place.

(133) Furthermore, in the case of the VCT scheme, there is no limit on the number of financial intermediaries which can operate under the scheme and, hence, the VCT scheme does not discourage any expansion of existing competitors. The Commission also observes that the UK authorities are not involved in the investment decisions of the VCT and have placed no limits as to the region of establishment for investee companies. In fact, the investment decisions under the EIS/VCT scheme are entirely left to the market and the selection of investments is based on commercial logic.

(134) Finally, as described in paragraph (14) the UK authorities have also excluded under the EIS/VCT scheme companies which should be able to access finance by traditional routes (for example if the undertaking is clearly asset-backed), as they are likely to be unaffected by any potential information asymmetry problem.

(135) On the basis of the above, the Commission considers that the EIS/VCT scheme is designed in a way to limit the distortion to competition and minimise undue advantages to the beneficiaries.

7. COMPATIBILITY ASSESSMENT OF THE EVALUATION PLAN

(136) Point 171 of the RFGs establishes the conditions when notified risk finance measures have to be subject to an evaluation, in order to establish the effectiveness of the aid measure in the light of its predefined general and specific objectives and indicators and its impact of the risk finance measure on markets and competition, specifying that this requirement may apply in particular to large schemes and to schemes with novel characteristics, which is the case for the EIS/VCT scheme. The Commission notes that the UK authorities have therefore notified an evaluation plan for the scheme.

(137) The Commission considers that, as described in section 5 of this decision, the notified evaluation plan contains the minimum elements necessary: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation.

(138) The Commission notes that the scope of the evaluation is defined in an appropriate way. It comprises a list of result indicators that are used for the evaluation questions in order to estimate the aid scheme's direct and indirect impact on the market and possible distortions of competition. The data gathered by external and internal sources provide a sufficient basis to collect the evidence necessary to answer the evaluation questions.

(139) Moreover, the evaluation plan sets out and explains the main methods that will be used in order to identify the impacts of the scheme, and discusses why these methods are likely to be appropriate for the scheme in question. The proposed evaluation methodology allows for a proper ex-post evaluation of the scheme regarding support for risk finance investments.

(140) Furthermore, the proposed timeline of the evaluation is reasonable in view of the characteristics of the measures concerned. In addition, findings of the evaluation can constitute an important source of information for the revision of the scheme.

(141) The Commission also acknowledges that the commitments made by the UK authorities to conduct the evaluation according to the plan described in the present decision by an appointed independent single evaluation body. The procedures envisaged for selecting such evaluation body are appropriate in terms of independence and skills. Moreover, the proposed modalities for the publication of the evaluation results are adequate to ensure transparency.

(142) Finally, the Commission notes the commitment made by the UK authorities to submit the final evaluation report at the latest in March 2019, in order to enable the UK authorities to fully assess the need of appropriate measure in the light of the outcome of the evaluation before the expiry of the RFGs.

8. CONCLUSION

(143) The Commission concludes that the notified amendments to the existing EIS/VCT scheme fulfil the conditions set out in the RFGs and that the positive effects of the measures outweigh its negative effects on competition in the internal market.

(144) The Commission therefore finds the measure to be compatible with the internal market pursuant to Article 107(3) (c) TFEU.

9. DECISION

(145) The Commission considers the notified State aid SA.40991 (2015/N) to be compatible with the internal market, pursuant to Article 107(3) (c) TFEU. Accordingly, it decides not to raise objections to the aid measures.

(146) The Commission reminds the UK authorities that, in accordance with Article 108(3) TFEU, all plans to change this aid measures must be notified to the Commission.

(147) The Commission reminds the UK authorities to provide an annual report on the implementation of the measures and that the final evaluation report must be submitted by March 2019.

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 by registered letter or fax to:

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Yours faithfully,
For the Commission

Margrethe VESTAGER
Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
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EUROPEAN COMMISSION