II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 May 1998

on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) — the growth and employment initiative

(98/347/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130(3) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Having regard to the opinion of the Committee of the Regions [4],

(1) Whereas the European Council, meeting in Amsterdam on 16 and 17 June 1997, in the context of measures for the alleviation of unemployment, invited the European Investment Bank (EIB) and the European Investment Fund (EIF), *inter alia,* to develop a facility to provide venture capital for high-technology projects of SMEs and by so doing, acknowledged, not only the link between SMEs, innovation and technology, and new jobs, but also the role of risk-capital in underpinning job-creation;

(2) Whereas the European Special Council on Employment, meeting in Luxembourg on 20 and 21 November 1997, welcomed the European Parliament's Growth and Employment Initiative, providing for the strengthening of budgetary resources earmarked for employment; whereas in its decision on the 1998 budget, the European Parliament in agreement with the Council created a new heading B5-5 (Labour market and technological innovation) for the financing with ECU 450 million over three years (1998 to 2000) of SMEs and of innovative actions and projects in the labour market; whereas, within this, ECU 30 million has been allocated in 1998 for innovative actions and projects in the labour market; whereas the European Council invited the Commission to make proposals, as soon as possible, for new financial instruments to support innovative and job-creating SMEs, as part of this initiative, so that the Council can adopt them speedily; whereas these new instruments must reinforce the European Technology Facility, financed by the European Investment Bank and administered by the European Investment Fund, by opening a 'risk capital window', supporting the creation of transnational joint ventures between SMEs within the European Union and establishing within the European Investment Fund a special guarantee fund to facilitate risk-taking by institutions providing finance for small and medium-sized enterprises;

(3) Whereas the EIB and EIF have already responded by creating the European Technology Facility (ETF), which will provide venture-capital for technology oriented SMEs by using established venture-capital funds as intermediaries;

[1] OJ C 108, 7. 4. 1998, p. 67.
[2] OJ C 138, 4. 5. 1998.
[3] Opinion delivered on 26 March 1998 (not yet published in the Official Journal).
[4] Opinion delivered on 17 April 1998 (not yet published in the Official Journal).

(4) Whereas, on 9 December 1996, the Council adopted Decision 97/15/EC on a third multiannual programme for small and medium enterprises (SMEs) in the European Union (1997 to 2000) [1]; whereas this programme includes the objectives of improving access to loan and risk capital financing, facilitating the development of specific financial instruments and stimulating the development of capital markets for fast-growing SMEs;

(5) Whereas, on 5 November 1997, the Commission adopted Decision 97/761/EC approving a support mechanism for the creation of transnational joint ventures for SMEs in the Community [2], a financially limited initiative launched under the third multiannual programme for SMEs;

(6) Whereas, on 15 December 1994, the Council adopted Decision 94/917/EC, adopting a specific programme for the dissemination and optimisation of the results of activities in the field of research and technological development, including demonstration (1994 to 1998) [3] which provides for activities to improve the European environment for financing the exploitation, adaptation and dissemination of technology by appropriate Community schemes; whereas the Commission on 25 November 1996 adopted a communication on the 'First action plan for innovation in Europe — innovation for growth and employment' providing for innovation financing to be facilitated in Europe, especially by encouraging investment in risk capital and equity, particularly in start-up investment and innovative, high-growth firms which are a major source of new jobs, and by reinforcing European Investment Fund action in favour of innovation; whereas this Decision should be implemented in appropriate coordination with the abovementioned activities;

(7) Whereas in the implementation on the financial assistance programme for SMEs under this programme, particular attention should be given to small enterprises with up to 100 employees, within the objectives of the programme;

(8) Whereas the lack of venture capital constitutes a particular difficulty for new firms and SMEs looking to expand, especially those exploiting new technology and innovative ideas; whereas this segment of the venture-capital market is underdeveloped in Europe and entails the highest risks which potentially translate to high losses; whereas a determined public sector involvment will assist private sector operators to make onward investments to early stage and emerging SMEs;

(9) Whereas SMEs frequently encounter difficulties in obtaining bank financing for the development of transnational joint ventures because of the higher risk for financial institutions; whereas the development of joint ventures between Community SMEs makes it possible to make better use of the opportunities of the internal market, to increase investment and trade and to have a positive effect on employment and economic growth; whereas advances and subsidies constitute the most suitable measure to overcome the financial obstacles for SMEs to create transnational joint ventures;

(10) Whereas bank loans constitute an important source of external funding for SMEs; whereas the raising of debt finance is difficult for SMEs as banks are often reluctant to lend to them; whereas loans are often only available to SMEs against tangible security; whereas loan guarantees constitute a cost-effective instrument to facilitate access to loans; whereas both tangible and intangible investments should be eligible under the scheme; and whereas a significant leverage effect can be achieved with a guarantee instrument;

(11) Whereas this Decision constitutes the legal basis for specific measures which are complementary with other Community measures and which cannot be better carried out at Member State level and therefore respect the principle of subsidiarity; whereas the Decision is limited to the minimum necessary to achieve its objectives and does not exceed what is necessary to this end and therefore respects the principle of proportionality;

(12) Whereas the Commission should adapt the allocation to the different schemes over the three-year period to take account of their absorption and efficiency in terms of the quality of the prospects submitted, their impact on the access to financing by SMEs and their immediate and long term impact on creating sustainable jobs;

(13) Whereas the definition of SMEs as set out in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises [4] should be applied in the implementation of this Decision;

[1] OJ L 6, 10. 1. 1997, p. 25.
[2] OJ L 310, 13. 11. 1997, p. 28.
[3] OJ L 361, 31. 12. 1994, p. 101.
[4] OJ L 107, 30. 4. 1996, p. 4.

(14) Whereas the EIF was set up in June 1994 to contribute to the pursuit of Community objectives by stimulating investment in trans-European networks and small and medium-sized enterprises; whereas the Community has become a member of the EIF by virtue of Council Decision 94/375/EC [1]; whereas the Fund is empowered to issue loan guarantees and to make equity investments according to its Statute;

(15) Whereas the cooperation agreements between the Commission and the EIF mentioned in Articles 3 and 5 should take account of the need to secure wide dissemination of information concerning the schemes;

(16) Whereas the EIF has indicated its willingness to participate in the implementation of the ETF start-up and the SME guarantee facility schemes under this Decision; whereas the EIF in the implementation of the ETF start-up facility should endeavour to ensure the maximum appropriate private sector venture capital involvement;

(17) Whereas the intermediary financial institutions should be selected in an open and transparent manner;

(18) Whereas the Joint European Venture (JEV) scheme will be administered by the Commission in accordance with its Decision 97/761/EC;

(19) Whereas the measures financed by the EIB and the EIF do not fall under the provisions of the Treaty on State aid; whereas those measures, if they have effected on beneficiary SMEs comparable to those arising from State aid, have to observe the limits and conditions laid down for the compatibility of comparable State aid,

HAS DECIDED AS FOLLOWS:

Article 1

Objective of the programme

A programme of financial assistance for innovatory and job-creating small and medium-sized enterprises is hereby set up with the aim of stimulating job-creation by facilitating and strengthening the establishment and growth of innovative SMEs (hereinafter 'the programme') as defined in Commission Recommendation 96/280/EC, by supporting their investment activity through increased availability of finance. The programme shall be targeted at SMEs with growth and therefore employment creation potential.

Article 2

Description of the programme

The programme shall consist of three complementary facilities which shall be: a risk-capital scheme (ETF Start-up) managed by the European Investment Fund (EIF), a scheme for financial contributions supporting the creation of transnational joint-ventures by SMEs within the Community (Joint European Venture) managed by the Commission and a guarantee scheme (SME Guarantee Facility) managed by the EIF.

Article 3

The ETF start-up facility

1. The Community shall provide risk-capital participation in SMEs primarily at their establishment and early stages and/or innovative SMEs through investments in relevant specialised venture-capital funds, where appropriate in cooperation with other participatory mechanisms established in Member States, particularly in smaller or newly established funds, funds operating regionally or funds focused on specific industries or technologies, or venture-capital funds financing the exploitation of R&D results, e.g. funds linked to research centres and science parks, avoiding duplication of existing EIB and EIF interventions and reduction of the risk on these instruments.

2. The EIF shall select, make and manage the investments into the venture-capital funds, where appropriate working with national schemes. The detailed terms and conditions for implementing the ETF start-up facility, including its monitoring and control, shall be laid down in a cooperation agreement between the Commission and the EIF.

3. The cooperation agreement shall take account of the indicative outline set out in Annex I.

Article 4

Joint European Venture (JEV)

1. The Community shall provide financial contributions to SMEs for the setting-up of new transnational joint ventures within the European Union. The Community contribution is intended to cover a part of the expenses incurred in the conception and setting-up of transnational joint ventures. The maximum contribution per project shall be ECU 100 000 covering:

[1] OJ L 173, 7. 7. 1994, p. 12.

(a) up to 50 % of the eligible expenses, with a maximum of ECU 50 000;

(b) up to 10 % of the total amount of investment made in fixed assets. particular attention shall be given to small enterprises with up to 100 employees.

2. Eligible expenses for the purposes of point (a) of paragraph 1 shall be those essential expenses related to the conception and setting-up of a transnational joint venture defined in point 6 of Annex II and created by European SMEs.

3. Applications for contributions shall be channelled to the Commission through a network of finance intermediaries. In the implementation of the JEV, the indicative outline set out in Annex II shall be taken into account.

Article 5

The SME guarantee facility

1. The Community shall provide budgetary allocations for the purpose of covering the cost of guarantees and counter-guarantees issued by the EIF in order to promote an increase of loans to SMEs, by increasing the capacity of guarantee schemes operating in the Member States in the public or private sector, including mutual guarantee schemes; the scheme may also support any risk-sharing SME instruments the EIB or any other appropriate financial institutions may make available. Appropriate cooperation with Member States will be ensured by contacts between the EIF and national authorities before implementing the facility.

2. The budgetary allocation shall cover the full cost of the facility, including EIF's guarantee losses and any other eligible costs or expenses of the facility. The cost of the facility to the Community budget shall be capped so that it does not under any circumstances exceed the budgetary allocations made available to the EIF under this action; there shall be no contingent liability on the Community budget.

3. Priority shall be given to small enterprises with up to 100 employees. The guarantees issued by the EIF shall be partial guarantees; there shall always be a risk-sharing arrangement between the EIF and the financial intermediary. Whenever possible, in the implementation of this instrument, the EIF will work guarantee schemes set up primarily to help finance loans that the banking system would not readily provide without guarantee cover and to ensure that part of the risk is borne by the lender.

4. The detailed terms and conditions for implementing the SME guarantee facility, including its monitoring and control, shall be laid down in a cooperation agreement between the Commission and the EIF.

5. The cooperation agreement shall take into account the indicative outline set out in Annex III.

Article 6

Management fees

The management fees paid to the EIF shall be determined in accordance with the accepted market practice and may be debited to the appropriations devoted to the initiative.

Article 7

Reporting and evaluation

1. The Commission shall report annually to the European Parliament and the Council on the implementation of this Decision and the different schemes under it, notably on this Decision's inpact on the access to financing by SMEs, its immediate effects on the creation of employment, the prospects for the creation of employment in the long term and coherence between the financial allocation to the different schemes and the objectives of the programme.

2. The Commission shall within 48 months at most from the date of its adoption, provide an evaluation of the programme, notably as regards its overall utilisation, its immediate effects on the creation of employment and the prospects for the creation of employment in the long term.

Article 8

Final provision

Without prejudice to what is indicated in Annex I, point 5, Annex II, point 4 and Annex III, point 10, this programme shall come to an end on 31 December 2000.

Article 9

This Decision shall be published in the *Official Journal of the European Communities.* It shall take effect on the day of its publication.

Done at Brussels, 19 May 1998.

For the Council

The President

G. BROWN

ANNEX I

INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE ETF START-UP SCHEME

1. Introduction

The ETF start-up will be operated by the EIF on a trust basis. The EIF will invest the Community funds allocated for the scheme in relevant specialized venture-capital funds and/or where appropriate in co-operation with other participatory mechanisms established in Member States, particularly in smaller or newly established funds, funds operating regionally or funds focused on specific industries or technologies, or venture capital funds financing the exploitation of R&D results, e.g. funds linked to research centres and science parks which in turn provide risk capital for SMEs. The ETF start-up scheme will reinforce the European Technology Facility established by the EIB in cooperation with the EIF by adopting an investment policy involving a higher risk-profile, both as regards intermediary funds and their investment policies.

2. Intermediaries

The EIF will use its best efforts to target investments, throughout the Community, particularly in smaller or newly established funds, funds covering specific regions, whether assisted or not, or focusing on specific industries or technologies, or venture-capital funds linked to research centres and science parks. The intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner in order to avoid any distortion of competition, having regard to the aim of working through a wide range of specialised funds.

3. Maximum investment

The maximum ETF start-up aggregate investment in an intermediary venture-capital fund will be 25 % of the total equity capital held by the relevant fund, or up to a maximum of 50 % in exceptional cases such as new funds which are likely to have a particularly strong catalytic role in the development of venture-capital markets for a specific technology or in a specific region. The Commission will explain in its annual report all individual cases where the EIF made any investment greater than 25 % of the total equity capital. No commitment in a single venture-capital fund will exceed ECU 10 million. The intermediary venture-capital funds will comply with established market practices with regard to portfolio diversification. The EIF will endeavour to ensure the maximum appropriate private sector venture capital involvement.

4. Investment *pari passu*

The investment made by the ETF start-up in the intermediary funds will rank *pari passu* with other equity investors.

5. Life of the facility

The ETF start-up scheme is established as a long-term facility that will usually take five to 12-year positions in venture-capital funds. The EIF will use its best efforts fully to commit the funds allocated to the facility not later than during the calendar year following the year in which the relevant budgetary payments are made. In any case, investments will not exceed 16 years from the time of signature of the cooperation agreement.

6. Realisation of investments

As most of the investments to be made under the ETF start-up scheme will be in unquoted, illiquid venture-capital funds, the realisation of those investments will be based on the distribution of the proceeds received by the intermediary funds from the sale of their investments in SMEs.

7. Reinvestment of proceeds from realised investments

Proceeds from realised investments may be reinvested during the first four years of operation of the scheme. The reinvestment period can be extended by up to three years, subject to a satisfactory evaluation of the facility 48 months after its adoption.

8. **Trust account**

A separate trust account will be set up within the EIF to hold budgetary funds underpinning the scheme. This account will be interest bearing; interest earned will be added to the resources of the facility. The investments made by the EIF under the ETF start-up scheme and EIF's management fees and other eligible expenses will be debited from, and the proceeds from realised investments will be credited to the trust account. After the fourth anniversary of the scheme or, where the reinvestment period of the scheme is extended, after the end of the extended reinvestment period, any balances on the trust account, other than funds committed and not yet drawn down/invested and funds reasonably required to cover eligible costs and expenses, such as EIF's management fee, will be returned to the Community budget.

9. **Court of Auditors**

Appropriate arrangements will be made to allow the Court of Auditors of the European Community to exercise its mission in order to verify the regularity of payments made.

ANNEX II

INDICATIVE OUTLINE OF THE IMPLEMENTATION OF THE JOINT EUROPEAN VENTURE SCHEMEe

1. Introduction

The Joint European Venture scheme will provide financial contributions to support the establishment of transnational joint ventures between SMEs within the European Union. It is based on the limited initiative launched under the third multiannual programme for SMEs, adopted by Commission Decision 97/761/EC of 5 November 1997 approving a support mechanism for the creation of transitional joint ventures for SMEs in the Community.

2. Intermediaries

The scheme will be accessible to SMEs through intermediaries, which may be banks or other appropriate financial institutions. The network of financial intermediaries will comprise financial intermediaries selected in conformity with the abovementioned initiative of 5 November 1997, following a new call for expression of interest published in the *Official Journal of the European Communities*. The Commission will check the eligibility of the applications in the light of the programme objectives.

3. Application procedure

Applications for financial contributions under this scheme will be submitted by SMEs to one of the intermediaries. The intermediary will be entrusted with the evaluation of the application, and, in the event of a favourable opinion, passing it on to the Commission. The Commission will check the eligibility of the applications in the light of the objectives of the scheme, in particular the effect on employment.

4. Payment of financial contributions

The contributions, the total of which will not exceed ECU 100 000 will be paid to the SME, through the financial intermediary which will pass on all payments without delay and deductions.

Payments under the first tranche, up to ECU 50 000, to cover 50 % of eligible expenditure for the conception and preparation of the joint venture, will be made in two instalments. A reimbursable advance of 50 % (maximum ECU 25 000) will be paid as soon as the application has been accepted by the Commission. A second payment of 50 % (maximum ECU 25 000) will be made on presentation of supporting documents for all the expenditure incurred and on the basis of a detailed project evaluation report which permits an assessment of the feasibility of the joint venture as well as the investment envisaged. After acceptance of the documents by the Commission, the reimbursable advance will be converted into a grant.

Payment under the second tranche, covering up to 10 % of the investment, will be made after receipt by the Commission of satisfactory evidence of completion of the investment and commencement of the new activity.

Any SME benefiting from a payment under the second tranche (10 % of the investment) must undertake to submit to the Commission, for a period of five years, information on the activities of the joint venture set up and, in particular, on the number of jobs created.

5. External management cost

In the management of the programme, recourse will be made to external assistance specialized in monitoring projects. This assistance will be provided by external contractors selected following a call for expression of interest. A maximum of 5 % of the budgetary allocation will be reserved to cover the external management cost of the initiative.

6. Definition of a joint venture

The concept of a 'joint venture' will be interpreted broadly, that is including any form of consortium, partnership or joint venture in the strict sense, which should lead to a new legal entity, of an industrial, service, commercial or craft nature, subject to the following conditions being met:

— the project will create new economic activities, involving investment and employment creation within the Community. Transfers of existing economic activities are not eligible. Similarly, purchases of existing enterprises are not eligible,

— the partners will play an active part in the joint venture and assume an adequate measure of responsibility. Any joint venture in which one of the partners owns more than 75 % will be ineligible. Any change in the holdings in the joint venture within three years following the signing of the contract with the Commission must be submitted to the Commission for a review of its financial participation,

— the joint venture must be newly created by at least two SMEs from two different Member States.

7. **Eligible expenses**

Eligible expenses are those relating to the conception and setting-up of a joint venture: expenses incurred as part of the preparatory action (market surveys, preparation of the legal framework, environmental impact assessment, technical standards, business plan, etc.); expenses for external experts (lawyers, advisers, accountants): fees based on actual costs, transport costs, accomodation and subsistence expenses (in accordance with the provisions laid down within the framework of the Commission's contracts for the provision of services); expenses for internal experts (relating to travel abroad): daily allowance, transport costs and accommodation and subsistence expenses (in accordance with the provisions laid down within the framework of the Commission's contracts for the provision of services).

For the grant, covering up to 10 % of the investment made, an investment is considered to be any purchase or production of tangible or intangible assets which are accounted for as fixed assets in the balance sheet of the joint venture and valued in accordance with generally accepted accounting standards.

Financing costs and expenses relating to partner search are excluded.

Expenses under Article 4(1)(b) may only be granted if expenses under Article 4(1)(a) have been granted for substantive preparatory work towards a transnational joint venture, thereby ensuring that grants are awarded only to projects with a genuine business prospect. Approval of the investment subsidy will be conditional on satisfactory evidence of the completion of the investment and the commencement of the new activities.

8. **Obligations of the beneficiaries**

Appropriate arrangements will be made to allow the Court of Auditors of the European Community or the Commission to exercise their mission in order to verify the regularity of declarations made by beneficiaries in support of payment claims submitted by them as well as the corresponding payments made.

ANNEX III

INDICATIVE OUTLINE OF IMPLEMENTATION OF THE SME GUARANTEE FACILITY

1. **Introduction**

The SME guarantee facility will be operated by the EIF on a trust basis. Whilst the EIF will provide counter-guarantees or, where appropriate, co-guarantees for guarantee schemes operating in Member States, and direct guarantees in the case of the EIB or any other appropriate financial intermediary, its losses from the relevant guarantees will be converted by Community funds. This will permit the targeting of the scheme to SMEs with growth potential experiencing particular difficulty in raising finance because of the perceived high risk inherent in lending to them, such as small or newly established companies.

2. **Intermediaries**

Guarantee schemes operating in the Member States within the public or private sector, including mutual guarantee schemes, the EIB or any other appropriate financial institution in connection with any risk-taking SME facilities they may make available. Intermediaries will be selected in conformity with best business and market practice in a fair and transparent manner, having regard to: (a) the effect on the volume of debt finance made available to SMEs, and/or (b) the effect on access to debt finance by SMEs, and/or (c) the effect on risk-taking in SME lending by the intermediary concerned.

3. **Eligible SME lending**

The financial criteria governing the eligibility of SME lending for guarantees under the SME guarantee facility will be determined individually for each intermediary in the framework of the guarantee schemes they are already operating, with the aim of reaching as many SMEs as possible. These rules will reflect market conditions and practices in the relevant territory. The guarantees and counter-guarantees will mainly be available to cover lending to SMEs with less than 100 employees. Particular attention will be given to lending to finance intangible assets.

4. **EIF-guarantees**

The guarantees given by the EIF will relate to individual loans in a specific loan portfolio, which may be an existing loan portfolio, where that leads to the expansion of lending to SMEs, or a loan portfolio to be created within a specific period of time. The guarantees issued by the EIF will cover a part of the credit risk inherent in the underlying loan portfolio with the risk shared with the relevant financial intermediary.

5. **EIF's capped maximum cumulative losses**

The EIF's obligation to pay its share of loan losses to the intermediary will continue until the cumulative amount of payments made to cover losses from a specific loan portfolio, reduced by the cumulative amount of corresponding loss recoveries, reaches a pre-agreed amount, after which EIF's guarantee is automatically cancelled.

6. **EIF *pari passu* with intermediary**

The guarantees given by the EIF will usually rank *pari passu* with the guarantees or, where appropriate, with the loans given by the intermediary.

7. **Trust account**

A trust account will be set up within the EIF to hold the budgetary funds underpinning the scheme. This account will be interest bearing; interest earned will be added to the resources of the facility.

8. **EIF's right to withdraw funds from the trust account**

The EIF will have the right to debit the trust account for payments to meet its obligations for the maximum cumulative losses under the guarantee facility, and, subject to agreement by the Commission, any other eligible costs, for example its management fees, eligible legal fees and promotional expenses of the scheme.

9. **Loss recoveries payable to the trust account**

Any moneys recovered from loan losses for which payment has been made under guarantees called will be credited to the trust account.

10. **Duration of the scheme**

It is envisaged that the individual SME guarantees will have a maturity of five to 10 years. Provided that adequate funds are held in the trust account, the EIF will enter into new guarantee commitments up to the fourth anniversary of the adoption of the facility. Any amount outstanding on the trust account at the time of expiry on the outstanding guarantees will be repaid to the Community budget.

11. **Court of Auditors**

Appropriate arrangements will be made to allow the Court of Auditors of the European Community to exercise its mission in order to verify the regularity of payments made.