EUROPEAN COMMISSION

Brussels, 27.6.2013
C(2013) 4142 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, 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 SA. 36180 (2013/N) Portuguese Guarantee Scheme on EIB lending

Sir,

I. PROCEDURE

1. On 3 February 2013, Portugal notified a guarantee scheme pursuant to which the Republic of Portugal will issue banks operating in Portugal with State guarantees which are, in turn, to guarantee lending by the European Investment Bank ("**the EIB**") in Portugal ("**the Scheme**").
2. The Scheme will be in force until 31 December 2013 but may be renewed thereafter in accordance with EU State aid rules.
3. For reasons of urgency, the Portuguese authorities exceptionally accept that the Commission decision be adopted in the English language.

II. BACKGROUND

4. Currently, the EIB grants loans to undertakings in Portugal ("**the Final Borrowers**"), either directly, with banks guaranteeing those loans ("**the Guarantors**"), or through intermediary banks which lend on the funds to the Final Borrowers.
5. Under the EIB's internal rules for credit risk management if a Guarantor's ratings fall below a certain pre-defined level, the EIB has the right to ask Final Borrowers to: a)

S. Ex.ª o Ministro dos Negócios Estrangeiros
Paulo PORTAS
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replace the Guarantor, b) ensure that additional collateral is provided by the Guarantor or c) repay the loan.

6. Recent rating downgrades of Portuguese banks rendered them ineligible as Guarantors for EIB purposes and triggered the clause under which the EIB can ask for the measures described in recital 5. All of the banks in Portugal currently acting as Guarantors have a rating below the eligibility criteria set out by the EIB. According to the Portuguese authorities, no bank located outside of Portugal with an eligible rating for EIB purposes has showed an interest to the EIB in acting as guarantor for lending in Portugal.

7. At the moment, the total amount of lending guaranteed to the EIB by the Guarantors amounts to EUR 3.3 billion, of which EUR 2.6 billion still needs to be collateralised by the Guarantors by pledging financial collateral to the EIB as a result of their now ineligible rating.

8. Furthermore, the EIB has agreed with the Portuguese authorities that it will increase its existing exposure to Portuguese companies by increasing its lending facility to up to EUR 6 billion subject to the existing EUR 2.6 billion of unsecured lending being adequately guaranteed. That latter condition could be met under EIB policy either by a) the Guarantors posting additional collateral for their existing exposure or b) the Portuguese State guaranteeing the Guarantors vis-à-vis the EIB.

9. While both the Portuguese authorities and the Guarantors wish the EIB to increase its lending operations in Portugal they both state that full collateralisation of the existing guaranteed loans would be too costly. Full collateralisation would be economically unattractive for the Guarantors and would in any event be impossible because of financial stability considerations. The latter consideration has been confirmed by the Bank of Portugal in its letter of 5 December 2012. Thus, the Scheme has been presented as an alternative solution aimed at making it possible for the EIB to maintain its existing exposure and to increase its future lending in Portugal to the Final Borrowers.

10. The combination of: a) the State guarantee with b) the risks inherent to the EIB's existing and new funding to the real economy in Portugal, and c) the Guarantors' guarantees already granted generates a risk profile for its existing and new funding to the real economy in Portugal that is acceptable to the EIB.

11. Consequently, in December 2012 the Portuguese authorities, together with the EIB and the Guarantors, devised the Scheme which was later notified to the Commission on 3 February 2012.

III. THE SCHEME

Legal basis and budget

12. The Scheme is based on Portuguese Law 112/97 of 16 September and Article 103-A of Law 64-B/2011 of 30 December as amended by Law 20/2012 of 14 May 2012. Furthermore, on 7 December 2012 the Republic of Portugal and the EIB reached an agreement "Garantia de Carteira" on the terms and conditions of the Portfolio Guarantee Scheme.

13. The total budget of the Scheme is EUR 2.8 billion.

Objective of the Guarantee Scheme

14. In response to the ongoing exceptional turbulences in the global financial markets and, in particular, to the sovereign debt crisis that has stricken Portugal over the last years, which had translated into rating downgrades of large parts of the Portuguese financial sector, Portugal brought forward the Scheme to preserve on the one hand the stability of the financial system and, on the other hand, to maintain existing and to increase future lending from the EIB to the real economy in Portugal.

Description of the Guarantee Scheme

15. The Scheme allows the Republic of Portugal to issue guarantees, subject to certain conditions, in favour of the Guarantors for the funding granted by the EIB to the Final Borrowers, either directly or indirectly through banks.

16. The State guarantees will only cover the existing obligations of the Guarantors towards the EIB, pursuant to the Portfolio State Guarantee agreed between Portugal and the EIB ("**the PSG**"), and new obligations up to the EUR 6 billion threshold of the EIB lending facility. Therefore, the Scheme is also open to new banks willing to guarantee or intermediate new EIB financing in Portugal as described in more detail in recital 21 below. State Guarantees will not exceed seven years. Moreover, guarantees issued under the Scheme will automatically expire upon the Guarantor regaining eligible rating status by EIB standards, whichever is earlier.

17. Under the Scheme, the Guarantors will not retain any additional benefit that could serve to develop other business activities. As such, the Guarantors can only charge Final Borrowers an aggregate fee that covers: a) their cost of capital, b) the credit risk assumed for the guarantee, c) general and administrative costs incurred in the management of the guarantee and d) a handling cost covering the additional administrative cost linked to the management and monitoring of the Scheme of up to a maximum of 10 basis points (as a percentage of the institution's exposure). Should there be justified reasons for an institution to exceed that 10 basis points ceiling, a duly justified request by the Portuguese authorities will be made to the Commission.

18. The State guarantees will be remunerated by the Guarantors in line with State aid rules. The remuneration for guarantees will be calculated in accordance with the formula set out in the 2011 Prolongation Communication[1]. The indicative guarantee fees for the period 1 July to 31 December 2013, can be found in Annex II, and are based on an updated sample of European banks established by the Commission on 16 May 2013.

19. The total size of the Scheme is up to EUR 2.8 billion of guarantees that will cover up to EUR 6 billion (or 47%) of existing and new funding from the EIB to the real economy in Portugal ("**the EIB Portfolio**"). The structure of the EIB Portfolio guaranteed partially by the Scheme and partially by the Guarantors is composed of a number of revolving credits. Upon maturity of those credit lines, new lines will be granted by the EIB up to the EUR 6 billion threshold agreed between the EIB and the Portuguese authorities, so that the new lending will also be guaranteed by both the Scheme and the Guarantors.

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[1] Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

20. State aid approval for the Scheme is initially sought for the period until 31 December 2013. In accordance with State aid rules, it may be possible for the Portuguese authorities upon notification to prolong the Scheme for another six months thereafter.

21. The Scheme is open to all banks that currently or that will guarantee or intermediate EIB financing operations in Portugal that also are: a) incorporated in Portugal (including Portuguese subsidiaries of foreign institutions), b) licensed and regulated by the Bank of Portugal (or an EU regulator), c) solvent and which, d) due to their recent credit rating downgrades, stopped being considered eligible by the EIB as guarantors of EIB lending in Portugal.

22. The State Guarantee cannot cover EIB loans to companies in difficulty.

IV. POSITION OF PORTUGAL

23. The Portuguese authorities submit that the Scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("**TFEU**"), but are of the view that it is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary in order to remedy a serious disturbance in the economy of Portugal.

24. Portugal submitted a letter by the Bank of Portugal[2] further supporting the need for the scheme to safeguard the stability of the financial system in Portugal and, in particular, the liquidity of the Guarantors taking part in the Scheme.

25. Portugal's understanding is that the Scheme is fully compatible with applicable State aid rules. The State guarantee is linked only to the EIB Portfolio and is an alternative to posting additional collateral by the Guarantors with the EIB. Posting additional collateral would undermine the liquidity position of the Guarantors. It is also fundamental to ensure that EIB will continue financing the Portuguese economy.

26. A market-oriented price is paid by the Guarantors since the guarantee fee to the State is higher than the EIB original pricing ([…][*] basis points) established under a temporary waiver granted to the Guarantors before the Scheme was adopted, which took into account the EIB's independent assessment of the quality of the EIB Portfolio.

27. The Scheme is open to all banks that guarantee or intermediate EIB financing operations to the Portuguese economy, which means that it is not selective or discriminatory. According to Portugal, the institutions covered by the operation are financially sound and sustainable.

28. In addition, Portugal considers that the Scheme is proportional to the challenge faced, and does not go beyond what is strictly required to achieve that objective. The State guarantee covers only part of the Guarantors’ total exposure to the EIB Portfolio and may only be called upon once they are unable to pay (following failure to pay by the relevant borrowers).

29. Finally, the Scheme was designed by the Portuguese authorities to minimize negative spill overs effects on competitors, other sectors and other Member States. The operation is open to all banks willing to join in. The guarantee will ensure that

[2] Letter of the Bank of Portugal of 5 December 2012

[*] Business secret: contains confidential information

EIB continues financing projects of strategic importance to the Portuguese economy. Only banks with ratings equal to (or above) […] would be considered as acceptable guarantors to the EIB. However, the availability of international banks with those rating and willing to enter/increase their exposure to Portugal has been rather scarce, if any.

V. ASSESSMENT OF THE MEASURE

V.1. Existence of State Aid

30. By virtue of Article 107(1) TFEU, "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"

31. The Commission notes that the Scheme concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. It is therefore capable of affecting trade between Member States and of distorting competition, to the extent that it confers an advantage on participating banks. The Scheme essentially provides the Guarantors with an advantage, as it allows them not to post additional collateral in relation to existing exposures (EUR 3.3 billion) but still remain eligible for the purposes of the EIB in guaranteeing new EIB loans. The measure is selective because it is only open to the financial sector and indeed only to Guarantors who have issued or will issue guarantees for funding provided by the EIB.

32. The Scheme is devised as a single mechanism, covering both existing and new exposures of a portfolio of revolving credits. The guarantees under the Scheme cannot be separated into guarantees for existing exposures and those for new exposures, as they cover a portfolio of revolving credits. Although the terms and conditions of the Scheme may not give rise to an advantage in relation to the new exposures, in relation to the existing exposures there is certainly an advantage stemming from the fact that the Guarantors do not need to post additional collateral or to stop the provision of guarantees, which otherwise would have been required under the existing contractual arrangements with the EIB. It is therefore not necessary to pronounce on the existence of an advantage in relation to the new exposures.

33. As the measure is a Scheme covering several elements, and as at least one or some of the elements of the Scheme constitutes State aid, the measure therefore involves State aid within the meaning of Article 107(1) TFEU.

V.2. Compatibility of the Aid

34. Under the Scheme, Portugal intends to provide aid in the form of State guarantees in favour of credit institutions.

35. Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011, the Commission considers it appropriate to examine the measure under Article 107(3)(b) TFEU.

36. Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "*to remedy a serious disturbance in the*

economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[3] and the Restructuring Communication[4]. The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting the 2010 Prolongation Communication[5], which prolonged until 31 December 2011 the application of State aid rules to support measures in favour of banks in the context of the financial crisis. The Commission has since extended the application of those rules beyond 31 December 2011 under the 2011 Prolongation Communication.

37. Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

38. The Commission does not dispute the position of the Portuguese authorities that the approval of the Scheme is necessary for reasons of financial stability and to both maintain and increase EIB lending to critical sectors of the Portuguese economy, suffering from an acute credit crunch. Consequently, the Commission finds that the Scheme aims at remedying a serious disturbance in Portugal's economy.

39. The objective of the Scheme is to temporarily offer appropriate measures for the Portuguese financial system in a timely and efficient manner, where financial institutions face difficulties in maintaining their eligibility as guarantors vis-à-vis the EIB in the context of the financial crisis and the resulting material credit rating downgrades for Portuguese financial institutions.

40. With regard to the scope of the measure, the Commission notes positively that Portugal has limited the size of the Scheme to EUR 2.8 billion or 47% of the total EIB Portfolio and that the Scheme applies until 31 December 2013.

41. The Commission notes that Portugal has committed to ensure that the Guarantors do not retain any undue benefits that could for example serve to develop other business activities of those banks. The detailed Commitments provided by the Portuguese authorities[6] are set out in Annex I.

42. The Scheme is limited to Guarantors who have issued or will issue guarantees for funding provided by the EIB. Additionally, the State guarantee is issued for a maximum period of seven years and will expire as soon as the Guarantor regains credit rating eligibility status for the EIB, whichever happens earlier.

43. Guarantees issued under the Scheme are cumulative to the other guarantee schemes for banks in Portugal. Moreover, Portugal commits that as of the entry into force of the new Commission's Guidelines on State Aid to financial services, when the cumulative liquidity support (including state guarantees) to any bank exceeds both the total amount of EUR 500 million and a ratio of 5% of a bank's total liabilities, participating banks exceeding those thresholds will be required to present a

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3 Commission Communication – Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

4 Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

5 Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of bank's in the context of the financial crisis, OJ C 329, 7.12.2010, p. 7.

6 Letter from the Secretary of State for the Treasury, Ms. Maria Luis Albuquerque of 24.06.13 and a follow up electronic mail of 25 June 2013

restructuring plan within the meaning of the EU State aid rules, within two months of granting of the new guarantees. Until that time, the banks exceeding the above thresholds will be required to submit a viability review.

44. Furthermore, based on paragraph 16 of the Restructuring Communication, the Commission recalls that should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, it cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Communication's final decision on that bank.

45. As of the entry into force of the new Commission's Guidelines on State Aid to financial services Portugal commits to provide the Commission individual restructuring or liquidation plans, within six months, for banks which cause the PSG to be called upon.

46. The Commission also notes that Portugal has committed that the pricing and other conditions for the State guarantees will be in line with the methodology established in the 2011 Prolongation Communication.

47. As of the entry into force of the new Commission's Guidelines on State Aid to financial services Portugal commits to impose on banks to refrain from aggressive commercial practices or from advertising having gained access to State aid funds eventually retained from the PSG.

48. The Commission welcomes that Portugal will put in place a monitoring system that will ensure that all terms and conditions of the Scheme are respected.

Conclusions on the compatibility of the aid measure

49. With respect to State guarantees on existing exposures, the Commission generally considers such guarantees as incompatible with the internal market. However, the measures at hand need to be viewed in the context of EIB lending to countries with severely distressed borrowing conditions compared to the Union's average. Enabling the EIB to continue and extend lending to such countries is in the common European interest, which needs to be taken into account in the compatibility assessment. The Commission intends to modify its guidelines on State guarantees to banks in the context of the financial crisis to that effect in the near future.

50. In that context, and based on the considerations and safeguards explained in recitals 40 to 48, the Scheme can therefore be considered an appropriate, necessary and proportionate measure to remedy a serious disturbance in Portugal's economy and to allow EIB funding to continue flowing, despite the requirements for additional safeguards on the side of the EIB. In light of the commitments set out in Annex I, the measure can thus be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU.

51. The Scheme is approved until 31 December 2013. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

52. The approval of the Scheme is without prejudice to the assessment under State aid rules of any potential advantage derived from it by the Final Borrowers.

53. Portugal exceptionally accepts that the present decision be adopted in the English language, for reasons of urgency.

VII. CONCLUSION

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market

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:

European Commission
Directorate General for Competition
State aid Registry
B-1049 Brussels
Belgium
Fax (32-2) 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I

COMMITMENTS

The Republic of Portugal commits to the following terms and conditions, which reflect the full terms and conditions upon which the Commission consider the Portfolio State Guarantee to be compatible aid:

(1) The Portfolio State Guarantee (PSG) covers an exposure of up to EUR 2.8 billion of the Portuguese State towards the European Investment Bank (EIB), for a portfolio of liabilities of up to EUR 6 billion granted or to be granted by the EIB;

(2) The PSG was designed to cope with rating downgrades of banks guaranteeing EIB liabilities towards investments in Portugal whereby banks need to either post additional collateral or seek alternatives;

(3) The PSG is subject to an agreement between Portugal and the EIB signed on the 7th December 2012;

(4) The participating banks will not retain any advantage from the PSG that could serve to develop other business activities. The banks will either pass the full advantage of the State guarantee to the final recipients of the funds provided by EIB or they will pass the advantage to the Portuguese State;

(5) With respect to the bank's business covered specifically by the PSG, the participating banks can only retain an adequate compensation that covers only:

- Their capital costs,
- Their credit risk,
- Their general and administrative costs incurred by that particular business,
- A handling fee to cover for the additional administrative cost linked to the monitoring of the compliance with the terms and conditions of the State guarantee, of up to a maximum of 10 bps (as a percentage of the institution's exposure)[7]

(6) The PSG is limited to the minimum necessary in scope and time: the guarantees will not exceed 7 years and the guarantee shall cease as soon as the banks benefitting from it recover a rating allowing them not to post additional collateral as per EIB standards, whichever is earlier;

(7) The PSG issued under this scheme is cumulative to the other guarantee schemes for banks in Portugal. As of the entry into force of the new Commission's guidelines on State Aid to financial services, when the cumulative liquidity support (including state guarantees) exceeds both the total amount of EUR 500 million and a ratio of 5% of a bank's total liabilities, participating banks exceeding those thresholds will be required to present a restructuring plan within the meaning of the EU State aid rules, within two months of granting of the new guarantees. Until that time, the banks exceeding the above thresholds will be required to submit a viability review;

[7] Should there be good reasons for an institution to exceed this amount, a duly justified request will be made to the Commission

(8) The PSG scheme is open to all banks operating in Portugal and willing to join the scheme;

(9) In case there is any aid passed to the final beneficiaries the Republic of Portugal will ensure its compatibility;

(10) The PSG will not cover loans considered by the EIB as non-performing.

(11) As of the entry into force of the new Commission's Guidelines on State Aid to financial services Portugal commits to impose on banks to refrain from aggressive commercial practices or from advertising having gained access to state aid funds eventually retained from the PSG

(12) As of the entry into force of the new Commission's Guidelines on State Aid to financial services Portugal commits to provide the Commission individual restructuring or liquidation plans, within six months, for banks which cause the PSG to be called upon.

PRICING OF THE GUARANTEE

(13) The pricing of the PSG will be in line with the methodology established in the 2011 Prolongation Communication that determines the minimum fees applicable for the compatibility of crisis-related State aid in the form of guarantees to banks8.

MONITORING OF THE SCHEME

(14) The Republic of Portugal will put in place a monitoring system that will ensure that participating banks abide by the terms and conditions of the PSG scheme. In particular, if banks retain any additional benefits they will have to pay it back to the State, with interest;

(15) The Republic of Portugal commits to re-submit the PSG for state-aid analysis every six months.

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[8] The Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

Annex II

Indicative guarantee fees as of 16 May 2013	
Banks	**Premium per institute (bp)**
Banco Comercial Português, S.A.	[…]
Banco Espírito Santo, S.A.	[…]
Caixa Geral de Depósitos, S.A.	[…]
Banks without CDS spread[9]	82

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[9] The Republic of Portugal observes that since the beginning of the sovereign debt crisis, the individual credit default swap (CDS) spreads of the banks situated in those Member States that currently face difficulties, have widened along the spreads of the sovereign. As a result, the individual CDS spreads of those banks do not reflect fairly the intrinsic risk of the banks in question and may lead to the remuneration of State guarantees being excessively high. Therefore, the Republic of Portugal claimed that the individual CDS spreads observed for the large Portuguese banks are no longer representative. For that reason, the Portuguese authorities will determine the guarantee fee for those banks on the basis of the CDS of the sample of banks in the lowest rating buckets ("BBB and below").