EUROPEAN COMMISSION

Brussels, 20.5.2019
C(2019) 3790 final

PUBLIC VERSION

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Subject: State Aid SA.53546 (2019/N) – Portugal
10th prolongation of the Portuguese Guarantee Scheme on EIB lending

Sir,

1. PROCEDURE

(1) On 27 June 2013 the Commission approved the Portuguese Guarantee Scheme on European Investment Bank ("EIB") lending ("the scheme") by its decision in State aid case SA.36180 ("the original decision")[1].

(2) On 7 October 2013 the Commission approved an amendment of the scheme by its decision in State aid case SA.37417 pursuant to which State guarantees granted under the scheme would not trigger the obligation of the beneficiary bank to submit a restructuring plan[2].

(3) On the basis of subsequent notifications, the Commission approved the prolongation of the scheme in its decisions of 17 December 2013 in State aid case SA.37688[3], of 30 July 2014 in State aid case SA.38778[4], of 6 February 2015 in State aid case SA.39958[5], of 15 July 2015 in State aid case SA.42156[6], of 1 February 2016 in State aid case SA.44013[7], of 28 July 2016 in State aid case SA.45671[8], of 17 February 2017 in State aid case SA.47164[9], of 7 November 2017

[1] OJ C 220, 1.8.2013, p. 3.
[2] OJ C 251, 1.8.2014, p. 4.
[3] OJ C 117, 16.4.2014, p. 25.
[4] OJ C 393, 7.11.2014, p. 9.
[5] OJ C 136, 24.4.2015, p. 4.
[6] OJ C 277, 21.8.2015, p. 10.
[7] OJ C 284, 5.8.2016, p. 4.
[8] OJ C 341, 16.9.2016, p. 12.
[9] OJ C 110, 7.4.2017, p. 8.

S. Ex.ª o Ministro dos Negócios Estrangeiros
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in State aid case SA.48549[10] and of 9 August 2018 in State aid case SA.51041[11]. By its decision in case SA.51041, the Commission authorised the prolongation of the scheme for 6 months from the adoption date of the decision.

(4) On 21 February 2019 Portugal notified a prolongation of the scheme for 6 months from the adoption date of the present decision. The notification was completed by further submission of information on 26 February 2019 and 17 April 2019.

(5) By letter dated 26 February 2019, Portugal agreed exceptionally to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958[12] and to have the present decision adopted and notified in English.

2. FACTS

2.1. Description of the scheme

(6) The scheme is based on Portuguese Law 112/97 of 16 September 1997 and Article 103-A of Law 64-B/2011 of 30 December 2011 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 scheme.

(7) The total budget of the scheme is EUR 2.8 billion, covering a maximum exposure up to EUR 6 billion of existing and new funding from the EIB to the real economy in Portugal.

(8) The scheme was set up in 2013 amidst global financial market turbulence, and, in particular, the sovereign debt crisis that affected Portugal with rating downgrades of large parts of the Portuguese financial sector at that time. In response, Portugal brought forward the scheme to maintain existing lending and to increase future lending from the EIB to the real economy in Portugal.

(9) 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.

(10) A detailed description of the scheme is provided in the original decision, in particular at recitals 15 to 22.

2.2. Utilisation of the scheme

(11) Regarding the utilisation of the scheme, Portugal submitted a report on the existing guarantees. As of 31 December 2018, the report includes an overview of the currently guaranteed operations, split between the outstanding maximum exposure (EUR 1.884 billion) and the effectively outstanding amount within that exposure (EUR 1.768 billion)[13]. The total budget of the scheme, which is the effective

[10] OJ C 3, 5.1.2018, p. 5.

[11] OJ C 339, 21.9.2018, p. 6.

[12] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

[13] The report at 31 December 2018, indicated the remaining scope to include new operations in the scheme was around EUR 880 million (this amount corresponds to the difference between the original EUR 6

guarantee cap, is still EUR 2.8 billion. This budget has not been exceeded. According to the report submitted by Portugal, the last time a bank requested to include a joint operation with the EIB into the scheme was in February 2016.

3. POSITION OF PORTUGAL

(12) Portugal requests a prolongation of the scheme for 6 months from the adoption date of the present decision, under the same conditions as approved through the previous Commission decisions regarding the scheme.

(13) Portugal submits that the scheme constitutes State aid within the meaning of Article 107(1) TFEU, but is of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary to remedy a serious disturbance in the economy of Portugal.

(14) Portugal submitted a letter by the Bank of Portugal further supporting the need for the proposed prolongation, even in the current conditions of economic recovery in Portugal. The Bank of Portugal considers that economic and financial stability considerations still require that investment and economic growth is promoted by facilitating access to capital markets especially for SMEs, for which it would remain difficult. The Bank of Portugal notes that despite some improvements in the banking sector, the capacity to provide a stable and adequate flow of credit to non-financial corporations remains vulnerable to potential internal and external adverse shocks. The Bank of Portugal demonstrates this by putting forward the high level of indebtedness that characterises the Portuguese economy and the fact that some Portuguese banks continue to have ratings below the investment grade which renders them ineligible as guarantors for EIB purposes. In such circumstances, the discontinuation of the scheme would require a full collateralisation for such loans or an early repayment, which would negatively affect the financial stability in Portugal through the impact on financing conditions of companies that are benefitting from EIB lending. Portugal therefore highlights the necessity to keep the link between the domestic banks and the EIB by prolonging this scheme and ensuring that Portuguese companies continue to have the access to the financing supported by EIB funds. The Bank of Portugal also considers other risks directly linked to credit institutions such as possible re-evaluation of sovereign risk and financial institutions premiums in the context of the end of the ECB's asset purchase program or capital requirements set at the European level for financial institutions.

(15) In line with the requirements of the 2011 Prolongation Communication[14], Portugal has provided an indicative fee (estimation) for each financial institution eligible to benefit from those guarantees. The estimation was based on an application of the scheme's remuneration formula and recent market data.

(16) As for the previous prolongations of the scheme, Portugal submitted its intention to continue to determine the guarantee fee for banks which still have a traded CDS on

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billion and the maximum guaranteed amounts committed to date, i.e. EUR 3.178 billion approved at the date of entry into force of the scheme and EUR 1.942 billion of new operations approved between December 2013 and December 2018). This follows from the fact that the EUR 6 billion maximum guaranteed portfolio cannot be replenished; in other words, once a guarantee operation is included in the EUR 6 billion portfolio, the maximum guaranteed portfolio is reduced with the same amount.

[14] 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.

the basis of the CDS of the sample of Union banks in the "BBB-rating and lower" rating category.

(17) Portugal confirmed that the credit institutions benefiting from the scheme have complied with their obligations in relation to the guaranteed operations, as well as with the payment of the guarantee fee to the Portuguese State.

(18) Portugal reasserted the commitments put forward at the second prolongation of the scheme[15].

4. ASSESSMENT

4.1. Existence of State Aid

(19) According to 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.

(20) Although the terms and conditions of the scheme may not give rise to an advantage in relation to new exposures, the scheme has been devised as a single mechanism to cover the exposures existing at the time of its inception and new exposures of a portfolio of revolving credits. For the reasons indicated in the original decision, 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. The scheme essentially provides the guarantors with an advantage, as it allows them not to post additional collateral in relation to existing exposures but still remain eligible for the purposes of the EIB in guaranteeing new EIB loans. However, Portugal has committed that the participating banks will not retain any advantage from the scheme 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.

(21) 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. The provision of that advantage to the guarantors is capable of affecting intra-Union trade.

(22) 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.

4.2. Compatibility of the scheme

4.2.1. Legal basis for the compatibility assessment

(23) Under the scheme Portugal intends to provide aid in the form of 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.

[15] See footnote 4

(24) 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". In the 2013 Banking Communication,[16] point 6, the Commission noted that in circumstances of persisting stress in financial markets and in the presence of a risk of wider negative spill-over effects, the requirements for the application of Article 107(3)(b) TFEU to State aid in the financial sector would continue to be fulfilled. The application of that derogation remains, however, possible only as long as the crisis situation persists, creating genuinely exceptional circumstances where financial stability at large is at risk.

(25) The Portuguese authorities have submitted the view of the Bank of Portugal that regular access of banks to funding in financial markets remains vulnerable at the current juncture, despite recent positive developments concerning Portugal's sovereign rating. For the purposes and the limited timeframe of this prolongation, the Commission does not dispute the position of the Portuguese authorities that the scheme would aim at remedying a serious disturbance in the Portuguese economy.

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

(27) In order for an aid to be compatible under Article 107(3)(b) TFEU, it must comply with the general principles for compatibility under Article 107(3), viewed in the light of the general objectives of the Treaty. Therefore, according to the Commission's case practice[17] any aid or scheme must comply with the following conditions: (i) appropriateness, (ii) necessity and (iii) proportionality.

(28) The 2013 Banking Communication and the Restructuring Communication[18] formulate assessment criteria which reflect those general principles and their requirements in light of the specific policy context.

4.2.2. Compatibility assessment of the scheme

Appropriateness

(29) The scheme should be appropriate to remedy a serious disturbance in the Portuguese economy. The scheme was set up in 2013 during the Macro-economic Adjustment Programme, with the objective to temporarily offer appropriate measures for the Portuguese financial system in a timely and efficient manner, in cases where financial institutions face difficulties in maintaining their eligibility as guarantors vis-à-vis the EIB in the aftermath of the financial crisis and the resulting material credit rating downgrades of Portuguese financial institutions. For the purposes and the limited timeframe of this prolongation, the Commission does not dispute the position of the Portuguese authorities that the scheme can be an appropriate means to address eligibility of the banks from an EIB perspective.

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[16] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

[17] See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka", OJ C314, 29.10.2013, p. 1 and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka", OJ C 314, 29.10.2013, p. 2.

[18] 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).

(30) Pursuant to point 61 of the 2013 Banking Communication, in exceptional cases the Commission may also approve guarantees covering exposures of the EIB towards banks for the purpose of restoring lending to the real economy in countries with severely distressed borrowing conditions compared to the Union average. In assessing such measures, the Commission examines in particular whether they do not confer an undue benefit that could for example serve to develop other business activities of those banks.

(31) 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. In addition, the original description of the scheme (see recital 17 of the original decision) restrictively defines the elements of the aggregate fee that the guarantors can charge to the final borrowers.

(32) The scheme is limited to guarantors who have issued or will issue guarantees for funding provided by the EIB.

Necessity

(33) With regard to the scope of the measure, the Commission notes positively that Portugal has limited the size of the guarantee scheme by setting its maximum budget at EUR 2.8 billion and that the scheme applies for 6 months from the adoption date of the present decision. The Commission also notes that, taking into account that the EUR 6 billion maximum guarantee portfolio cannot be replenished, the remaining scope to include new operations is limited to EUR 880 million[19].

(34) Additionally, the State guarantee was issued in 2013 for a maximum period of seven years and will expire next year on 27 June 2020 or as soon as the guarantors regain credit rating eligibility status for the EIB, whichever happens earlier.

(35) Regarding the remuneration level, the Commission observes that Portugal, in line with point 59(c) of the 2013 Banking Communication, has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication which requires, in particular, the application of a pricing method based largely on market data.

(36) The guarantee fee required by 2011 Prolongation Communication foresees a pricing method also for banks without representative CDS data, which Portugal argues would still be appropriate to use.[20] It seems appropriate to consider the CDS spreads of individual banks located in the countries recently subject to a financial assistance programme as temporarily non-representative of the intrinsic risk of those banks.

(37) For the time period of this prolongation, the Commission does not object to Portugal's intention to continue to determine the guarantee fee for banks which still have a traded CDS on the basis of the CDS of the sample of Union banks in the "BBB- and lower" rating category. The Commission notes that the financial assistance programme in Portugal ended in May 2014 and will review its

[19] See footnote 133
[20] See recital (16)

assessment of the macro-economic situation and appropriateness of that exceptional pricing mechanism whenever a further prolongation of the scheme is notified.

Proportionality

(38) The Commission notes that Portugal has committed[21], in line with point 59(f) of the 2013 Banking Communication, to a number of behavioural safeguards such as a ban on advertisements referring to the State support and a ban on any aggressive commercial strategies which would not take place without the State support. Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.

(39) Finally, the Commission welcomes that Portugal undertakes to submit individual restructuring or liquidation plans, within two months, for banks which cause the guarantee to be called upon, in line with point 59(e) of the 2013 Banking Communication.

(40) As regards the combination of the scheme with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

(41) Furthermore, based on point 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, such additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. All State aid measures received by a bank as individual aid or under the scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

Monitoring

(42) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Portugal undertakes to present every three months a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged and to supplement it with updated available data on the cost of comparable non-guaranteed debt issuances (nature, volume, rating and currency).

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

Conclusions on the compatibility of the aid measure

(44) For the purposes of this prolongation, the scheme is considered to remain an appropriate, necessary and proportionate measure to remedy a serious disturbance of the Portuguese economy. The notified prolongation therefore complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

[21] See recital (18)

(45) In line with the Commission's decisional practice, the scheme can therefore be prolonged for 6 months from the adoption date of the present decision.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

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