Subject: State Aid SA.56803 – Spain
COVID-19 - Guarantee scheme to companies and self-employed to support the economy in the current COVID-19 outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 23 March 2020, Spain notified aid in the form of guarantees on loans (“Línea de avales para las empresas y autónomos para paliar los efectos económicos del COVID-19”, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).

(2) The Spanish authorities confirm that the notification does not contain business secrets.

(3) By letter of 24 March 2020, Spain exceptionally agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union

---


Excm. Sr. D.ª Arancha González Laya
Ministra de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID
(“TFEU”) in conjunction with Article 3 of Regulation 1/1958\(^2\) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(4) Spain considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(5) On 17 March, the Government of Spain approved several economic measures to support the economy in the current exceptional circumstances through Royal Decree-Law 8/2020. Article 29 enabled the Ministry of Economic Affairs and Digital Transformation to grant up to EUR 100 billion in guarantees to private sector loans of companies and self-employed that undergo financial difficulties as a consequence of the coronavirus outbreak.

(6) An Agreement of the Council of Ministers will develop the conditions of these guarantees and release a first tranche of up to EUR 20 billion of guarantees.

(7) These guarantees will cover new loans and refinancing operations of self-employed and companies granted by credit institutions, financial credit establishments, electronic money entities and payment entities. This will help companies and self-employed face their liquidity needs.

(8) The Agreement of the Council of Ministers will include three differentiated lines of guarantees:

(a) The first line will target refinancing operations and new loans of an amount of up to EUR 1.5 million for self-employed, SMEs and large enterprises.

(b) The second line will target self-employed and SMEs with needs above EUR 1.5 million.

(c) The third line will target large companies with needs above EUR 1.5 million.

(9) As regards the first line in recital (8), the maximum amount of the guaranteed loan/refinancing operation by client is EUR 1.5 million. The maximum coverage of the guarantee does not exceed 80% for self-employed and SMEs, 70% for new loans for large enterprises (60% for refinancing operations), the maximum maturity of the underlying operation being of five years. The Spanish authorities consider that, given these conditions, the guarantees granted under the first line can be considered as *de minimis* aid under the Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid\(^3\) (the *de minimis* Regulation). The Spanish authorities have

\(^2\) OJ 17, 6.10.1958, p. 385.

consequently excluded the measure under recital (8)(a) from the notification under the Temporary Framework, and the measure will not be assessed in this decision.

(10) Consequently, the measure and the assessment carried out in this Decision concern only the second and third lines of the scheme as described above in recital (8).

(11) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(12) The measure provides aid in the form of guarantees on loans.

2.2. National legal basis

(13) The legal basis for the measure consists of two instruments:

(a) The Royal Decree-Law 8/2020, which in its article 29 enables the Ministry of Economic Affairs and Digital Transformation to grant guarantees to private sector loans of companies and self-employed that undergo financial difficulties as a consequence of the coronavirus outbreak.

(b) An Agreement of the Council of Ministers that will release a first tranche of guarantees for up to EUR 20 billion of loans and establishes the concrete features of the measure in full compliance with this Decision.

2.3. Administration of the measure

(14) The Spanish national promotional bank, the Instituto de Crédito Oficial (ICO), is responsible for administering the measure and the aid is to be granted through credit institutions and other financial institutions as financial intermediaries.

2.4. Duration of the measure

(15) Aid may be granted under the measure, as from its approval until 30 September 2020. The availability period could however be extended until 31 December 2020, if so decided by an Agreement by the Council of Ministers.

2.5. Beneficiaries

(16) The final beneficiaries of the measure are undertakings (including self-employed persons) registered in Spain. Aid may be granted under the measure to undertakings that are not in difficulty and to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation (“GBER”) on 31 December 2019, but that faced difficulties or entered into difficulty thereafter because of the COVID-19 outbreak.

---

2.6. Sectoral and regional scope of the measure

(17) The measure is open to all sectors, however, credit institutions are excluded as eligible final beneficiaries. It applies to the whole territory of Spain.

2.7. Basic elements of the measure

(18) The eligible instruments will meet the following conditions:

(a) They can be either a refinancing operation agreed as of 17 March 2020 or a new loan granted as of 17 March 2020.

(b) They may relate to both investment and working capital loans.

(c) The amount of the loan will be above EUR 1.5 million and, if the maturity is beyond 31 December 2020, it will comply with one of the following alternative conditions:
   – It will not surpass the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
   – It will not surpass 25% of total turnover of the beneficiary in 2019; or
   – With appropriate justification and based on a self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

(d) For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than specified in point (c) of the present recital, with appropriate justification and provided that proportionality remains assured.

(e) The maximum maturity of the loan is five years.

(f) The costs of new loans and refinancing operations that benefit from these guarantees will be in line with the costs charged before the start of the COVID-19 crisis.

(19) The guarantee will fulfil the following conditions:

(a) The guarantee can be granted until 30 September 2020, or until 31 December 2020 if the deadline is extended by an Agreement of the Council of Ministers.

(b) The maximum coverage of the guarantee is as follows:
   – For self-employed and SMEs, the guarantee may cover up to 80% of the underlying loan principal, be it a new loan or a refinancing operation.
– For large undertakings, the guarantee may cover up to 70% of the underlying loan if it is a new loan and 60% for refinancing operations.

(c) Losses are sustained proportionally and under the same conditions by the financial intermediary and the Member State Ministry of Economic Affairs and Competitiveness.

d) The maturity of the guarantee will match that of the loan up to 5 years.

e) As regards the risk analysis of the operation, for loans up to EUR 50 million, the ICO will make use of the risk analysis by the financial intermediary; for loans above EUR 50 million, the ICO will perform its own analysis, additional to the one carried out by the financial intermediary.

(f) The guarantee fees are progressive in time and step up each year for the outstanding amount until the final maturity of the underlying credit operation in order to incentivise early repayment.

g) Concerning guarantee premia, the Spanish authorities have taken advantage of the flexibility provided by point 25 (b) of the Temporary Framework, whereby Member States may notify schemes, considering the table in point 25 (a) as basis, but with the possibility to modulate maturity, pricing and guarantee coverage (e.g. lower guarantee coverage offsetting a longer maturity). Hence, and considering the lower coverage ratio of 80%, 70% and 60% compared to maximum 90% allowed under the Temporary Framework, the Spanish authorities have notified minimum guarantee premia that are lower than those in the grid of point 25 (a).

(h) Taking this into account, minimum premia are set as follows:

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Instrument</th>
<th>1\textsuperscript{st} year</th>
<th>2\textsuperscript{nd} and 3\textsuperscript{rd} year</th>
<th>4\textsuperscript{th} and 5\textsuperscript{th} year</th>
<th>Guarantee coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMEs and self employed</td>
<td>New loans and Refinancing operations</td>
<td>20bps</td>
<td>30bps</td>
<td>80bps</td>
<td>80%</td>
</tr>
<tr>
<td>Other companies</td>
<td>New Loans</td>
<td>30bps</td>
<td>60bps</td>
<td>120bps</td>
<td>70%</td>
</tr>
<tr>
<td>Other companies</td>
<td>Refinancing operations</td>
<td>25bps</td>
<td>50bps</td>
<td>100bps</td>
<td>60%</td>
</tr>
</tbody>
</table>

(i) The Spanish authorities have also confirmed that the mobilisation of the guarantees is contractually linked to specific conditions, which are agreed between the parties when the guarantee is initially granted.

(20) The Council of Minister Agreement specifically foresees that “the financial entity will pass on the advantages of the public guarantee to the final beneficiaries”. A supervision system will be established. In any case, the costs of new loans and refinancing operations that benefit from these guarantees will be in line with the costs charged before the start of the COVID-19 crisis.

2.8. Cumulation

(21) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
For the same underlying loan principal, aid granted under section 3.2 and section 3.3 of the Temporary Framework cannot be cumulated.

Aid under this measure may be cumulated with other compatible aid, de minimis aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

2.9. Monitoring and reporting

The Spanish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (e.g., by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.). In particular, those authorities will provide information demonstrating that none of the beneficiaries were companies in difficulty on 31 December 2019 within the meaning of the GBER.

3. ASSESSMENT

3.1. Legality of the measure

By notifying the measure before putting it into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU. As explained in recital (8) the notified measure and the assessment carried out in this Decision concern only the lines (b) and (c) as described in recital (8) of the decision (i.e. the second line, targeted at self-employed and SMEs with financing needs above EUR 1.5 million, and the third line, targeted at larger enterprises with financing needs above EUR 1.5 million).

3.2. Existence of State aid

For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

The measure is imputable to the State, since it is enacted by a Royal Decree Law and is administered by the Ministry of Economic Affairs and Digital Transformation. It also involves State resources since it is financed by public funds.

The measure is selective since it is awarded only to certain undertakings that fulfil the conditions detailed in recitals (18)-(19), furthermore, the second line of guarantees in recital (8) applies only to self-employed persons and SMEs and the third line of guarantees in recital (8) applies only to large undertakings. It applies to all sectors of activity, however, credit institutions are excluded as eligible final beneficiaries (recital (17)). Finally, the measure applies only to undertakings registered in Spain.
The measure confers an advantage on its beneficiaries in the form of guarantees on loans. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.

The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Spanish authorities do not contest that conclusion.

### 3.3. Compatibility

Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure can be found compatible with the internal market.

Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “to remedy a serious disturbance in the economy of a Member State”.

By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that “the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”. The Commission concluded that “State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”.

The measure aims at facilitating the access of companies and self-employed to external finance by increasing the banks’ willingness to issue credit at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak, and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

The measure is one of a series of measures conceived at national level by the Spanish authorities to remedy a serious disturbance in their economy. The importance of the measure to ensure lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Spanish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid in the form of guarantees on loans ”) described in section 3.2 and “Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions” described in Section 3.4 of the Temporary Framework.

The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
• The measure sets minimum levels for guarantee premiums. The price structure of the measure consists of fees as displayed in recital (19)(h). Spain - pursuant point 25 (b) - modulates the fees set out in point 25(a) of the Temporary Framework, in consideration that the participation of the State in the losses is significantly lower than 90%, which is the maximum allowed under point 25(f). The Commission notes that the increased degree of risk-sharing ensures a sufficient incentive for intermediary financial entities to assess adequately the risk of providing a loan and to select whether the viability outlook of the borrower ensures the likely repayment of the loan. Lastly, the Commission takes comfort in the compulsory analysis of the risk profile that the ICO has to carry out before the approval of the new loan or refinancing operation for all transaction above EUR 50 million. Therefore, the Commission concludes that the remuneration of the guarantees envisaged by Spain conforms to point 25 (b) of the Temporary Framework.

• The granting period extends until 30 September 2020. The availability period could however be extended if so decided by an Agreement by the Council of Ministers, but only until 31 December 2020 at the latest (recitals (15) and (19)(a)). The measure is therefore in conformity with point 25(c) of the Temporary Framework.

• For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary, which may be covered by guarantees, will comply with point 25(d) of the Temporary Framework (recital (18)(c)). For loans with a maturity until 31 December 2020, the higher amount of the loan principal will be justified appropriately and the proportionality of the aid will remain assured (recital(18)(d)). in line with point 25(e) of the Temporary Framework.

• The measure limits the duration of the guarantees to maximum five years (recital(19)(d)). The guarantees cover up to 80%, 70% or 60% of the loan principal, and the losses stemming from the loans are sustained proportionally and under same conditions by the financial entities and the State (recital (19)(c)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally. The measure therefore complies with point 25(f) of the Temporary Framework.

• Guarantees granted under the measure relate to investment and working capital loans (recital (18)(b)). The measure therefore complies with point 25(g) of the Temporary Framework.

• Undertakings in difficulty (situation as of 31 December 2019) within the meaning of the GBER are excluded from benefiting from the measure (recital (16)). The measure therefore complies with point 25(h) of the Temporary Framework.

• The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries. Moreover, credit institutions are
excluded as eligible final beneficiaries (recitals (17) and (20)). The measure therefore complies with points 28 to 31 of the Temporary Framework.

- In particular, the measure complies with point 31 of the Temporary Framework, which requires that the financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on, to the largest extent possible, to the final beneficiaries. The Commission observes that the beneficiary undertakings are experiencing substantial losses hampering their ability to service expensive debt. Considering the banks’ relatively high exposure on the loans, they have an incentive to offer loans on the most favourable conditions possible to prevent the undertaking from defaulting, both on the new credit and any other, older credits granted earlier. The Commission also takes into account the fact that all commercial banks have, in principle, access to the guarantee scheme, creating competition between the banks. Finally, the Commission assesses positively the obligation (recital (18)(f)) that the costs applied by the banks to the new loans and the refinancing operations will have to be in line with those applied before the start of COVID-19 crisis, thus minimizing possible benefits retained by the financial intermediaries.

- The Spanish authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (24)).

- Lastly, the mobilisation of the guarantees is contractually linked to specific conditions that have to be agreed between the parties when the guarantee is initially granted.

(38) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)b) TFEU and meets all the relevant conditions of the Temporary Framework.

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(39) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“BRRD”)5 and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (“SRMR”),6 in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(40) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial

---


institutions as financial intermediaries, may also constitute an indirect advantage to those institutions. Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(41) Moreover, as indicated in recital (37) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(42) The Commission therefore concludes that the measure does not to violate any intrinsically linked provisions of BRRD and of SRMR.

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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

---

7 Points 6 and 29 of the Temporary Framework.