EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.56873(2020/N) – Portugal
COVID-19: Direct grant scheme and loan guarantee scheme

Excellency,

1. PROCEDURE

(1) By electronic notification of 30 March 2020, Portugal notified aid in the form of direct grants and guarantees on loans ("the measures") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[1] Portugal submitted further information on 1 April 2020 and a revised notification on 3 April 2020.

(2) The Portuguese authorities confirm that the notification does not contain confidential information.

(3) Portugal exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,[2] and to have this Decision adopted and notified in English.

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended.

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

S. Ex.ª o Ministro dos Negócios Estrangeiros
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2. DESCRIPTION OF THE MEASURES

(4) Portugal considers that the COVID-19 outbreak affects the real economy. The measures form part of an overall package of measures and aim 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) The measures are 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

(6) The measures provide aid in the form of direct grants and guarantees on loans.

2.2. National legal basis

(7) The legal basis for the measures comprises *inter alia* the following rules:

- Article 199(g) of the Portuguese Constitution,
- Decree 2-A/2020 of 20 March 2020 executing the state of emergency declared by Decree 14-A/2020 of 18 March 2020,
- Article 13 of Decree-Law 10-J/2020 of 26 March 2020 establishing exceptional measures to protect the credits of families, companies, private social solidarity institutions and other entities of the social economy, and a special regime of State guarantees regarding the COVID-19 disease pandemic,
- Decree-Law 211/98 of 16 July 1998 regulating the activity of mutual guarantee companies, as amended by Decree-Law 157/2014 of 24 October 2014, Decree-Law 100/2015 of 2 June 2015 and Decree-Law 309-A/2007 of 7 September 2007.

2.3. Administration of the measures

(8) *SPGM Sociedade do Investimento S.A.* ("SPGM"), the entity heading the Portuguese Mutual Guarantee System, is responsible for administering the measures. It is an investment company that manages the Mutual Counter-guarantee Fund (*Fundo de Contragarantia Mútuo*, "FCGM"), created by Decree-Law 211/98 of 16 July 1998. It supports the creation of mutual guarantee societies (*sociedades de garantia mútua*, "SGMs") by participating in their share capital.

(9) FCGM is a public legal entity responsible for 'promoting and carrying out the actions required to ensure the solvency of the Mutual Guarantee Societies'. It counter-guarantees operations performed by SGMs, having several guarantee lines, resulting from public or international funding. In case FCGM is delayed in the performance of its obligations, creditors are entitled to take action against the Portuguese State. The counter-guarantee provided by FCGM reduces the risk incurred by SGMs, reducing their required provisions, having a multiplier effect on their ability to provide guarantees without undermining their solvency ratio.

(10) At the operational level, SGMs provide guarantees to the final beneficiaries ensuring the repayment of the amount due to the lender up to the coverage specified in recital (17).

2.4. Budget and duration of the measures

(11) The Portuguese authorities confirmed that no more than EUR 13 billion of nominal amounts will be guaranteed under the loan guarantee scheme. The estimated budget for the direct grant scheme is EUR 1.6 billion.

(12) Aid may be granted under the measures as from its approval until 31 December 2020.

2.5. Beneficiaries

(13) The final beneficiaries of the measures are undertakings active in Portugal, irrespective of their size. Aid may not be granted to undertakings that were already in difficulty[3] on 31 December 2019. Aid is granted under the measures either directly or through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measures

(14) The measures apply to the whole territory of Portugal and are open to all sectors, with the exception of undertakings whose principal activities fall under NACE Code K – Financial and insurance activities (Divisions 64 to 66).

2.7. Basic elements of the measures

2.7.1. Loan guarantee scheme

2.7.1.1. Nature of eligible instruments

(15) The measure provides for the issuance of guarantees on new investment loans and new working capital loans.

2.7.1.2. Maximum amount of eligible instruments

(16) The overall amount of eligible instruments per beneficiary does not exceed:

(a) the double of the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's 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,

[3] As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

(b) 25 percent of total turnover of the beneficiary in 2019; or

(c) 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.

2.7.1.3. Maximum amount of the guarantee

(17) The guarantees do not exceed 90 percent of the loan principal and the losses are sustained proportionally and under same conditions, by the credit institution and the State. Furthermore, the Portuguese authorities confirmed that when the size of the loan decreases over time, the guaranteed amount decreases proportionally.

2.7.1.4. Maximum duration of the guarantee

(18) The maximum duration of the guarantees is six years.

2.7.1.5. Remuneration of the guarantee

(19) The measure sets minimum levels for guarantee premia, applied progressively from 25 to 200 bps depending on the type of recipient, the guarantee coverage and the maturity of the loan, as follows:

Recipient	Coverage	1st year	2nd to 3rd year	4th to 6th year
SMEs	90%	25bps	50bps	100bps
	80%	25bps	50bps	100bps
Large enterprises	90%	50bps	100bps	200bps
	80%	30bps	80bps	175bps

2.7.1.6. Mobilisation of the guarantee

(20) The Portuguese authorities confirmed that the mobilisation of the guarantees is contractually linked to specific conditions, which are agreed between the parties when the guarantees are initially granted.

2.7.1.7. Additional provisions

(21) The measure is implemented through the Portuguese mutual guarantee system and entails two different levels:

- SGMs grant guarantees to final beneficiaries on eligible instruments described in recital (15). Those guarantees have the characteristics described in recitals (16)-(20).

- FCGM grants a counter-guarantee to each SGM that covers 100 percent of the guarantees issued by SGM to the final beneficiaries. FCGM is entitled to part of the guarantee premium.

(22) In principle, all commercial credit institutions have access to the measure.

(23) SGMs conduct an operation-to-operation risk analysis (both credit risk and commercial risk) in relation to the issuance of guarantees under the measure. Guarantees may be granted under the measure only if it is established on the basis of documents submitted by eligible undertakings to SGMs and/or the credit institutions that the final beneficiaries will maintain jobs over a period of time and will not initiate or execute any dismissal of employees for economic reasons, either through collective dismissals or though the abolition of job positions.

2.7.2. Direct grant scheme

2.7.2.1. Form of aid

(24) The measure provides for the conversion of an amount of capital owed equivalent to part of the guarantees issued under the notified loan guarantee scheme and under the loan guarantee schemes authorised by Commission Decision of 22 March 2020 – SA56755(2020/N) – Portugal – Guarantee schemes related to Covid-19, C(2020) 1888 final into direct grants to undertakings active in certain sectors of the Portuguese economy. The decision to convert a guarantee into a direct grant has to be taken by 31 December 2020. The direct grant is earmarked to the repayment of (part of) the underlying loan.

2.7.2.2. Maximum amount of aid

(25) The overall aid under the measure does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products or EUR 800 000 for all other undertakings. The Portuguese authorities confirmed that if an undertaking receives one or more direct grants under the notified and/or other direct grant schemes authorised under section 3.1 of the Temporary Framework, the grants will not exceed in total the maximum amount.

2.7.2.3. Additional provisions

(26) The measure is implemented through the Portuguese mutual guarantee system. In particular, SGMs determine the amount of capital equivalent to part of the guarantees issued to eligible undertakings under the notified loan guarantee scheme and the loan guarantee schemes authorised by Commission Decision of 22 March 2020 – SA56755(2020/N) – Portugal – Guarantee schemes related to Covid-19, C(2020) 1888 final.

(27) Aid may be granted under the measure only if it is established on the basis of documents submitted by eligible undertakings to SGMs that certain conditions are met, namely that the former will maintain jobs over a period of time and will not initiate or execute any dismissal of employees for economic reasons, either through collective dismissals or through the abolition of job positions. The Portuguese authorities will regularly monitor the fulfilment of the conditions on

the basis of which the aid is granted. In case of non-compliance, the aid must be recovered.

(28) The Portuguese authorities confirmed that:

(a) aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned;

(b) aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;

(c) aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/201420;[4]

(d) where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Portuguese authorities will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities.

2.8. Cumulation

(29) The aid ceilings and cumulation maxima fixed under the measures shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(30) The Portuguese authorities confirmed that aid granted under section 3.2 and section 3.3 of the Temporary Framework will not be cumulated, if the aid is granted for the same underlying loan and the overall loan amount per undertaking exceeds the thresholds set out in point 25(d) or 27(d) of the Temporary Framework.

(31) Furthermore, the Portuguese authorities confirmed that:

(a) eligible undertakings may use only one of the Portuguese guarantee schemes approved under the Temporary Framework for a given loss;

(b) the notified loan guarantee scheme will comply with the maximum loan amounts as specified in the present notification (recital (16)); and

(c) the Portuguese authorities will ensure that eligible undertakings are not surpassing the maximum loan amounts laid down in the Temporary Framework, also taking into account any other loans benefitting from

[4] Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

guarantees granted under schemes approved under the Temporary Framework.

2.9. Monitoring and reporting

(32) The Portuguese 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.).

3. ASSESSMENT

3.1. Legality of the measures

(33) By notifying the measures before putting them into effect, the Portuguese authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(34) 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.

(35) The measures are imputable to the State, since they are administered by SPGM, the entity heading the Portuguese Mutual Guarantee System and they are based on the legal basis stipulated in recital (7). They are financed through State resources, since they are financed by public funds. In particular, the direct grants are funded by the general State budget, while the guarantees on loans are funded by guarantees and own funds of the public entity FCGM.

(36) The measures confer an advantage on their beneficiaries in the form of direct grants and guarantees on loans. The measures thus relieve those beneficiaries of costs which they would have had to bear under normal market conditions.

(37) The advantage granted by the measures is selective, since it is awarded only to certain undertakings that meet the conditions in recital (13). They apply, in principle, to all sectors of activity, however, undertakings whose principal activities fall under NACE Code K – Financial and insurance activities (Divisions 64 to 66) are excluded as eligible final beneficiaries (recital (14)).

(38) The measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(39) In view of the above, the Commission concludes that the measures constitute aid within the meaning of Article 107(1) TFEU. The Portuguese authorities do not contest that conclusion.

3.3. Compatibility

(40) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measures are compatible with the internal market.

(41) 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*".

(42) 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*".

(43) The measures aim at facilitating the access of firms to external finance at a time when the normal functioning of credit 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.

(44) The measures are part of a series of measures conceived at national level by the Portuguese authorities to remedy a serious disturbance in their economy. The importance of the measures to stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measures are of a scale which can be reasonably anticipated to produce effects across the entire Portuguese economy. Furthermore, the measures have been designed to meet the requirements of a specific category of aid ("*Aid in the form of direct grants*" and "*Aid in the form of guarantees on loans*") described in Sections 3.1 and 3.2 of the Temporary Framework and the requirements for 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.

(45) The Commission accordingly considers that the measures are 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:

(46) For the loan guarantee scheme:

- The measure sets minimum levels for guarantee premia, applied progressively from 25 to 200 bps depending on the type of recipient, the guarantee coverage and the maturity of the loan (recital (19)). For all guarantees granted to SMEs and guarantees granted to large enterprises with a coverage ratio of 90 percent, the applicable premia are established in accordance with point 25(a) of the Temporary Framework. For guarantees granted to large enterprises with a coverage ratio of 80 percent, the applicable premia are established in accordance with point 25(b) of the Temporary Framework. For these guarantees, the lower guarantee coverage allows for lower guarantee premia since the increased risk sharing with financial intermediaries ensures that portfolios of guarantees held by the Portuguese authorities will be less risky. The measure therefore complies with points 25(a) and (b) of the Temporary Framework.

- Guarantees may be granted under the measure by 31 December 2020 at the latest (recital (12)). The measure therefore complies with point 25(c) of the Temporary Framework.

- For all loans, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (16)).

- The measure limits the duration of the guarantees to a maximum of six years (recital (18)). The guarantees cover up to 90 percent of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State. Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (17)). The measure therefore complies with point 25(f) of the Temporary Framework.

- Guarantees granted under the measure relate to investment loans and working capital loans (recital (15)). The measure therefore complies with point 25(g) of the Temporary Framework.

- Guarantees may not be granted to undertakings that were already in difficulty on 31 December 2019 (recital (13)). 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 (recitals (21) to (23)).

    - *First*, SGM conduct an operation-to-operation risk analysis (both credit risk and commercial risk) in relation to the issuance of guarantees under the measure, which ensures the passing on of the advantage from the State guarantee in the form of higher volume of financing, riskier portfolios, lower collateral requirements and lower interest rates.

    - *Second*, all commercial credit institutions have, in principle, access to the measure, which means that beneficiaries can search the best conditions for the credit operation, thus fostering competition among credit institutions.

    - *Third*, the fee collected by SGMs from the final beneficiaries is shared with FCGM, thus contributing to reduce the possible indirect advantage for them.

  Such safeguards ensure that the commercial banks, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries. The measure therefore complies with points 29 to 31 of the Temporary Framework.

- The applicable cumulation rules are respected (recitals (29) to (31)).

- The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantees are initially granted (recital (20)).

(47) For the direct grant scheme:

- The overall aid under the measure does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products or EUR 800 000 for all other undertakings (recital (25)). The measure therefore complies with points 22(a) and 23(a) of the Temporary Framework.

- The measure is granted on the basis of an aid scheme with an estimated budget of EUR 1.6 billion (recital (11)). The measure therefore complies with point 22(b) of the Temporary Framework.

- Aid may not be granted to undertakings that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 22(c) of the Temporary Framework.

- Aid may be granted under the measure no later than 31 December 2020 (recitals (12) and (24)). The measure therefore complies with point 22(d) of the Temporary Framework.

- Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned (recital (28)). Furthermore, aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market (recital (28)). The measure therefore complies with points 22(e) and 23(b) of the Temporary Framework.

- Aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/201420[5] (recital (28)). The measure therefore complies with point 23(c) of the Temporary Framework.

- Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Portuguese authorities confirmed that they will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities (recital (28)). The

[5] Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

measure therefore complies with point 23bis of the Temporary Framework.

- The applicable cumulation rules are respected (recitals (29) to (31)).

(48) Finally, the Portuguese authorities confirmed that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (32)).

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

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

(50) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[6] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[7] 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 measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(51) 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 channelled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[8] Nevertheless, any such indirect aid granted under the measures does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measures 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 measures does not qualify as extraordinary public financial support under Article 2(1) No 28 BRRD and Article 3(1) No 29 SRMR.

(52) Moreover, as indicated in recital (46) 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.

(53) The Commission therefore concludes that the measures do not violate any intrinsically linked provisions of the BRRD and of SRMR.

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6 OJ L 173, 12.6.2014, p. 190-348.

7 OJ L 225, 30.7.2014, p. 1-90.

8 Points 6 and 29 of the Temporary Framework.

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