EUROPEAN COMMISSION

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Subject: State Aid SA.59196 (2020/N) – Spain
COVID-19: Third amendment to SA.56851 (2020/N)

Excellency,

1. PROCEDURE

(1) By electronic notification of 26 November 2020, Spain notified amendments to the aid scheme SA.56851 (2020/N) ("Umbrella Scheme"), which the Commission had approved on 2 April 2020 (the "initial Umbrella Scheme Decision"), under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary Framework").[1] The Umbrella Scheme was amended by SA.57019 (2020/N) on 24 April 2020 ("first amendment to the Umbrella Scheme") and SA.58778 (2020/N) on 22 October 2020 ("second amendment to the Umbrella Scheme").

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I , 4.4.2020, p. 1,by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

Excma. Sr. D.a Arancha González Laya
Ministra de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

(2) The Umbrella Scheme comprises the same type of guarantees on loans measures as SA.56803 (2020/N) "*COVID-19 - Guarantee scheme to companies and self-employed to support the economy in the current COVID-19 outbreak*", approved on 24 March 2020 ("the first ICO Scheme Decision"), which is managed by the *Instituto de Crédito Oficial* ("ICO") on behalf of the Ministry of Economy and Finance. This scheme has been amended by SA.58096 (2020/N) on 5 August 2020 ("amendment to the first ICO Scheme").

(3) As the Umbrella Scheme comprises the same type of guarantees on loans measures as the first ICO Scheme and as ICO is also a granting authority under the Umbrella Scheme, Spain considers that amending the Umbrella Scheme only is sufficient to be able to apply the notified measures comprehensively in Spain.

(4) Spain exceptionally agrees 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[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(5) The Spanish authorities wish to amend the Umbrella Scheme in order to ensure that sufficient liquidity remains in the market, so that the disruptions caused by the COVID-19 outbreak do not undermine the viability of the undertakings, in a context where the crisis and its impacts have revealed longer and deeper than previously expected.

(6) Spain has confirmed that the aid under the measures is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(7) The compatibility assessment of the measures is based on Article 107(3)(b) TFEU, in light of Sections 2, 3.1, 3.2 and 3.4 of the Temporary Framework.

2.1. The nature and form of aid

(8) Spain intends to include the following aid measures into the Umbrella Scheme. First, it intends to allow aid in the form of adjustments to the guarantees granted by the granting authorities covered by the Umbrella Scheme either under the *de minimis* regulations[3] or under the schemes mentioned in recitals (1) and (2), which are necessary to enable changes to the terms of the underlying loans (the "guaranteed loans"). The change in the terms of the guaranteed loans can take two forms: an extension of the maturity of the existing loan and an extension of the grace period of the loan, i.e. the period until the first instalment for the repayment

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

[3] The Spanish authorities have also used, in line with the guidance provided by the Communication on a Coordinated economic response to the COVID-19 outbreak of 13 March 2020, other possibilities to grant guarantees under the Regulations on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, which Spain was not required to notify.

of the loan principal. Second, for new guarantees on refinancing operations[4] Spain intends to allow for maturities of up to eight years.

(9) All other conditions of the Umbrella Scheme, as previously amended, remain applicable.

2.2. Legal basis

(10) The legal bases for the present amendment to the Umbrella Scheme are the Agreement of the Government's Delegate Commission for Economic Affairs of 27 November 2020, the Royal Decree-Law 34/2020[5] of 17 November, and the Agreement of the Council of Ministers of 24 November 2020.

2.3. Administration of the measure

(11) The administration of the amended measures remains under the same granting authorities as identified in recital (10) of the initial Umbrella Scheme Decision.

2.4. Budget and duration of the measure

(12) The budget remains as described in recital (11) of the initial Umbrella Scheme Decision.

(13) The duration of the scheme is not changed. Aid may be granted under the measures until no later than 30 June 2021, as established in recital (11) of the second amendment to the Umbrella Scheme.

2.5. Beneficiaries

(14) The scope of final beneficiaries remains unchanged, as described in recital (13) of the initial Umbrella Scheme Decision.

2.6. Sectoral and regional scope of the measure

(15) The measures are open to all sectors except the financial sector, as described in recital (14) of the initial Umbrella Scheme Decision. They apply to the whole territory of Spain.

2.7. Basic elements of the measure

2.7.1. Changes in the terms of existing guaranteed loans

(16) The Spanish authorities intend to grant aid in the form of adjustments of the guarantees granted by the granting authorities referred in recital (11) either under the *de minimis* regulations or under the schemes mentioned in recitals (1) and (2), in order to enable changes to the terms of guaranteed loans .

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[4] Refinancing operations as referred in recital (22)(a) of the initial Umbrella Scheme Decision.

[5] *Real Decreto-ley 34/2020, de 17 de noviembre, de medidas urgentes de apoyo a la solvencia empresarial y al sector energético, y en materia tributaria.*

(17) Upon request from the final beneficiary[6], the changes in the guaranteed loan can take two basic forms, which can be granted cumulatively:

(a) The grace period of the eligible loan can be prolonged for up to 12 months not exceeding an overall grace period of 24 months. More precisely, the instalments of repaying the principal of the existing guaranteed loan can be postponed, while interest remains due. Since this will not trigger a longer duration of the guarantee, the guarantee premiums will not change.

(b) The maturity of the eligible loan can be extended by a maximum of three years, to a maximum loan maturity of eight years, counted from the date when the existing loan was granted. The extension of maturity of the guaranteed loan will trigger a longer duration of the guarantee. Guarantee premiums will therefore be adapted in accordance with recital (19).

(18) Any other features of the amended guaranteed loan will remain unchanged, including the original guarantee coverage in percentage of the guaranteed loan provided by the granting authority. All other conditions of the existing Umbrella Scheme as previously amended will be complied with.

(19) For an extended maturity, the guarantee premiums will be as follows:

(a) If the loan amount, together with any aid of limited amount granted to the same beneficiary, does not exceed a maximum of EUR 800 000 for all sectors but the fishery and aquaculture sector, where the maximum amount per beneficiary is EUR 120 000, and the primary production of agricultural products, where the maximum per beneficiary is EUR 100 000, the guarantee premiums will not be adjusted.

(b) If the loan amount exceeds the thresholds in (a) the guarantee premiums will be adjusted in line with the below table. Flat annual guarantee premium as shown in the table for the different maturities will be applied on the outstanding amount for the entire duration of the loan including the extended period. As the flat fees rise with maturity, the annual guarantee premiums for the entire duration of the loan will be adjusted to take into account the increase in fees also for the period between the date of granting the guaranteed loan and the date of granting the maturity extension.

[6] For certain guaranteed loans administered by ICO, the amendments requested by an eligible beneficiary are mandatory for financial institutions. According to the Royal Decree Law 34/2020, those guaranteed loans were granted under the Royal Decree Law 8/2020 and formalised before 18 November 2020.

Beneficiary	Instrument	Maturity						Guarantee coverage
		1 year	2 and 3 years	4 and 5 years	6 years	7 years	8 years	
SMEs and self employed	New loans and Refinancing operations	20bps	30bps	80bps	80bps	169bps	188bps	80%
Large companies	New loans	30bps	60bps	120bps	125bps	260bps	285bps	70%
Large companies	Refinancing operations	25bps	50bps	100bps	110 bps	235 bps	260 bps	60%

2.7.2. *New guarantees on refinancing operations exceeding the maximum amounts of Section 3.1 of the Temporary Framework.*

(20) The Spanish authorities intend to include refinancing operations within the scope of recital (23)(c) of the initial Umbrella Scheme Decision as amended by recital (8) of its second amendment Decision, thus allowing the granting of guarantees to new refinancing operations with the following conditions:

(a) For SMEs and self-employed, the guarantee may cover up to 80% of the underlying loan principal; for large undertakings, the guarantee may cover up to 60% of the underlying loan.

(b) The maximum maturity will be eight years.

(c) The yearly flat guarantee premiums foreseen in recital (19)(b) for (i) SMEs and self employed benefiting from a guarantee coverage of 80% and (ii) for large companies benefiting from a coverage of 60% will be applicable.

2.7.3. *Safeguards to ensure the pass-on of the benefit to the final beneficiaries*

(21) While safeguards described in recital (24) of the initial Umbrella Scheme Decision remain applicable, for the measures described in Section 2.7.1, an additional safeguard is foreseen. The costs of the guaranteed loans benefiting from the changes in terms must be in line with the costs charged prior to the amendment, and may only be increased to reflect an increase in the guarantee premium of the guarantee, if any.

2.8. Cumulation, monitoring and reporting

(22) The cumulation rules of the initial Umbrella Scheme Decision (recitals (33) to (36)) remain applicable.

(23) Spain explains where changes in the terms are applied to an existing guaranteed loan that initially fell under the *de minimis* regulation, but after the change will no longer fall under the de minimis threshold, Spain will record the guaranteed loan as granted under the Temporary Framework from the beginning, for the purposes of compliance with the cumulation rules.

(24) Monitoring and reporting rules of the Umbrella Scheme as previously amended remain applicable.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(26) 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.

(27) The initial Umbrella Scheme Decision concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU and this conclusion is confirmed by its first and second amendments.

(28) For the assessment of State resources and imputability, the Commission refers to recital (40) of the initial Umbrella Scheme Decision.

(29) The adjustments of the guarantees on loans mentioned in recital (16) and the granting of new guarantees to refinancing operations are made at favourable guarantee premiums and thus relieve the beneficiaries of costs, which they would have had to bear under normal market conditions.

(30) The advantages granted by the measures are selective, since they are awarded only to certain undertakings, excluding the financial sector.

(31) 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.

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

3.3. Compatibility

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

(34) 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".

(35) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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*".

(36) The objective of the Umbrella Scheme remains unchanged. As outlined in recital (5), the new measures as per the notified amendments pursue the objectives of supporting undertakings to overcome possible liquidity shortages stemming from the impact of the health crisis that lasts longer and is deeper than previously expected. They therefore comply with Section 2 of the Temporary Framework.

(37) The measures have been designed to meet the requirements of Sections 3.1, 3.2 and 3.4 of the Temporary Framework. The Commission refers to its analysis of compatibility as set out in recitals (52) and (53) of the initial Umbrella Scheme Decision, in recitals (74) and (75) of the Decision on its first amendment and in recitals (22) and (23) of the Decision on its second amendment, with the exception of compliance with points 25(b) and (f) of the Temporary Framework.

(a) Changes in the terms of existing guaranteed loans

(38) For the changes in the terms of existing guaranteed loans, the Commission refers to its clarification in point (9) of the Fourth Amendment to the Temporary Framework[7], according to which, where an aid measure has been granted under Section 3.2 of the the Temporary Framework and its terms have been adjusted before the end of validity of the Temporary Framework, the aid already received and the new aid must overall remain in conformity and within the limits set out in Section 3.2 for the entire duration of the measure. Accordingly, when the amount of the guarantee does not change and there is only a readjustment of its terms and conditions as provided under an existing aid measure, the aid already received and the new aid will remain in principle within the limits set out in Section 3.2 for the entire duration of the measure.The changes in the terms of existing guaranteed loans will be as follows:

(a) For an extension of the grace period of an existing guaranteed loan, the compatibility criteria of the original guarantee do not change. The nominal loan amount, the maturity and the guarantee coverage remain unchanged and therefore also the remuneration (recital (17)(a)). Hence, the compatibility assessment of the original guarantee does not change.

(b) For an extension of the maturity of the guaranteed loan, the compatibility criteria of the original guarantee do not change, except for the duration and the remuneration, which is adjusted in accordance with recital (19)).

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[7] Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

(39) For guarantees on loans that do not exceed the amounts in recital (19)(a)), which are in line with points 22 (a) and 23 (a) of the Temporary Framework, Section 3.1 thereof does not request a minimum remuneration. Therefore, the fact that the remuneration of these guarantees remains unchanged while their duration increases does not affect compatibility.

(40) The remuneration of the guarantee is adjusted for extended guarantees on loans exceeding those thresholds, in accordance with recital(19)(b), increasing the applicable premiums also for the period between the date of granting of the guaranteed loan and the date of granting of the maturity extension. For the first two rows of the table in recital (19)(b) (i.e., for guarantees of up to 80% where the final beneficiaries are SMEs or self-employed and for guarantees of up to 70% where the final beneficiaries are large companies), the combination of guarantee premiums, guarantee coverages and durations have already been assessed by the Commission in the second amendment to the Umbrella Scheme (Decision SA.58778) as compliant with points 25(b) and 25(f) of the Temporary Framework. For the third row, applicable to guarantees up to 60% on refinancing operations of large companies, the Commission notes that the significantly higher flat guarantee premiums for the maturities of 7 and 8 years reflect the exceptional nature of longer maturities while also accounting for the lower coverage ratio (60%) compared to that referred to in point 25(f) of the Temporary Framework. The advantage to the final beneficiary resulting from it is comparable to the one received under the standard conditions laid down in point 25(a) of the Temporary Framework. Therefore, the Commission concludes that the remuneration of these guarantees as proposed by Spain conforms to point 25(b) and (f) of the Temporary Framework.

(b) New guarantees on refinancing operations

(41) As regards the inclusion of refinancing operations within the scope of recital 23(c) of the initial Umbrella Scheme Decision as amended by recital (8) of its second amendment, all the conditions set up therein apply and only the applicable guarantee premiums (i.e., for guarantees of up to 80% where the final beneficiaries are SMEs or self-employed and for guarantees of up to 60% where the final beneficiaries are large companies) need to be set up *ex novo*. As described in recital (20)(c), these applicable guarantee premiums are modulated in accordance with the table in recital (19)(b) and their conformity with points 25(b) and 25(f) has been already assessed under recital (40) above.

(c) General

(42) Safeguards of the initial Umbrella Scheme Decision continue to apply both for changes in the terms of guaranteed loans and for new guarantees on refinancing operations. Furthermore, the Spanish authorities introduce an additional safeguard for the changes in the terms of guaranteed loans, as the final beneficiary is locked-in in an existing financial transaction (recital (21)). In particular the Commission notes that, in this specific situation of the change in the conditions of existing loans, where the beneficiary is tied to the the bank where the guaranteed loan was originally negotiated and cannot choose between different financial intermediaries, limiting the adjustment of the remuneration of the loan to the increase of the public guarantee premium ensures that the additional cost that the financial institution will apply to the final beneficiary's loan will be fully passed on by the financial intermediary to the State through the guarantee fee and that the

bank will not retain part of the increase of the cost of the loan. The measures therefore comply with Section 3.4 of the Temporary Framework.

(43) The Commission further observes that the notified amendments do not affect the compliance of the Umbrella Scheme with the rules on cumulation and they have no impact on the monitoring and reporting obligations as laid down in point 20 and Section 4 of the Temporary Framework.

(44) As there are no further changes that affect the compatibility assessment, the Commission accordingly considers that the measures, as modified, are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the conditions of the Temporary Framework.

4. Compliance with intrinsically linked provisions of Directive 2014/59/EU and Regulation (EU) 806/2014

(45) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("BRRD")[8] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[9] 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 the BRRD and the SRMR.

(46) 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.[10] 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 Article 2(1)(28) BRRD and Article 3(1)(29) SRMR.

(47) Moreover, as indicated in recital (42) above, the amended measures introduce additional 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 additional safeguards complement the already implemented safeguards in the original measures and ensure that those institutions, to the largest extent possible, pass on the advantages provided by the amended measures to the final beneficiaries.

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8 OJ L 173, 12.6.2014, p. 190.

9 OJ L 225, 30.7.2014, p. 1.

10 Points 6 and 29 of the Temporary Framework.

(48) The Commission therefore concludes that the measures, as modified, do not violate any intrinsically linked provisions of the BRRD and the 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.

The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION