EUROPEAN COMMISSION

Brussels, 31/3/2020
C(2021) 2409 final

In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]

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<tr>
<th>Subject: State Aid SA.58082(2021/N) – Portugal COVID-19: State guarantee for the insurance of domestic trade credit risks</th>
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<th>1. Procedure</th>
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<tr>
<td>(1) On 29 January 2021, the Portuguese authorities pre-notified to the Commission the proposal to provide cover for the domestic trade credit insurance risks in Portugal.</td>
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<td>(2) By electronic notification of 22 March 2021, Portugal notified a measure in the form of a State guarantee for the insurance of domestic trade credit risks (“the measure”) pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).</td>
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<td>(3) Portugal exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958(^1) and to have this Decision adopted and notified in English.</td>
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\(^1\) 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 de Estado e dos Negócios Estrangeiros
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2. DESCRIPTION OF THE MEASURE

(4) Portugal considers that the COVID-19 seriously affects the real economy in Portugal. The aim of the measure is to complement other measures already taken by the Portuguese Government to ensure that sufficient liquidity remains available in the market, to ensure that the disruptions caused by the outbreak do not undermine the viability of the Portuguese undertakings and to preserve the continuity of their economic activity during and after the outbreak.

(5) In a context of increased risks of trade payment defaults affecting undertakings due to the COVID-19 outbreak, the credit insurers operating in Portugal have been substantially reducing their coverage limits. Therefore, there is a need in the real economy to ensure that credit insurance coverage remains available to all companies in Portugal, thereby preventing buyers of goods and services from being required to pay in advance, which creates additional liquidity needs for undertakings already under liquidity stress due to the current situation. The aim of the measure is to preserve the availability of trade credit insurance for trades within Portugal and thereby provide an economic benefit to all companies in Portugal that take out insurance for the provision of supplier credits to domestic buyers.

(6) The measure is based on Article 107(3)(b) TFEU to remedy a serious disturbance in the economy, but it is designed in analogy to the principles set out in the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")\(^2\).

2.1. The nature and form of the measure

(7) The measure is provided in the form of a State guarantee granted to participating trade credit insurers for the insurance of domestic trade credit risks.

2.2. Legal basis


2.3. Administration of the measure

(9) The Portuguese Ministry of Finance through the Directorate General of the Treasury and Finance, a public body in charge of the State Guarantees, is responsible for administering the measure.

2.4. Budget and duration of the measure

(10) The estimated budget of the measure is EUR 500 million.

Support may be granted under the measure as from its approval until 31 December 2021.

The measure will concern exclusively risks underwritten between the approval of the measure and 31 December 2021. The losses that occur after 31 December 2021 are covered by the measure if the underlying trade or transaction and invoicing took place before 31 December 2021 and if the claim is submitted within the claims notifications deadline and in any case before 31 October 2022.

2.5. Relevant context for the measure

Trade credit insurance is a risk management product used by undertakings to protect their accounts receivable from losses due to trade credit risks. In the absence of such an insurance products, sellers of goods or services may ask buyers to switch to advance payments. That would also have an impact on the liquidity requirements of buyers up to a point where business activities may cease if liquidity were to be unavailable or too costly. This again would hurt suppliers. Hence, reductions in insurance coverage or sudden withdrawal of such coverage would further weaken the resilience of the economy in the face of the COVID-19 pandemic.

The data for the insurance market in Portugal shows that, although the total number of policyholders and sales has increased, the volume of insured transactions fell significantly, both in the domestic and export market. In the domestic market, the total credit insurance volume has decreased by [0-15]% between December 2019 and September 2020, corresponding to EUR [0-5] billion. As at 30 September 2020, the total credit insurance volume in domestic market amounted to EUR [5-15] billion.

Under the present circumstances, given the abrupt deterioration of economic activity, trade credit insurers may further reduce insurance limits, which would then further aggravate the liquidity situation of Portuguese companies.

2.6. Beneficiaries

The final beneficiaries of the measure are all private law companies established in mainland Portugal and in the Autonomous Regions of Madeira and Azores that are policyholders or insured under a credit insurance policy. The beneficiaries should have no unjustified insurance incidents or defaults and have their tax and contribution situation regularised on the date of contracting the trade credit insurance under the measure.

2.7. Sectoral and regional scope of the measure

The measure is open to all sectors and it applies in mainland Portugal and in the Autonomous Regions of Madeira and Azores.

2.8. Basic elements of the measure

The measure will be provided in the form of a top-up cover, with the aim to increase the insurance coverage for policyholders that otherwise could not obtain sufficient coverage in the private market because the private insurers do not want to provide the full requested coverage or decide to decrease the existing coverage
levels. The measure will allow the private insurers to offer those policyholders, next to the primary insurance cover, a supplementary insurance cover that will be covered by the State guarantee.

(19) The measure will cover the insurance of domestic trade credit risks with the duration up to 180 days.

(20) Domestic trade credit risks covered by another private insurance product, different from the primary insurance policy, are excluded from the measure. Domestic trade credit risks resulting from sales contracts signed with a private individual or with a company controlled by the policyholder, as well as all those in which the credits or risks are excluded from coverage by application of the conditions of the primary insurance policy, are excluded from the measure.

(21) All private credit insurers legally authorised to operate in Portugal can participate in the measure. The Portuguese authorities indicated that four of the private credit insurers operating in Portugal have already indicated that they intend to participate in the measure.

(22) The budget of the measure will be divided into two equal tranches of EUR 250 million each. The first tranche will be allocated to the participating trade credit insurers at the time of the entry into force of the measure on a pro rata basis according to their market share determined at 31 December 2019. After the first tranche is exhausted, the insurers will be able to obtain additional tranches of EUR 25 million each until the total budget under the measure has been spent. The State may reallocate parts of unused tranches among participating insurers.

(23) The percentage of insurance cover is limited to 90% both under the primary and supplementary credit insurance policies, i.e. the policyholder keeps at least 10% of the risk.

(24) The State fully covers the risks in the supplementary insurance policy.

(25) The supplementary insurance cover can amount to maximum 150% of the primary insurance cover. For example, if a policyholder requests insurance coverage of its trade credit exposure and retains the minimum of 10% of the risk, the private insurer will need to provide 40% of the insurance cover, so that the State can cover 60% through the supplementary insurance for a total insurance coverage of 90%. Consequently, the amount that may be compensated by the Portuguese State under the measure will not exceed 54% of the total underlying trade credit.

(26) The supplementary insurance cover will be capped with respect to different categories of buyer risk based on the risk assessment carried out by the participating private trade credit insurers, according to the following predefined criteria:

a) the buyers valued at risk A (good rating) may obtain coverage of up to EUR 2 million,

b) buyers in category B (medium rating) may obtain coverage up to EUR 1 million,

c) buyers in category C (low rating) may obtain coverage up to EUR 300,000, and
d) buyers falling into category D will not be eligible.

(27) The quarterly price paid by the policyholder to the participating private trade credit insurer for the supplementary insurance consists of: a) a supplementary insurance risk premium equal to the quarterly premium rate charged in the primary insurance policy increased by 30%, and in addition b) an administration fee of 30% of the supplementary insurance risk premium. The premium is calculated on the maximum value of supplementary insurance coverages granted in each quarter and each cover is charged for a minimum period of 3 months, even if it has been reduced, cancelled or cancelled in that period.

(28) The participating private trade credit insurers will keep the 30% administration fee as their operating cost, covering expenses of concluding and administering the supplementary insurance policy. The remaining share of the received supplementary insurance risk premium will be transferred by the participating private trade credit insurers to the Portuguese State.

(29) In case of default, the policyholders trigger the insurance and ask for the payment of the claim. The participating private trade credit insurer confirms the value of the claim (loss adjustment) and asks the Portuguese State to pay its share to the policyholders. The allocation of the amounts to be compensated is proportional to the amount insured by participating private trade credit insurer and the amount guaranteed by the State. After those payments, the participating private trade credit insurer has mandate for recovering the credit in total (the share of the State and of the insurance company, as well as of the policyholder). Credit recoveries are also made pro rata, according to the risk sharing rules agreed.

(30) Monitoring and reporting

(31) The Portuguese authorities confirm that the participating trade credit insurers have to periodically report to the Portuguese treasury on the execution of State guarantees (premiums, guarantees granted, claims etc.).

(32) The Portuguese authorities will provide a report to the Commission at the latest by 30 June 2022 outlining how the measure was implemented.

3. ASSESSMENT

3.1. Lawfulness of the measure

(33) By notifying the measure before putting it 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

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3 In particular, the operating cost involve the assessment of the eligibility and the buyer risk rating, monthly detailed reporting obligations to the Portuguese State, marketing the measure among the policyholders, handling the claims in the recovery processes, changes to the participating trade credit insurers’ IT systems, the adoption of additional procedures and the allocation of additional human resources.
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 measure is imputable to the State, since it is administered by the Portuguese Ministry of Finance through the Directorate General of the Treasury and Finance and it is based on Portuguese Decree-Law 10-J/2020 of 26 March 2020 as amended by Decree-Law 26/2020 of 16 June 2020. It is financed through State resources, since it is financed by public funds (recitals (8) and (9)).

(36) The measure confers an advantage on its beneficiaries in the form of guarantees on trade credit insurance (recital (7)). Policyholders (sellers) will be able to continue using trade credit insurance without reductions of the credit limits due to the macroeconomic effects of the COVID-19 outbreak (recital (5)). The measure thus confers an advantage on those beneficiaries, which they would not have had under normal market conditions.

(37) The measure also benefits the private credit insurers, as it allows them to offer the same level of insurance to their clients by providing the additional top-up product by the State and which they administer against a fee for the portion of the insurance that the State takes over. The fact that credit insurers keep only a limited amount of the insurance premiums paid by the policyholders, namely on those risks that the insurers decide to keep, is not sufficient to exclude aid at the level of private credit insurers.

(38) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. those trading companies, which insure themselves against domestic trade credit risks with the Portuguese private trade credit insurers (recital (16)).

(39) 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.

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

(i) Compatibility

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

(42) 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”.

(43) By adopting the Temporary Framework, the Commission acknowledged 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”.

(44) The measure aims at facilitating trade between companies at a time when the normal functioning of markets, including the trade credit insurance market, is severely disturbed by the COVID-19 outbreak, and that outbreak is affecting the wider economy.

(45) While the Commission has provided guidance in the Temporary Framework as to when aid under Article 107(3)(b) TFEU can be declared compatible with the internal market in light of the current shock to the economy, the Temporary Framework is not directly applicable to the measure proposed by Portugal, as it does not cover guarantees for the insurance of trade credit risks.

(46) Therefore, the measure proposed by Portugal has to be assessed based on general criteria for compatibility under Article 107(3)(b) TFEU. However, the Temporary Framework can provide general guidance and its principles can be applied in analogy mutatis mutandis as far as appropriate.

(47) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other. It also requires taking into account the possible systemic importance and position of the beneficiaries and the sector concerned and any safeguards proposed to avoid undue negative effects on competition and trade between Member States.

(48) For the avoidance of doubt, the Commission notes that the Banking Communication 2013 (the "Banking Communication") is not applicable to the measure, as trade credit insurers are not credit institutions. The Commission considers further, that it is also not appropriate to apply the principles of the Banking Communication in analogy to the current situation, because the measure is neither intended to address concerns related to financial stability nor liquidity or solvency needs of the trade credit insurers. Instead, the measure intends to address the direct consequences of the COVID-19 outbreak to the real economy. As a result, applying the Banking Communication to the measure would not be appropriate.

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5 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 of 30 July 2013, p. 1).
3.3.1. Appropriateness

(49) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case, to remedy a serious disturbance in the Portuguese economy. This would not be the case if the disturbance would also disappear in the absence of the measure or if the measure would not be suitable to remedy the disturbance.

(50) In light of the deteriorating economic outlook due to the COVID-19 outbreak, trade credit insurers in Portugal have already significantly reduced or withdrawn the insurance limits provided to their policyholders (recital (14)). A further reduction or withdrawal of limits would likely lead to further negative effects in the Portuguese economy. The impact on liquidity needs of buyers that would be required to provide advance payments as well as the potential losses spreading on to suppliers could be significant. Based on the proposed measure, policyholders will be in a position to obtain and keep sufficient insurance coverage, which would otherwise be reduced or withdrawn by the private trade credit insurers.

(51) In light of the above, the Commission considers that the measure proposed by Portugal is appropriate, because it directly addresses the imminent risk of a significant disturbance of the Portuguese economy.

3.3.2. Necessity

(52) In order to meet the compatibility criterion of necessity, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective. In other words, if a lesser amount of aid or a measure in a less distortive form were sufficient to remedy a serious disturbance in the entire economy, the measures in question would not be necessary.

(53) First, the State guarantee provided by the Portuguese State for the insurance of domestic trade credit risks is limited at EUR 500 million to be compared with a total market of domestic credit insurance in Portugal of EUR [5-15] billion in September 2020 (recitals (10) and (14)).

(54) Second, the State guarantee provided by the Portuguese State for the insurance of domestic trade credit risks is limited in time and expires by 31 December 2021 (recital (11)). The duration is in line with the Temporary Framework, itself amended and extended until 31 December 2021, to allow Member States to continue to support the economy during the crisis.

(55) Third, the State guarantee provided by the Portuguese State covers only specific, domestic trade credit insurance products, specifically designed to cover the adjustments in the offers of credit insurance caused by the COVID-19 outbreak (recitals (18) and (19)).

(56) The amounts of domestic trade credits that can be insured under the measure are strictly limited to compensate for those adjustments in credit insurance contracts which are linked to the COVID-19 outbreak:

- only those risks which increased due to the COVID-19 outbreak and which credit insurers do not want to insure anymore are included (recitals (12) and (18));
• the supplementary insurance cover which is guaranteed under the measure can amount to maximum 150% of the primary insurance cover (recital (25)). This cap ensures that, in case insurance coverage of the underlying trade credit would indeed amount to the maximum of 90%, the State cannot cover more than 54% of the risk of the underlying trade credit and thus limits the total amount of credit insurance guaranteed by the State;
• the measure is designed in line with the sound underwriting principle to include only trade credits for buyers with lower probability of default (recital (26)). Consequently, it completely excludes trade credits to buyers with a high risk of default and that are more likely not to be insured under normal market conditions.

(57) In light of the above, the Commission considers that the measure proposed is limited to the minimum necessary to achieve its objective.

3.3.3. Proportionality

(58) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives.

(59) First, the State guarantee is provided by the Portuguese State exclusively for the insurance of those domestic trade credit risks which the private market currently does not sufficiently cover (recitals (18) and (19)). Consequently, private insurers will continue offering insurance for all other trade credit risks.

(60) Second, the system implemented by Portuguese authorities ensures the access to the measure to all private trade credit insurers active in Portugal proportionally to their share in the domestic credit insurance market (recitals (21) and (22)). Moreover, the access to the measure will be open to all companies established in Portugal, which ensures that they have access to credit insurance despite the sudden deterioration of the economy caused by the COVID-19 outbreak (recital (16)).

(61) Third, the system implemented by Portugal also guarantees a distribution of losses between the policyholders, the credit insurers and the State:
• the policyholder retains at least 10% of the risk (recital (23));
• apart from the risk retained by the policyholder, losses are shared proportionally under the primary and supplementary credit insurance policy. Moreover, as described in recital (25), the supplementary insurance cover will amount to maximum 150% of the primary insurance cover. Therefore, Portuguese State cannot cover more than 54% of the losses on an underlying trade credit, which has to remain partially covered by the participating private credit insurers. In that way, the total State coverage remains in any case below the limits for guarantees on loans provided in point 25(f)(i) of the Temporary Framework.

(62) Fourth, the remuneration paid by the policyholder limits distortion of competition. The policyholder will pay to the participating private trade credit insurer an insurance premium for the supplementary insurance equal to quarterly rate charged in the primary insurance policy increased by 30% to reflect increased risk. This supplementary insurance premium will be transferred in its entirety to
In addition, the policyholder will be charged a 30% administration fee on the supplementary insurance premium (recital (27)), which is retained by the private insurers. Portugal submits that this level of remuneration is necessary to cover the insurers’ operating cost for this scheme (recital (28)) and is therefore appropriate. In view of the levels observed by the Commission in related cases and in the current circumstances (including the existing uncertainty as regards trade operations and the novelty of the scheme in Portugal) and based on the data currently in the Commission’s possession, that level can be accepted as appropriate and proportionate.

Therefore, the Commission considers that the measure as proposed by Portugal is proportionate to reach the intended goal while minimising the distortive effects on competition.

3.3.4. Conclusion on compatibility

Based on the above considerations, the Commission concludes that the measure is compatible under Article 107(3)(b) TFEU.

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6 See in particular the decision referred to in footnote 4, recital (80)).
4. 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.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

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For the Secretary-General

Martine DEPREZ
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EUROPEAN COMMISSION