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**Subject: State Aid SA.62838 (2021/N) – Spain
COVID-19: Amendment of SA.56851 (2020/N) and SA.57019
(2020/N)**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 26 April 2021, modified on 29 April 2021, Spain notified amendments concerning the following aid schemes (“the existing aid schemes”) which the Commission already approved in light of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)¹:
 - (a) SA.56851 (2020/N): “*Umbrella Scheme - National Temporary Framework for State aid in the form of direct grants, repayable advances, tax or payments advantages, guarantees on loans and subsidised interest rates for loans to support the economy in the current COVID outbreak*” (“Umbrella Scheme”), which the Commission approved on 2 April 2020 (the “Umbrella Scheme decision”). The Umbrella Scheme was amended by SA.57019 (2020/N) on 24 April 2020, SA.58778 (2020/N) on 22 October 2020 (“second amendment to the Umbrella Scheme”), SA.59196

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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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(2020/N) on 11 December 2020 (“third amendment to the Umbrella Scheme”), SA.59723 (2021/N) on 19 February 2021 (“fourth amendment to the Umbrella Scheme”) and SA.61875 (2021/N) on 23 March 2021 (“fifth amendment to the Umbrella Scheme”).

(b) SA.57019 (2020/N): “*Second National Temporary Framework for State aid related to the containment of the COVID-19 outbreak*” (“Second Umbrella Scheme”), which the Commission approved on 24 April 2020, was prolonged by SA.60136 (2020/N) on 23 December 2020 and amended by SA.61875 (2021/N) on 23 March 2021.

(2) 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 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

(3) The Spanish authorities wish to implement a set of modifications to the existing aid schemes (see recitals (5) to (9) below) aimed at increasing the budget for the Umbrella Scheme and further extending for both schemes the scope of eligible micro and small enterprises in difficulty as of 31 December 2019 with regard to what was authorised under Decision 61875(2021/N)³, eliminating the condition that the aid received is related to research, development and innovation activities.

(4) Spain confirms that there are no other modifications to the existing aid schemes.

2.1. Amendments to the Umbrella Scheme

(5) The legal basis for the Umbrella Scheme is specified in recital (9) of the Umbrella Scheme decision. The legal bases for the first, second, third, fourth and fifth amendments thereof are specified in recital (11) of decision SA.57019, recital (5) of decision SA.58778, recital (10) of decision SA.59196, recital (15) of decision SA.59723 and recital (6) of decision SA.61875. The legal basis for the current amendments is the Agreement of the Government's Delegate Commission for Economic Affairs of 23 April 2021, which includes a standstill clause in order to ensure that the measure is not put in place before the Commission’s approval.

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

³ Decision 61875(2021/N) amended the Umbrella Scheme and the second Umbrella Scheme (see recitals (9) and (15)) in order to allow access to micro and small enterprises to aid related to research, development and innovation activities, even if they were in difficulty within the meaning of the General Block Exemption Regulation (“GBER”), the Agricultural Block Exemption Regulation (“ABER”) or the Fisheries Block Exemption Regulation (“FIBER), as applicable, on 31 December 2019, if those enterprises, at the moment of granting the aid, were not subject to collective insolvency procedure under national law and they had not received rescue aid or restructuring aid.

- (6) Spain amends the budget for limited amounts of aid granted under section 3.1 of the Temporary Framework by EUR 30 billion, from EUR 13.65 billion to EUR 43.65 billion⁴.
- (7) Spain amends the Umbrella Scheme in order to allow eligibility of micro and small enterprises irrespective of the type of aid they receive (not exclusively related to research, development and innovation activities), even if they were in difficulty within the meaning of the General Block Exemption Regulation (“GBER”), the Agricultural Block Exemption Regulation (“ABER”) or the Fisheries Block Exemption Regulation (“FIBER”)⁵, as applicable, on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid⁶ or restructuring aid⁷. Medium and large enterprises that were already in difficulty on 31 December 2019 are excluded from the measures. The relevant aid measures are granted under sections 3.1, 3.2, 3.3 and 3.12 of the Temporary Framework. Spain further clarifies that previous aid measures originally granted after the COVID-19 outbreak under the *de minimis*⁸ regulations (outside the scope of notifiable aid under the Umbrella Scheme⁹) will now be

⁴ This budgetary increase aims at ensuring compliance with point 22 (b) of the Temporary Framework regarding the consideration of guarantees originally granted after the COVID-19 outbreak under the “*de minimis*” regulations (and therefore outside the scope of the Temporary Framework and the Umbrella Scheme) as guarantees granted within the scope of the Temporary Framework and Umbrella Scheme, after checking compliance with the relevant features specified in it.

⁵ As defined in Article 2(18) of 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, 26.6.2014, p. 1 (“GBER”), Article 2(14) of 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, 1.7.2014, p. 1 (“ABER”), and Article 3(5) of 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, 24.12.2014, p. 37 (“FIBER”).

⁶ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

⁷ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (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 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

⁹ 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.

considered granted under the Umbrella Scheme approved under the Temporary Framework as long as the relevant provisions, including on cumulation, are met in each case.

2.2. Amendments to the Second Umbrella Scheme

- (8) The legal basis for the Second Umbrella Scheme is specified in recital (11) of Decision SA.57019, and for its prolongation in recital (6) of Decision SA.60136 and recital (13) of Decision SA.61875. The legal basis for the current amendment is the Agreement of the Government's Delegate Commission for Economic Affairs of 23 April 2021, which includes a standstill clause in order to ensure that the measure is not put in place before the Commission's approval.
- (9) Spain amends the Second Umbrella Scheme in order to allow access to micro and small enterprises irrespective of the type of aid they receive (not exclusively related to research, development and innovation activities), even if they were in difficulty within the meaning of the GBER, ABER or FIBER, as applicable, on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁰ or restructuring aid¹¹. Medium and large enterprises that were already in difficulty on 31 December 2019 are excluded from the measures. The relevant aid measures are granted under sections 3.6, 3.7 and 3.8¹² of the Temporary Framework.

2.3. Scope of application by the designated granting authorities

- (10) Spain commits to fully respect the compatibility conditions established in the Temporary Framework. The granting authorities will ensure full respect of the compatibility conditions as reflected in the relevant authorising decisions and the amendments thereof when applying the Umbrella Scheme and the Second Umbrella Scheme.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (11) By notifying the amendments before putting them into effect (see recitals (5) and (8)), the Spanish authorities have respected their obligations under Article 108(3) TFEU.

¹⁰ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹¹ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

¹² Aid measures under sections 3.9 and 3.10 of the Temporary Framework may be granted to undertakings, irrespective of their size, that were already in difficulty on 31 December 2019, as indicated in recital (19) of Decision SA.57019.

3.2. Existence of State aid

- (12) 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.
- (13) The decisions approving the existing aid schemes conclude that the measures constitute aid within the meaning of Article 107(1) TFEU and this conclusion is confirmed by the respective amendment decisions.¹³ The reasons are set out in the specific assessment of those decisions.¹⁴
- (14) The notified amendments concern an increase of the budget of the Umbrella Scheme and a limited extension of the scope of eligible beneficiaries under the Umbrella Scheme and Second Umbrella Scheme. Accordingly, they do not alter those conclusions. The Commission therefore refers to the respective assessment of the existing aid schemes and concludes that the amended schemes constitute State aid in the meaning of Article 107(1) of the TFEU. The Spanish authorities do not contest that conclusion.

3.3. Compatibility

- (15) The Commission assessed the existing aid schemes on the basis of Article 107(3)(b) and 107(3)(c) TFEU in light of the Temporary Framework and concluded that the existing aid schemes were compliant with the compatibility conditions set out in the Temporary Framework.
- (16) The Commission refers to its analysis of compatibility as set out in the decisions approving the existing aid schemes referred to in recital (1).¹⁵
- (17) The third amendment to the Temporary Framework acknowledges that micro and small undertakings have been particularly affected by the liquidity shortage caused by the economic impact of the COVID-19 outbreak. Its points 5 and 6 motivate the reasons for granting aid to undertakings even if they were in

¹³ See recital (1) for the list of existing aid schemes and their respective amendments.

¹⁴ See recitals (39) to (44) of the Umbrella Scheme decision; see recitals (60) to (65) of the Second Umbrella Scheme decision (also amending the Umbrella Scheme); see recitals (15) and (16) of the decision on the second amendment to the Umbrella Scheme, see recitals (26) to (32) of the decision on the third amendment to the Umbrella Scheme; see recitals (11) and (12) of decision SA.60136 (2020/N); see recitals (41) to (47) of the decision on the fourth amendment to the Umbrella Scheme; see recitals (21) to (24) of the Decision on the fifth amendment to the Umbrella Scheme.

¹⁵ See recitals (45) to (54) of the Umbrella Scheme decision; see recitals (67) to (81) of the Second Umbrella Scheme decision (also amending the Umbrella Scheme); see recitals (17) and (26) of the decision on the second amendment to the Umbrella Scheme, see recitals (33) to (44) of the decision on the third amendment to the Umbrella Scheme; see recitals (13) to (15) of decision SA.60136 (2020/N); see recitals (48) to (63) of the decision on the fourth amendment to the Umbrella Scheme; see recitals (25) to (36) of the decision on the fifth amendment to the Umbrella Scheme.

difficulty, within the meaning of the relevant Block Exemption Regulations (GBER, ABER and FIBER), on 31 December 2019.

- (18) The notified amendments allow the granting of aid under the Umbrella Scheme and the Second Umbrella Scheme to micro and small enterprises irrespective of the type of aid they receive (not exclusively related to research, development and innovation activities) even if they were already in difficulty on 31 December 2019. This measure is aimed at ensuring a continued economic activity in all sectors of the economy. This condition is only applicable if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁶ or restructuring aid¹⁷ (recitals (7) and (9)). The amended measures therefore comply with points 22(c)bis, 25(h)bis, 27(g)bis, 35(h)bis, 37(k)bis, 39(i)bis and 87(f) of the Temporary Framework and do not alter the Commission's conclusions on the compatibility of the Umbrella Scheme and Second Umbrella Scheme (recital (16)).
- (19) The budgetary increase of EUR 30 billion for limited amounts of aid granted under section 3.1 of the Temporary Framework (recital (6) is in line with point 22 (b) of the Temporary Framework, which requires that temporary limited amounts of aid are granted on the basis of a scheme with an estimated budget.
- (20) Spain has committed to ensure that the granting authorities fully respect the compatibility conditions as reflected in the relevant authorising decisions and the amendments thereof when applying the Umbrella Scheme and the Second Umbrella Scheme (recital (10)).
- (21) As there are no further changes (recital (4)) that affect the compatibility assessment, the Commission accordingly considers that the notified 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 since they meet all the conditions of the Temporary Framework. In the specific cases of aid for COVID-19 relevant research and development, testing and upscaling infrastructures and production of COVID-19 relevant products, the Commission concludes that the positive effects of the amended measures continue outweighing their potential negative effects on competition and trade, in line with Article 107(3)(c) TFEU.

¹⁶ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹⁷ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid concerning the Umbrella Scheme 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, nor to the aid concerning the Second Umbrella Scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) and Article 107(3)(c) 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

