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EUROPEAN COMMISSION

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Subject: State Aid SA. SA.100974 (2021/N) – Spain COVID-19: Prolongation and amendments of the schemes SA.56851, SA.57019, SA.57659 and SA.62067, as already amended

Excellency,

1. PROCEDURE

(1) By electronic notification of 8 December 2021, Spain notified a prolongation (the “notified amendment”) to the following existing aid schemes (collectively, the “existing aid schemes”), which the Commission had already approved (“the initial decisions”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak\(^1\) (the “Temporary Framework”):

(a) SA.56851 ECON - Umbrella Scheme - National Temporary Framework for State aid in the form of direct grants, repayable advances, tax advantages, guarantees on loans and subsidised interest rates for loans to support the economy in the current COVID outbreak, which the Commission approved by decision C(2020) 2154 final of 2 April 2020;

(b) SA.57019 Covid-19 - Spain- Temporary Framework support measures for COVID RDI and testing infrastructure, wages, tax/social contribution

deferral and COVID related production, which the Commission approved by decision C(2020)2740 final of 24 April 2020;

(c) SA.57659 Spain COVID 19 - Recapitalisation fund, which the Commission approved by decision C(2020) 5414 final of 31 July 2020; and


(3) 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, and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENT

(4) The objective of the existing aid schemes is to preserve the continuity of economic activity during and after the COVID-19 pandemic. They are designed to ensure that undertakings continue to have access to the necessary liquidity to overcome the current economic difficulties.

(5) The notified amendment prolongs the existing aid schemes until 30 June 2022 according to points 22 d), 25 c), 27, 35, 48 and 87 of the TF. Measures granted under SA.56851 in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in section 3.1 of the Temporary Framework are complied with (point 23 ter. of the Temporary Framework). In addition, it introduces the following amendments:

a) For the aid scheme in case SA.56851, the notified amendment reflects the increase of the aid ceilings set out in sections 3.1 (EUR 2.3 million per undertaking, EUR 345 000 per undertaking active in the fishery and aquaculture sector or EUR 290 000 per undertaking active in the primary production of agricultural products) and 3.12 (EUR 12 million per undertaking) of the Temporary Framework, as amended.

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2 Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
b) For the aid scheme in case SA.62067, the notified amendment introduces the following amendments as described in the Agreement in Council of Ministers of 7 December 2021\(^3\) (“ACM”) amending the Agreement in Council of Ministers on the functioning of the Recapitalisation Fund for enterprises affected by the COVID outbreak, adopted by Resolution of 15 June 2021\(^4\):

- Under the existing scheme, the beneficiaries are companies established and active in Spain with total net revenues between EUR 15 million and EUR 400 million according to audited annual financial statements as of 31 December 2019 (recital 16 a) of the initial decision). With the notified amendment, beneficiaries can be companies established and active in Spain with total net revenues between EUR 10 million and EUR 400 million according to audited annual financial statements as of 31 December 2019. In addition, those companies that exceed the maximum amount of EUR 400 million in revenues may also be beneficiaries if they justify not having access to support through the Solvency Fund for Strategic Enterprises\(^5\) due to not reaching the minimum amount per beneficiary required by that Fund.

- Regarding the eligibility criteria for the beneficiaries, under the existing scheme (recital 16b) of the initial decision), the demonstration that without the State intervention the beneficiary would go out of business or would face serious financial difficulties can be shown by “deterioration of, in particular, the beneficiary’s debt to equity ratio or similar indicators”. The notified amendment excludes the possibility to demonstrate this deterioration by other “similar indicators” and foresees only demonstration by means of the debt to equity ratio.

- The beneficiary must not have been an undertaking that was already in difficulty on 31 December 2019, as defined in Article 2(18) of the GBER (recital 16 e) of the initial decision). According to point 49 d) of the Temporary Framework, the notified amendment maintains this criterion but adding that an undertaking in difficulty on 31 December that reverses its situation later could be eligible if it is viable and fulfils all the eligibility criteria and requirements.

- Under the existing scheme, the support granted through the Fund is limited to the range between EUR 4 million and EUR 25 million per beneficiary for large companies. In the case of medium enterprises, the maximum amount allowed is between EUR 3 million and EUR 15 million. The notified amendment modifies the maximum amounts for medium enterprises, which are now between EUR 2.5 million and EUR 15 million.

\(^{3}\) https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2021/refc20211207.aspx#covid


\(^{5}\) SA.57659 (2020/N), approved by Commission decision C(2020) 5414 final of 31 July 2020.
In order to ensure proportionality of the aid, the existing scheme provides that the amount of support will not exceed the minimum necessary to restore the viability of the beneficiary and will not lead to increasing its equity above that recorded on 31 December 2019 (recital 28 of the initial decision). In order to be fully aligned with point 54 of the Temporary Framework, the notified amendment provides that the amount of support will not exceed the minimum necessary to restore the viability of the beneficiary and will not go beyond restoring the capital structure of the beneficiary to the one predating COVID-19 outbreak, i.e. the situation on 31 December 2019.

Apart from the notified amendment, the Spanish authorities confirm that no further amendments are proposed to the existing aid schemes and that all other conditions of these schemes remain unaltered.


The Spanish authorities committed to respect all the applicable conditions of the Temporary Framework.

Aid may be granted under the existing aid schemes, as amended, as from the notification of the Commission’s approval of the notified amendment.

3. **ASSESSMENT**

3.1. **Lawfulness of the measure**

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

3.2. **Existence of State aid**

For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources.

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6 To determine whether the amount of the recapitalisation is limited to restoring capital structure of the beneficiary predating the COVID-19 outbreak, a comparison of the forecasted debt-to-equity ratio with the historic debt-to-equity ratio of the beneficiary prior to the COVID-19 outbreak shall be performed. The cut-off date for the forecasts shall be 31 December 2021 and the historic basis for the comparison shall be 31 December 2019. It must be ensured that the debt-to-equity ratio on 31 December 2021 after a recapitalisation will not exceed the historic debt-to-equity ratio on 31 December 2019.


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.

(12) The existing aid schemes constitute State aid within the meaning of Article 107(1) TFEU for the reasons set out in the initial decisions. The amendments referred to in recital (2) did not affect this conclusion. The notified amendment does equally not affect that conclusion. The Commission therefore refers to the assessment of the initial decisions and concludes that the existing aid schemes, as amended, constitute State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

(13) The existing aid schemes are compatible with the internal market pursuant to Article 107(3)(b) TFEU, since they meet the conditions of sections 2, 3.1, 3.2, 3.3, 3.6, 3.11 and 3.12 of the Temporary Framework for the reasons set out in the initial decisions. The amendments referred to in recital (2) above did not affect that assessment as confirmed in the respective Commission decisions thereon. The Commission therefore refers to the respective assessment of the initial decisions.

(14) The Commission considers that a limited prolongation of the existing aid schemes is appropriate to ensure that national support measures effectively help affected undertakings during the COVID-19 pandemic. The notified amendment does not affect the compatibility assessment made under the initial decisions and confirmed under the amendments specified in recital (2). In particular, the Commission notes that aid under the schemes can only be granted until 30 June 2022 according to points 22 d), 25 c), 27, 35, 48 and 87 a) of the Temporary Framework. In addition, measures granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in section 3.1 of the Temporary Framework are complied with (point 23 ter. of the Temporary Framework).

(15) Furthermore, the Commission notes that for the scheme approved under SA.56851, the maximum aid amounts per beneficiary under section 3.1 are increased to EUR 2.3 million per undertaking, EUR 345 000 per undertaking active in the fishery and aquaculture sector or EUR 290 000 per undertaking active in the primary production of agricultural products. For measures under section 3.12, the maximum aid amounts per beneficiary are increased to EUR 12 million. The measure thus continues to comply with point 22a), 23 a) and 87 d) of the Temporary Framework.

(16) Concerning the amendments described in recital (5) for the scheme in case SA. 62067 other than the prolongation:

(a) On the one hand, they relate to the scope of the beneficiaries and the maximum amount of aid per undertaking are limited in nature and do not affect the compatibility assessment made under the initial decision and the conclusion that the existing aid scheme complies with the requirements of Section 3.11 of the Temporary Framework. As referred in recital 15, the maximum amount per beneficiary complies with the increases foreseen in the Temporary Framework after the 6th amendment. Concerning the scope
of the beneficiaries, the amendments notified do not affect the eligibility and entry conditions established in point 49 of the Temporary Framework.

(b) On the other hand, the other amendments aim to clarify some points of the original scheme in order to ensure full alignment with the provisions and wording of the Temporary Framework. Regarding recital 28 of the initial decision, the amendment notified is consistent with the wording of point 54 of the Temporary Framework.⁹

(17) Apart from the notified amendment, Spain confirms that no further amendments are proposed to the existing aid schemes and that all other conditions of that scheme remain unaltered.

(18) The Commission therefore considers that the notified amendment is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework. The Commission therefore considers that the notified amendment does not alter the Commission’s conclusion on the compatibility of the existing aid schemes in the initial decision and in the decisions concerning amendments referred to in recital (2).

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the schemes, as amended, on the grounds that they are 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.

⁹ See also footnote 6.
Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President