EUROPEAN COMMISSION

Brussels, 30.6.2022
C(2022) 4736 final

SENSITIVE[*]: *COMP Operations*

Subject: **State Aid SA.103291 (2022/N) – Spain**
COVID-19: Amendment of SA.56851 to enable extension of guarantees

Excellency,

1. PROCEDURE

(1) By electronic notification of 16 June 2022, Spain notified amendments (the "notified amendments") to State aid measure SA.56851 ECON – 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, approved by Commission decision C(2020) 2154 final of 2 April 2020 (the "initial decision"), under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[1].

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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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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(2) The measure approved in the initial decision has already been amended in cases SA.57019 (2020/N) approved by Commission decision C(2020) 2740 final of 24 April 2020, SA.58778 (2020/N) approved by Commission decision C(2020) 7455 final of 22 October 2020, SA.59196 (2020/N) approved by Commission decision C(2020) 9222 final of 11 December 2020, SA.59723 (2021/N) approved by Commission decision C(2021) 1200 final of 19 February 2021, SA.61875 (2021/N) approved by Commission decision C(2021) 2070 final of 23 March 2021, SA.62838 (2021/N) approved by Commission decision C(2021) 3660 final of 18 May 2021 and SA.100974 (2021/N) approved by Commission decision C(2021) 9882 final of 21 December 2021 (and is referred to, following those amendments, as the "existing aid scheme").

(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[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

(4) Spain wishes to amend the existing aid scheme according to point 12 of the Sixth Amendment of the Temporary Framework[3], by allowing for the possibility to extend the duration of guarantees granted under the existing aid scheme in line with Sections 3.1 and 3.2 of the Temporary Framework, also after the expiry of that framework. This amendment will also apply to guarantees originally granted under the "ICO scheme"[4], since the existing aid scheme, as amended by decision SA.59196 (2020/N), also covers the amended guarantees granted initially under the "ICO scheme". The conditions of the extension of the duration of guarantees are as follows:

(a) The granting authority (or the managing authority, should there be one) will have no discretion regarding the extension of the guarantee, which will be triggered automatically by the extension of the maturity of the underlying financial transaction if the conditions hereunder are met.

(b) The maximum possible duration of the guarantee can in no circumstances exceed 10 years for guarantees granted under Section 3.1 of the Temporary Framework and eight years for guarantees granted under Section 3.2 of the Temporary Framework, respectively, from the signing date of the underlying financial transaction with the final beneficiary.

(c) The financial intermediary granting the loan agrees in the contract with the granting authority – or the managing authority, should there be one – that

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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.

3 Commission Communication C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

4 The "ICO scheme" was approved by Commission decision of 24 March 2020 C(2020) 1925 final in case SA.56803 (2020/N), as amended by Commission decision of 5 August 2020 C(2020) 5504 final in case SA.58096 (2020/N).

the duration of the State guarantee will be extended up to the maximum period set out in recital (4)(b) if extensions of the underlying financing transaction are carried out according to the financial intermediary's standard policies and procedures and the following cumulative conditions are met:

(i) The final beneficiary will have been made aware at the time this possibility is made available, that it has the possibility to request an extension of the maturity of the underlying financing transaction, without prejudice to the fact that the financial intermediary can accept or refuse this request in accordance with its standard policies and procedures.

(ii) For guarantees granted under Section 3.1 of the Temporary Framework, the cost of the guarantee will not vary in result of the extension. In the case of guarantees under Section 3.2 of the Temporary Framework, the guarantee premium will need to be adjusted to account for the new maturity in case an extension is granted. The adjustment will be determined in accordance with the table included in recital (19)(b) of Decision SA.59196 (2020/N)[5].

(iii) At the level of the underlying financing transaction, the financial intermediaries will be contractually obliged to ensure that the extension of the maturity will not result in an increase in the interest rate or fees applicable to the underlying financing before such amendment takes place[6].

(iv) The extension of the duration of the guarantee will not affect the mechanism ensuring the transfer of benefit to the final beneficiary, which continues to apply for financial intermediaries throughout the State guarantee coverage period, even if it is extended.

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

(6) The legal basis for the notified amendments is the Agreement of the Government's Delegated Commission for Economic Affairs of 14 June 2022.

(7) The notified amendments may be put in place as from the notification of this Decision to the Spanish authorities by 30 June 2022 (inclusive) and the possibility provided by the measure will be granted to beneficiaries within the same time

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5 The granting authority -or the managing authority should there be one in the relevant sub-scheme- will calculate the difference in pricing and charge it retroactively, in line with the applicable pricing in accordance to the new duration of the guarantee.

6 For example, it is not allowed that the financial intermediary increases the interest rate linked to a downgrade of the final beneficiary's rating performed during the assessment of the extension request, even if such increase would be permitted by its standard policies.

period. As stated in the legal basis, the notified amendments will take effect as of the notification of the Commission's decision approving the measure.

3. ASSESSMENT

3.1. Lawfulness of the measure

(8) By notifying the amendments before putting them into effect (recital (7)), the Spanish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(9) 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 be liable to affect trade between Member States.

(10) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (40) to (44) of the initial decision. The amendments referred to in recital (2) did not affect this conclusion. The notified amendments do equally not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

(11) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of Sections 2, 3.1, 3.2 and 3.4 of the Temporary Framework for the reasons set out in recitals (45) to (53) of the initial decision. The amendments referred to in recital (2) did not affect that assessment, as confirmed in the respective Commission decisions thereon. The Commission therefore refers to the respective assessment of the initial decision.

(12) The notified amendments do not affect that conclusion as they are limited to allowing for a possibility to extend the duration of the guarantees granted under the existing aid scheme in line with the conditions laid down in point 12 of the Sixth Amendment to the Temporary Framework. In particular:

(a) The granting authorities have no discretion regarding the extension of the guarantee (see recital (4)(a)), in line with point 12 of the Sixth Amendment to the Temporary Framework;

(b) The final beneficiaries will have been informed that they can request, an extension of the maturity of the financing in line with point 12 of the Sixth Amendment of the Temporary Framework (see recital (4)(c)(i));

(c) The terms and conditions of the extension of the guarantee will be stipulated in the amended initial guarantee contracts between the granting or managing authorities and the credit or financial, and they will have to remain in line with the terms and conditions of the Temporary Framework. Furthermore, all the final beneficiaries will have been duly informed of this possibility of extension (see recital (4)(c)(i)). The Commission notes that the granting authorities will have no discretion regarding the extension of the guarantee, in line with point 12 of the Sixth Amendment to the Temporary Framework;

(d) The extension will not result in an increase in the interest rate or fee rates applicable to the underlying instrument, in line with footnote 12 of point 12 of the Sixth Amendment of the Temporary Framework (see recital (4)(c)(iii));

(e) The extension of the duration of the guarantee will not affect the mechanism ensuring the transfer of benefit to the final beneficiary (see recital (4)(c)(iv)), in line with Section 3.4 of the Temporary Framework;

(f) For guarantees under Section 3.2 of the Temporary Framework, the guarantee premium will account for the new duration of the guarantee, which cannot exceed eight years, in accordance with the table included in recital (19)(b) of Decision SA.59196 (2020/N), in line with point 25(b) of the Temporary Framework (see recitals (4)(b) and (4)(c)(ii));

(g) The possibility to extend the duration of the guarantees concerned, provided by the measure, will be granted by 30 June 2022, in accordance with points 22(d) and 25(c) of the Temporary Framework (see recital (7)).

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

(14) The Commission therefore considers that the notified amendments do not alter the Commission's conclusions on the compatibility of the existing aid scheme with the internal market pursuant to Article 107(3)(b) TFEU, since that scheme, as amended, continues to meet all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the existing aid scheme, as amended, 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
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EUROPEAN COMMISSION