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**SENSITIVE**[*]: *COMP Operations*

**Subject:** **State Aid SA.102771 (2022/N) – Spain**
**TCF: Umbrella Scheme**

Excellency,

## 1. PROCEDURE

(1) By electronic notification of 20 May 2022, Spain notified aid in the form of limited amounts of aid, liquidity support in the form of guarantees and liquidity support in the form of subsidised loans (*Marco Nacional Temporal relativo a las medidas de ayuda para apoyar a la economía tras la invasión de Ucrania por parte de Rusia*, the "measure") under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis Framework")[1].

(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 1/1958[2] and to have this Decision adopted and notified in English.

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[1] Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131 I, 24.3.2022, p. 1).

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

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## 2. DESCRIPTION OF THE MEASURE

(3) Spain considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia ("the current crisis") so far affects the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector.

(4) The Spanish authorities state that the rise in energy prices is affecting particularly those sectors that are energy intensive. The sudden increase in costs puts pressure on the liquidity position of undertakings active in these sectors. In this regard, a wide range of industries across economic sectors representing a significant share of the Spanish Gross Domestic Product ("GDP") are vulnerable to a sharp price increase in energy costs, due to the significant share of energy costs in their cost structure and their sometimes limited ability to pass through to final customers or to the supply chain those increases in input costs. According to the Spanish authorities' internal provisional estimates, sectors whose energy costs account for more than 15% of their total costs represent over a quarter of the Spanish GDP and span across different economic activities, such as transport, various industries or manufacturers, agriculture or fishery. In the context of potential liquidity constraints emerging and a pro-cyclical tightening of credit conditions in the European Union, a measure that supports liquidity lending can play a beneficial countercyclical role as well as reducing uncertainty and contributing to avoid potential ripple effects in the Spanish economy.

(5) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia.

(6) Spain confirms that the aid under the measure 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 measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.1, 2.2 and 2.3 of the Temporary Crisis Framework.

### 2.1. The nature and form of aid

(8) The measure provides aid in the form of direct grants, tax advantages, repayable advances, guarantees, loans and equity (under section 2.1 of the Temporary Crisis Framework), guarantees on loans (under section 2.2 of the Temporary Crisis Framework) and subsidised loans (under section 2.3 of the Temporary Crisis Framework).

### 2.2. Legal basis

(9) The legal basis for the measure is the Agreement of the National Government Commission for Economic Affairs of 25 April 2022 on a National Temporary Framework for State aid to support the economy following the aggression against Ukraine by Russia.

### 2.3. Administration of the measure

(10) The aid granting authorities include (i) the General State Administration; (ii) the Administration of the Autonomous Communities; (iii) the entities forming the local government(s); and (iv) the other bodies governed by public law with legal personality linked to or dependent on the aforementioned administrations.

### 2.4. Budget and duration of the measure

(11) The estimated provisional budget of the measure is EUR 1.3 billion. The Spanish authorities estimate that around EUR 800 million will be used for aid under Section 2.1 of the Temporary Crisis Framework. The remaining estimated EUR 500 million are to be used for aid under Sections 2.2 and 2.3 of the Temporary Crisis.

(12) The Agreement of the National Government Commission for Economic Affairs of 25 April 2022 specifies that aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2022. For aid granted in the form of tax advantages, the tax liability in relation to which that advantage is granted will arise no later than 31 December 2022.

### 2.5. Beneficiaries

(13) The final beneficiaries of the measure are small and medium enterprises ("SMEs") and large enterprises[3] active in Spain that are affected by the crisis.[4] However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.

(14) Aid is granted under the measure either directly or through credit institutions and other financial institutions as financial intermediaries.

(15) Spain confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions. Spain confirms that beneficiaries are required to submit a

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[3] As defined in Annex I to 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).

[4] The Agreement of the National Government Commission for Economic Affairs of 25 April 2022 (recital (9)) establishes that all the aid measures will be granted only to final beneficiaries affected by the crisis.

self-certification in this regard, and also commits that only undertakings affected by the current crisis will be granted aid.

(16) Spain confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations[5]. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

### 2.6. Sectoral and regional scope of the measure

(17) The measure is open to all sectors except the financial sector. It applies to the whole territory of Spain.

### 2.7. Basic elements of the measure

#### *2.7.1. Limited amounts of aid*

(18) The aid scheme will provide liquidity support in the form of direct grants, tax advantages, repayable advances, guarantees, loans and equity granted under conditions designed in line with section 2.1 of the Temporary Crisis Framework.

(19) The aid amount under the measure does not exceed EUR 400 000 in gross terms, before any deduction of tax or other charges, per undertaking at any given point in time. For undertakings active in the fishery and aquaculture sector[6] or in the primary production of agricultural products[7], the total amount of aid shall not exceed EUR 35 000 in gross terms, before any deduction of tax or other charges.

(20) Spain commits that aid under the measure will be granted only to undertakings affected by the current crisis. Beneficiaries will have to provide a self-certification where they declare that they are affected by the crisis.

(21) Spain confirms that aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

(22) Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 41(a) and 42(a) of the Temporary Crisis

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[5] For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

[6] As defined in Article 2(1) of 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).

[7] As defined in Article 2(5) of Commission Regulation (EC) 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 on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

Framework, it will be ensured, by appropriate means such as separation of accounts, that for each of those activities the relevant ceiling is respected and that the overall maximum amount of EUR 400 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 42(a) of the Temporary Crisis Framework, the overall maximum amount of EUR 35 000 is not exceeded per undertaking.

(23) Aid in the form of guarantees or subsidised loans is channelled through credit or other financial institutions in the form of guarantees or subsidised loans, such institutions will, to the largest extent possible, pass on the advantages of the public guarantee or subsidised loan to the final beneficiaries. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the subsidised loans or the guarantee is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries will commit to grant the loans "at cost". This means they will be able to charge their funding costs and administrative costs, as well as the guarantee fee in case of guarantees, but no additional margin.

(24) Spain confirms that, if the aid is channelled through credit or other financial institutions in the forms guarantees, the mobilisation of the guarantee is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted.

(25) For aid granted in the agriculture, fisheries and aquiculture sector, Spain further confirms that:

(a) aid to undertakings active in the primary production of agricultural products will not be fixed on the basis of the price or quantity of products put on the market; and

(b) aid to undertakings active in the fishery and aquaculture sector[8] does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) Commission Regulation (EU) No 717/2014[9].

(26) Aid granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other more favourable forms of aid such as grants, provided the conversion takes place by 30 June 2023 at the latest and the conditions in Section 2.1 of the Temporary Crisis Framework are complied with.

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8 Commission Regulation (EC) 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 90, 28.6.2014, p. 45).

9 Commission Regulation (EC) 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 90, 28.6.2014, p. 45).

### *2.7.2. Liquidity support in the form of guarantees*

(27) The aid scheme will provide liquidity support in the form of guarantees on loans. In order to be eligible, the instruments, for which guarantees will be provided, will have to meet the following conditions:

(a) The eligible instruments can only be new individual loans.

(b) The type of eligible instrument may relate to both investment and working capital loans.

(c) The maximum loan amount will comply with one of the following alternative conditions:

– It will be 15% of the beneficiary's average total annual turnover over the last three closed accounting periods. In order not to exclude from the measure undertakings that do not hold three closed annual accounts, such undertakings may benefit from the guarantees on new loans up to (i) 15% of the beneficiary's average total annual turnover over the last two closed accounting periods where two closed annual accounts are available, or (ii) 15% of the beneficiary's total annual turnover over the last closed accounting period where only one closed annual account is available, or (iii) 15% of the annualised linear projection of the beneficiary's turnover from the year-to-date account where no closed annual account is available, with the condition that the undertaking has operated for at least 3 months and the quarterly total turnover, as declared to the tax authority, is provided to the granting authority; or

– The maximum loan amount will be up to 50% of energy costs over the 12 months preceding the month when the application for aid is submitted.

(28) The guarantee will fulfil the following cumulative conditions, unless modulated in line with recital (29):

(a) The maximum amount of the guarantee will not exceed:

– 90% of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or

– 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions; and

– in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally.

(b) The duration of the guarantee is the same as that of the underlying loan and, in any case, is limited to maximum 6 years.

(c) The guarantee premiums will be set at a minimum level as follows:

| Beneficiary | Instrument | Maturity | | |
|---|---|---|---|---|
| | | 1st year | 2nd to 3rd year | 4th to 6th year |
| SMEs | New loans | 25bps | 50bps | 100bps |
| Large companies | New loans | 50bps | 100bps | 200bps |

(29) As an alternative to the guarantees provided under recital (28), guarantees could also be provided in line with the following cumulative conditions:

(a) The maximum amount of the guarantee does not exceed 80% of the loan principal for SMEs and self-employed and 70% for large enterprises. When the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally.

(b) The duration of the guarantee is the same as that of the underlying loan and, in any case, is limited to maximum 8 years.

(c) Losses are sustained proportionally and under the same conditions by the credit institution and the State.

(d) The guarantee premiums are flat for the full duration of the guaranteed loan. They take into account the duration of the guaranteed loan and the guarantee coverage, in accordance with the following table.[10]

| Beneficiary | Instrument | Maturity | | | | | | Guarantee coverage |
|---|---|---|---|---|---|---|---|---|
| | | Up to 1 year | Between 1 and up to 3 years | Between 3 and up to 5 years | Between 5 and up to 6 years | Between 6 and up to 7 years | Between 7 and up to 8 years | |
| SMEs and self employed | New loans | 20bps | 30bps | 80bps | 80bps | 169bps | 188bps | 80% |
| Large companies | New loans | 30bps | 60bps | 120bps | 125bps | 260bps | 285bps | 70% |

(30) The guarantees are granted by 31 December 2022 at the latest.

[10] The guarantee premiums replicate the ones approved under the Spanish COVID-19 umbrella scheme. See recital 19 of Commission decision of 11 December 2020 C(2020) 9222 final in case SA.59196 (2020/N) – Spain – Third amendment to SA.56851 (2020/N).

(31) The mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted.

(32) Credit and other financial institutions through which the aid is channelled will, to the largest extent possible, pass on the advantages of the public guarantee to the final beneficiaries. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the guarantee is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries granting the loans will commit to grant the loans 'at cost'. This means they will be able to charge their funding costs and administrative costs, as well as the guarantee fee, but no additional margin.

### *2.7.3. Liquidity support in the form of subsidised loans*

(33) The aid scheme will provide liquidity support in the form of subsidised loans. In order to be eligible, the instruments, for which reduced interest rates will be applied, will have to meet the following conditions:

(a) The type of eligible instrument may relate to both investment and working capital loans.

(b) The maximum maturity of the loans is limited to 6 years.

(c) The maximum loan amount will comply with one of the following alternative conditions:

– It will be 15% of the beneficiary's average total annual turnover over the last three closed accounting periods. In order not to exclude from the measure undertakings that do not hold three closed annual accounts, such undertakings may benefit from the guarantees on new loans up to (i) 15% of the beneficiary's average total annual turnover over the last two closed accounting periods where two closed annual accounts are available, or (ii) 15% of the beneficiary's total annual turnover over the last closed accounting period where only one closed annual account is available, or (iii) 15% of the annualised linear projection of the beneficiary's turnover from the year-to-date account where no closed annual account is available, with the condition that the undertaking has operated for at least 3 months and the quarterly total turnover, as declared to the tax authority, is provided to the granting authority; or

– The maximum loan amount will be up to 50% of energy costs over the 12 months preceding the month when the application for aid is submitted.

(34) The reduced interest rates will be at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) available either on 1 February 2022 or at the moment of notification, plus the credit risk margins as set-out in the following table:

| Beneficiary | Credit risk margin | | |
|---|---|---|---|
| | 1st year | 2nd - 3rd year | 4th - 6th year |
| SMEs | 25bps[11] | 50bps[12] | 100bps |
| Large companies | 50bps | 100bps | 200bps |

(35) The loan contracts are signed by 31 December 2022 at the latest.

(36) The subsidised loans will not be granted to credit institutions or other financial institutions.

(37) Credit and other financial institutions, through which the aid is channelled will, to the largest extent possible, pass on the advantages of the subsidised loans to the final beneficiaries. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the interest rate subsidy is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries will commit to grant the loans “at cost”. This means they will be able to charge their funding costs and administrative costs but no additional margin.

[11] The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

[12] See footnote 10.

### 2.8. Cumulation

(38) The Spanish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[13] or the General Block Exemption Regulation or with aid under the Agricultural Block Exemption Regulation or with aid under the Fisheries Block Exemption Regulation[14] provided the provisions and cumulation rules of those Regulations are respected.

(39) The Spanish authorities confirm that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(40) The Spanish authorities confirm that aid under the measure may be cumulated with aid under measures approved in cases SA.56803[15], SA.56851[16], SA.57019[17],

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[13] 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, 26.4.2012, p. 8).

[14] 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 of 26.6.2014, p. 1), Commission Regulation (EC) 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 on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1) and 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 on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

[15] Commission decision of 24 March 2020 C(2020) 1925 final in case SA.56803 (2020/N) – Spain – Guarantee scheme to companies and self-employed to support the economy in the current COVID-19 outbreak, as amended by Commission decision of 5 August 2020 C(2020) 5504 final in case SA.58096 (2020/N) – Spain – Amendments to SA.56803 (2020/N) Guarantee scheme (OJ C 277, 21.8.2020, p.1).

[16] Commission decision of 2 April 2020 C(2020) 2154 final in case SA.56851 (2020/N) – Spain – 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, as amended by Commission decision of 24 April 2020 C(2020) 2740 final in case SA.57019 (2020/N) – Spain – Second National Temporary Framework for State aid related to the containment of the COVID19 outbreak and Commission decision of 22 October 2020 C(2020) 7455 final in case SA.58778 (2020/N) – Spain – Amendments to SA.56851 (2020/N) Conditions of the guarantees on loans and prolongation and Commission decision of 11 December 2020 C(2020) 9222 final in case SA.59196 (2020/N) – Spain – Third amendment to SA.56851 (2020/N) and Commission decision of 19 February 2021 C(2021) 1200 final in case SA.59723 (2021/N) – Spain – Fourth amendment to SA.56851 (2020/N) – Umbrella Scheme and Commission decision of 23 March 2021 C(2021) 2070 final in case SA.61875 (2021/N) – Spain – Amendment of SA.56851 (2020/N), SA.57019 (2020/N) and SA.57659 (2020/N) and Commission decision of 18 May 2021 C(2021) 3660 final in case SA.62838 (2021/N) – Spain – Amendment of SA.56851 (2020/N) and SA.57019 (2020/N) and Commission decision of 21 December 2021 C(2021) 9882 final in case SA.100974 (2021/N) – Spain – Prolongation and amendments of the schemes SA.56851, SA.57019, SA.57659 and SA.62067, as already amended.

SA.57659[18] and SA.62067[19], as amended. Those measures were approved by the Commission under the COVID-19 Temporary Framework and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.

(41) The Spanish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.

(42) The Spanish authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in points 41(a) and 42(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under section 2.1 of the Temporary Crisis Framework which has been reimbursed before 31 December 2022 will not be taken into account in determining whether the relevant ceiling is exceeded.

(43) The Spanish authorities confirm that for the same underlying loan principal aid granted under section 2.2 of the Temporary Crisis Framework will not be cumulated with aid granted under section 2.3 of that framework and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. For different loans, aid granted under section 2.2 may be cumulated with aid granted under section 2.3 and vice versa provided the overall amount of

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[17] Commission decision of 24 April 2020 C(2020) 2740 final in case SA.57019 (2020/N) – Spain – Second National Temporary Framework for State aid related to the containment of the COVID19 outbreak, as amended by Commission decision of 23 December 2020 C(2020) 9643 final in case SA.60136 (2020/N) – Spain – State aid schemes (SA.57019 – COVID 19 - Spain Temporary Framework support measures for COVID RDI and testing infrastructure, wages, tax/social contribution deferral and COVID related production, and SA.57659 – ES – COVID 19 - Recapitalisation fund) – Prolongation and Commission decision of 23 March 2021 C(2021) 2070 final in case SA.61875 (2021/N) – Spain – Amendment of SA.56851 (2020/N), SA.57019 (2020/N) and SA.57659 (2020/N) and Commission decision of 18 May 2021 C(2021) 3660 final in case SA.62838 (2021/N) – Spain – Amendment of SA.56851 (2020/N) and SA.57019 (2020/N) and Commission decision of 21 December 2021 C(2021) 9882 final in case SA.100974 (2021/N) – Spain – Prolongation and amendments of the schemes SA.56851, SA.57019, SA.57659 and SA.62067, as already amended.

[18] Commission decision of 31 July 2020 C(2020) 5414 final in case SA.57659 (2020/N) – Spain – Recapitalisation fund, as amended by Commission decision of 23 December 2020 C(2020) 9643 final in case SA.60136 (2020/N) – Spain – State aid schemes (SA.57019 – COVID 19 - Spain Temporary Framework support measures for COVID RDI and testing infrastructure, wages, tax/social contribution deferral and COVID related production, and SA.57659 – ES – COVID 19 - Recapitalisation fund) – Prolongation and Commission decision of 23 March 2021 C(2021) 2070 final in case SA.61875 (2021/N) – Spain – Amendment of SA.56851 (2020/N), SA.57019 (2020/N) and SA.57659 (2020/N) and Commission decision of 21 December 2021 C(2021) 9882 final in case SA.100974 (2021/N) – Spain – Prolongation and amendments of the schemes SA.56851, SA.57019, SA.57659 and SA.62067, as already amended.

[19] Commission decision of 19 July 2021 C(2021) 5481 final in case SA.62067 (2020/N) – Spain – Recapitalisation Fund for certain enterprises affected by the COVID-19 outbreak, as amended by Commission decision of 21 December 2021 C(2021) 9882 final in case SA.100974 (2021/N) – Spain – Prolongation and amendments of the schemes SA.56851, SA.57019, SA.57659 and SA.62067, as already amended.

loans per beneficiary does not exceed the ceilings set out in points 47(e) and 50(e) of the Temporary Crisis Framework.

(44) A beneficiary may benefit in parallel from multiple schemes under section 2.2 and 2.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in points 47(e) and 50(e) of the Temporary Crisis Framework.

### 2.9. Monitoring and reporting

(45) The Spanish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and above EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[20]).

## 3. ASSESSMENT

### 3.1. Lawfulness of the measure

(46) By notifying the measure and committing not to put it into effect pending notification of the Commission's decision approving the measure (recital (12)), the Spanish authorities have respected their obligations under Article 108(3) TFEU.

### 3.2. Existence of State aid

(47) 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.

(48) The measure is imputable to the State, since it is granted by (i) the General State Administration; (ii) the Administration of the Autonomous Communities; (iii) the entities forming the local government(s); and (iv) the other bodies governed by public law with legal personality linked to or dependent on the administrations listed in points (i) to (iii). In addition, the measure is based on the Agreement of the National Government Commission for Economic Affairs of 25 April 2022 on a National Temporary Framework for State aid to support the economy following the aggression against Ukraine by Russia (recitals (9) and (10)). It is financed through State resources, since it is financed by public funds (recital (11)).

(49) The measure confers an advantage on its beneficiaries in the form of direct grants, tax advantages, repayable advances, guarantees, loans and equity (under section

[20] Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For guarantees, the nominal value of the underlying instrument shall be inserted per beneficiary.

2.1 of the Temporary Crisis Framework), guarantees on loans (under section 2.2 of the Temporary Crisis Framework) and subsidised loans (under section 2.3 of the Temporary Crisis Framework) not in line with market conditions (recital (8)) and their characteristics are described above (section 2.7). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.

(50) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings affected by the current crisis (see for example recitals (3) and (4)), excluding the financial sector (recital (17)).

(51) 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.

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

### 3.3. Compatibility

(53) 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.

(54) 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*".

(55) By adopting the Temporary Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia, have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Spain. 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 if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken so far, for example by Russia.

(56) The measure aims at facilitating the access of undertakings to external finance at a time when a wide range of economic sectors are affected, and the normal functioning of markets is severely impacted leading to severe disturbances of the real economy of Member States, including in the economy of Spain.

(57) The measure is one of a series of measures conceived at national level by the Spanish authorities to remedy a serious disturbance in their economy. The importance of the measure to stimulate lending by private banks to enterprises

during the current crisis is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Spanish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Limited amounts of aid*", "*Liquidity support in the form of guarantees*" and "*Liquidity support in the form of subsidised loans*") described in sections 2.1, 2.2 and 2.3 of the Temporary Crisis Framework and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in point 47(h) and point 50(g) of the Temporary Crisis Framework, respectively.

(58) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework.

(59) In particular, the notified measure meets all the conditions provided for by the Temporary Crisis Framework for limited amounts of aid, as described in section 2.7.1:

(a) The aid takes the form of direct grants, tax advantages, repayable advances, guarantees, loans and equity (recital (8)).

(b) The overall aid will not exceed EUR 400 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (19)). The measure therefore complies with point 41(a) of the Temporary Crisis Framework.

(c) Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (11). The measure therefore complies with point 41(b) of the Temporary Crisis Framework.

(d) Aid will be granted under the measure no later than 31 December 2022. For aid in form of tax advantages, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2022 (recital (12)). The measure therefore complies with point 41(c) of the Temporary Crisis Framework.

(e) Aid will be granted only to undertakings affected by the crisis (recitals (13), (15) and (20)). The measure therefore complies with point 41 (d) of the Temporary Crisis Framework.

(f) Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (21)). The measure therefore complies with point 41(e) of the Temporary Framework.

(g) The mobilisation of guarantees channelled through credit or other financial institutions is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (24)).

(h) The measure provides for the conversion of aid granted in the form of repayable advances, guarantees, loans or other repayable instruments under limited amounts of aid under section 2.1 of the Temporary Crisis Framework into grants, provided that conversion takes place by 30 June 2023 at the latest (recital (26)). The measure therefore complies with point 44 of the Temporary Crisis Framework.

(i) The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the subsidised loans or the guarantee is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries will commit to grant the loans "at cost". This means they will be able to charge their funding costs and administrative costs, as well as the guarantee fee in case of guarantees, but no additional margin. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (23)(23)). The measure therefore complies with points 47(h) and 50(g) of the Temporary Crisis Framework.

(j) The overall nominal value of aid does not exceed EUR 35 000 per undertaking active in the primary production of agricultural products, fishery and aquaculture sectors (recital (19)); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 42(a) of the Temporary Crisis Framework.

(k) Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (25)(a)). The measure therefore complies with point 42(b) of the Temporary Crisis Framework.

(l) Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) Commission Regulation (EU) No 717/2014 (recital (25)(b)). The measure therefore complies with point 42(c) of the Temporary Crisis Framework.

(m) Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 41(a) and 42(a) of the Temporary Crisis Framework, Spain will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 400 000 is not exceeded per undertaking (recital (22)). Where an undertaking is active in the sectors covered by point 42(a) of the Temporary Framework, the overall maximum amount of EUR 35 000 is not exceeded per undertaking (recital (22)). The measure therefore complies with point 43 of the Temporary Crisis Framework.

(60) For liquidity support in the form of guarantees on loans, as described in section 2.7.2:

(a) Guarantees may be granted on new individual loans made to undertakings (recital (27)(a)). The measure therefore complies with point 47(a) of the Temporary Crisis Framework.

(b) As a general rule, the measure sets minimum levels of guarantee premiums (recital (28)(c)). It therefore complies with the guidance provided in point 47(b) of the Temporary Crisis Framework.

(c) As an alternative, the measure also provides the option to modulate guarantee premiums for SMEs and self-employed and for large enterprises on loans with a maturity of up to 8 years (recital (29)(d)). The modulated guarantee premiums are flat for the entire duration of the guaranteed loan and reflect the exceptional nature of longer maturities up to 8 years while also accounting for the lower coverage ratio (80% for SMEs and self-employed and 70% for large enterprises) compared to the minimum levels of guarantee premiums referred in point 47(b) of the Temporary Crisis Framework (recital (29)(d)). The resulting advantage to the final beneficiary is comparable to the one received under the standard conditions laid down in point 47(b) of the Temporary Crisis Framework. It therefore complies with the guidance provided in point 47(c) of the Temporary Crisis Framework.

(d) Guarantees may be granted under the measure by 31 December 2022 at the latest (recital (30)). The measure therefore complies with point 47(d) of the Temporary Crisis Framework.

(e) As a general rule, the measure limits the duration of the guarantees to a maximum of 6 years (recital (28)(b)). Those guarantees cover 90% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State or cover 35% of the loan principal where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee*)* (recital (28)(a)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (28)(a)). The measure therefore complies with point 47(f) of the Temporary Crisis Framework.

(f) As alternative option, the measure limits the duration of the guarantees to a maximum of 8 years (recital (29)(b)). Those guarantees cover 80% of the loan principal for SMEs and self-employed and 70% for large enterprises (recital (29)(a)) and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State (recital (29)(c)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (29)(a)).

The measure therefore complies with points 47(c), as assessed in recital (60)(c) above, and 47(f) of the Temporary Crisis Framework.

(g) The maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 47(e) of the Temporary Crisis Framework (recital (27)(c)).

(h) Guarantees granted under the measure relate to investment and working capital loans (recital (27)(b)). The measure therefore complies with point 47(g) of the Temporary Crisis Framework.

(i) The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the guarantee is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries granting the loans will commit to grant the loans 'at cost'. This means they will be able to charge their funding costs and administrative costs, as well as the guarantee fee, but no additional margin. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (32)). The measure therefore complies with point 47(h) of the Temporary Crisis Framework.

(j) The cumulation rules set out in point 46 of the Temporary Crisis Framework are respected (recitals (43) and (44)).

(k) The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (31)).

(61) For liquidity support in the form of subsidised loans, as described in section 2.7.3:

(a) Loans under the measure granted in response to the current crisis will not be granted to credit institutions or other financial institutions (recital (36)). The measure therefore complies with point 50(a) of the Temporary Crisis Framework.

(b) The applicable interest rates for loans granted under the measure are equal to the base rate (1 year IBOR or equivalent as published by the Commission)[21] available on 1 February 2022 or at the moment of notification plus a credit margin for SMEs and for large enterprises (recital

[21] Base rates calculated in accordance with the Commission's Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

(34)). The measure therefore complies with point 50(b) of the Temporary Crisis Framework.

(c) The loan contracts are signed by 31 December 2022 at the latest (recital (35)) and are limited to a maximum of 6 years (recital (33)(b)). The measure therefore complies with point 50(d) of the Temporary Crisis Framework.

(d) The maximum loan amount per beneficiary granted under the measure is limited in line with point 50(e) of the Temporary Crisis Framework (recital (33)(c)).

(e) Loans granted under the measure relate to investment and working capital needs (recital (33)(a)). The measure therefore complies with point 50(f) of the Temporary Crisis Framework.

(f) The cumulation rules set out in point 49 of the Temporary Crisis Framework are respected (recitals (43) and (44)).

(g) The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. In this sense, the competent granting authority shall (a) give access to the measure to all financial intermediaries, thus enabling competition between them; and (b) set up a mechanism ensuring that the advantage of the interest rate subsidy is passed on to the largest extent possible to the final beneficiary. The financial intermediary must demonstrate that it applies a mechanism that guarantees the repercussion of the advantages, to the greatest extent possible, to the final beneficiaries in the form of greater volumes of financing, portfolios with a greater degree of risk, lower requirements in terms of guarantees, lower guarantee premiums or lower interest rates. In particular, financial intermediaries will commit to grant the loans “at cost”. This means they will be able to charge their funding costs and administrative costs but no additional margin. The safeguards thus ensure that those institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries without conditioning the granting of subsidised loans under this section to refinancing existing loans (recital (37)). The measure therefore complies with point 50(g) of the Temporary Crisis Framework.

(62) The Spanish authorities confirm that, pursuant to point 32 of the Temporary Crisis Framework, the aid under the measure 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 (recital (6)).

(63) The Spanish authorities confirm that, pursuant to point 33 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by

sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (15)).

(64) The Spanish authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (45)). The Spanish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Guidelines and Regulations are respected (recitals (38) to (44)).

(65) The Commission therefore considers that the measure 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 Crisis Framework.

## 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.

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