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State Aid: Reintroduction of the Spanish Guarantee Scheme

European Union: European Commission

Brussels, 9.2.2012
C(2012) 786 final

Subject: State Aid SA. 34224 (2012/N) – Spain
Reintroduction of the Spanish Guarantee Scheme

Sir,

I. PROCEDURE

1. On 14 October 2008, Spain notified a scheme for the creation of a debt guarantee scheme, which was approved by the European Commission on 23 December 2008, (State aid case NN 54b/2008[1]). On 31 March 2009, Spain notified changes to that scheme, which were approved on 16 April 2009. On 23 April 2009, a corrigendum was published in order to correct some translation and stylistic mistakes ("**the Original Scheme**").

2. On 27 May 2009, Spain notified the Commission a request to prolong, for the first time, and amend the Original Scheme. The first prolongation was approved on 25 June 2009 (State aid case N 336/2009[2]).

3. On 26 October 2009, Spain notified the Commission a request to prolong, for the second time, the Original Scheme for an additional period of six months, which was approved on 1 December 2009 (State aid case N 588/2009[3]).

4. On 18 June 2010, Spain notified to the Commission a request to prolong, for the third time, for an additional period of six months and amend the Original Scheme, which was approved on 28 June 2010 (State aid case N 263/2010[4]).

5. On 16 November 2010, Spain notified to the Commission a request to prolong the Original Scheme, for the fourth time for an additional period of six months, which was approved on 29 November 2010 (State aid case N 530/2010[5]).

[1] OJ C 122/2009 of 29.05.2009.
[2] OJ C 174/2009 of 28.07.2009.
[3] OJ C 25/2010 of 02.02.2010.
[4] OJ C 190/2010 of 14.07.2010.

[5] OJ C 7/2010 of 12.01.2011.

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6. On 17 May 2011, Spain notified to the Commission a request to prolong, for the fifth time, the Original Scheme for an additional period of six months, which was approved on 1 June 2011 (State aid case SA.32990 2011/N[6]). The fifth prolongation of the Original Scheme expired on 31 December 2011.

7. On 16 January 2012, Spain notified to the Commission a request to introduce a new debt guarantee scheme ("**the Scheme**"), under the terms and conditions recorded in this decision and the relevant Spanish legislation[7]. The Scheme will be in force until 30 June 2012.

8. The Spanish authorities have exceptionally accepted that the Commission decision be adopted in the English language.

II. DESCRIPTION

The objective of the Original Scheme

9. In response to exceptional turbulence in the financial markets experienced since the second half of 2008, Spain brought forward a measure designed to preserve the stability of its financial system and to remedy a serious disturbance to its economy. In particular, the Original Scheme aimed at limiting the risks and re-establishing confidence in the financing mechanism of credit institutions and fostering lending to businesses and households. The exact details of the Original Scheme are explained in the Commission's earlier decisions mentioned under Section I above.

10. The legal framework[8] of the Original Scheme was amended in several occasions to, *inter alia*: a) take into consideration the consolidation undergone by the Spanish credit institutions, b) facilitate its phasing-out by increasing, as from July 2010, the amount of the fees to be paid by its beneficiaries and c) the need, under certain circumstances, to be subject to a viability review so as to prevent overreliance by its beneficiaries.

Description of main features of the scheme to be reintroduced

11. The main terms and conditions for the Scheme remain the same as those of the Original Scheme, except for, inter alia, the introduction of an upfront fee (see recital 19) and the pricing of the fees (see recital 18). The Scheme is open to any credit institution, consolidated group of credit institutions and pool of credit institutions, that: a) is resident in Spain, b) has a share of, at least, 0.1% in the Spanish credit market as defined in the Statistical Bulletin of the Bank of Spain[9] and c) has, in the past, issued debt securities (guaranteed or unguaranteed) similar to those authorised under the Scheme (see recital 13) between 2007 and 2011 (hereinafter "**the Beneficiary**" and collectively as "**the Beneficiaries**")

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6 OJ C 206/2011 of 12.07.2011.

7 The legal basis for the Scheme is Article 49 Dos b) of the General Budget Law for 2011 as amended by Royal-Decree Law 20/2011 of 30 December 2011. The Scheme is also based on the Ministerial Order ECC/149/2012 of 30 January 2012, published on 1 February 2012.

8 Ministerial Orders of 29 December 2008 and 30 September 2009 implementing Royal Decree-law 7/2008.

9 Please see "*epígrafe 2.4, Préstamos y créditos. Otros sectores correspondientes a Residentes en España del último estado UEM1 del Boletin Estadístico del Banco de España*" available at: http://www.bde.es/webbde/en/secciones/informes/boletines/Boletin_Estadist/anoactual/

12. If a credit institution systematically transfers its liquidity management by contract to another entity, that credit institution and the other entity will be able to group their application for the purpose of the Scheme. The condition mentioned under recital 11 b) will be assessed at pool level, while the condition set out in recital 11 c) must be fulfilled at least by one member of the pool. The liquidity management entity will apply for the pool of credit institutions and will be the only one allowed to issue guaranteed emissions under the Scheme.

13. The debt instruments to be guaranteed by the Kingdom of Spain under the Scheme, up to a total amount of EUR 100 billion, comprise emissions of debt certificates (*bonos*) and obligations (*obligaciones*) admitted to the official secondary markets in Spain with a maturity of between one and five years. Those instruments must not be covered by other type of guarantee. The part of the guaranteed liabilities with a maturity longer than three years of a bank cannot exceed one-third of the total value of the liabilities covered by the State guarantee.

14. The interest rate of the debt instruments issued may be fixed or variable. In the case of variable interest, the reference used must be broadly known in the financial markets.

15. During the issue window of the Scheme, each Beneficiary may only submit a request for guarantees under the Scheme once. The principal of the instrument issued must be re-paid in one payment upon maturity. The minimum nominal value of each emission shall not be less than EUR 10 million. Options, structured or complex products, and products with a derivative component which make it difficult for the guarantor to assess the risk assumed, are explicitly excluded from the Scheme.

16. The Minister for the Economy and Competitiveness determines the maximum amount of debt securities which may be issued under the Scheme by each Beneficiary. This amount will be calculated according to the proportion of the Beneficiary's share over total credit granted by the applicant entities, as recorded in the most recent Statistic Bulletin of the Bank of Spain.

17. In addition, if a Beneficiary seeks to issue guaranteed debt securities for an amount less than its respective quota as defined in recital 16 above, the balance shall be allocated among the other Beneficiaries which are willing to issue guaranteed debt securities in excess of their own quota.

18. The Scheme introduces a guarantee fee that is calculated differently from that in the Original Scheme. The fee the Beneficiaries must pay up-front for the guarantees under the Scheme is calculated in accordance with the Communication from the Commission on the application, from January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis ("the Prolongation Communication"[10]). In particular, the fee will be the sum of:

    i. a basic fee of 40 basis points (bp); and

    ii. a risk-based fee equal to the product of 40 basis points and a risk metric composed of (i) one-half of the ratio of the beneficiary's median five-year senior CDS spread over the three years ending one month before the date of issue of the guaranteed bond to

[10] OJ C 356, 6.12.2011, p. 7.

the median level of the iTraxx Europe Senior Financials five-year index over the same three-year period, plus (ii) one-half of the ratio of the median five-year senior CDS spread of all Member States to the median five-year senior CDS spread of the Member State granting the guarantee over the same three-year period[11].

iii. For banks without CDS data, or without representative CDS data, but with a credit rating, an equivalent CDS spread will be derived from the median value of five-year CDS spreads during the same sample period for the rating category of the bank concerned, based on a representative sample of large banks in the Member States. The supervisory authority will assess whether the CDS data of a bank are representative.

iv. For banks without CDS data and without a credit rating, an equivalent CDS spread will be derived from the median value of five-year CDS spreads during the same sample period for the lowest rating category[12], based on a representative sample of large banks in the Member States. The calculated CDS spread, for that category of banks, may be adapted on the basis of a supervisory assessment.

19. The Scheme also incorporates an up-front fee of 0.5% of the total final fee calculated in accordance with recital 18 to be paid by the Beneficiaries upon their formal request to be entitled to issue debt securities under the Scheme. The introduction of the up-front fee in the Scheme aims at better adjusting demand and effective use. The up-front fee has not been devised as a surcharge for the Beneficiaries. Instead, it will be offset against the final fee calculated in accordance with recital 18 to be paid upon issuance.

20. The Spanish authorities, using recent market data, have provided an indicative fee for each potential Beneficiary based on an application of the formula referred to in recital 18.

21. If the guarantee is activated, the Secretary General of the Treasury and Financial Policy will communicate that fact to the Bank of Spain, so that the Bank of Spain can adopt the appropriate measures mentioned in the Law 26/1988 of 29 July, on Discipline and Intervention of Credit Institutions.

Operations of the Original Scheme

22. In the notification of the Original Scheme, Spain undertook to submit reports every six months on its functioning. Those reports were submitted on 27 May 2009, 17 November 2009, 18 June 2010, 16 November 2010, 10 May 2011 and 18 January 2012. Furthermore, Spain also submitted a mid-term reviews on the operations of the Original Scheme.

23. According to the Spanish authorities, the Original Scheme contributed positively to the easing of the impact of the crisis on the funding of the Beneficiaries and on the financial system as a whole. By reducing the risk premium, the Original Scheme provided the Beneficiaries with a funding mechanism at a significantly lower cost than would

11 The formula for the guarantee fee can be written as: fee = 40bp x (1 + (1/2 x A/B) + (1/2 x C/D)), where A is the beneficiary's median five-year senior CDS spread, B is the median iTraxx Europe Senior Financials five-year index, C is the median five-year senior CDS spread of all Member States and D is the median five-year senior CDS spread of Spain, as the Member State granting the guarantee. The medians are calculated over the three years ending one month before the date of issue of the guaranteed bond. In the case of guarantees for covered bonds, the guarantee fee may take into account only one-half of the risk-based fee calculated in accordance with point (2) above.

12 Footnote 12 of the 2011 Prolongation Communication states that the lowest category to be considered is A, as there is insufficient data available for the rating category BBB. However, due to the recent downgrade of many banks in the framework of the sovereign crisis, there are now many banks with a rating below A with representative CDS. Therefore the Commission services been able to establish the sample of European banks with a representative CDS that also includes banks in the "BBB-rating or below" bucket.

otherwise be available to them on the markets at the current juncture. Every guarantee requested under the Original Scheme was granted.

24. Up to 31 December 2011, the Beneficiaries applied for and issued debt instruments for a total of EUR 69.66 billion, with an aggregate take-up rate of 47.48% of the global ceiling (EUR 146.721 billion) Furthermore, the Beneficiaries have respected the behavioural commitments agreed by the Spanish authorities and no guarantee has been called upon.

III. POSITION OF SPAIN

25. In line with the previous Decisions on the Original Scheme, the Spanish authorities accept that the Scheme contains State aid elements.

26. The Spanish authorities note, and the letter submitted by the Bank of Spain[13] confirms, that the Beneficiaries' access to wholesale market funding is still affected by the international financial crisis and, more specifically, by the sovereign debt crisis experienced throughout 2011. Moreover, the Spanish authorities note that a significant amount of the securities issued under the Original Scheme will mature in 2012. Therefore, the Spanish authorities find it necessary to reintroduce the Scheme as a way to assure that the Beneficiaries have access to funding so that they can promote credit to the private sector in the coming months.

27. Spain undertakes to maintain the commitments made since the introduction of the Original Scheme and, in particular, the Spanish authorities commit to:

    a) submit to the Commission, in addition to the existing reporting obligations mentioned in recital 39, a concise mid-term review by 15 April 2012, at the latest, on the operation of the Scheme and on comparable guaranteed and non-guaranteed debt issues completed during the reporting period.

    b) present a viability review for any Beneficiary that requests new guarantees under the Scheme which take or keep the total amount of its outstanding guaranteed liabilities above 5% of its total liabilities and above the absolute amount of EUR 500 million. The viability review should be presented on the basis of the parameters established in the Restructuring Communication[14] within three months of the granting of the guarantees.

    c) price the guarantees according to the formulae recorded in recital 18 and to enable the Commission to assess the effective application of that pricing.

    d) communicate to the Commission, within three months following each issue of guaranteed bonds, the actual fee charged in relation to each issue of guaranteed bonds.

    e) notify, ex ante, to the Commission, in accordance with recital 38, any new guarantees granted under the Scheme to Beneficiaries that: a) are under the obligation to present a restructuring plan and b) have notified a restructuring to the Commission but whose plan does not reflect the guarantees to be issued under the Scheme.

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[13] Letter from the Director General for Operations, Markets and Settlement Systems of the Bank of Spain dated 16 January 2012.

[14] Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

28. In accordance with the commitment made in recital 27 e), the Spanish authorities have notified to the Commission that the maximum amount of debt instruments calculated in accordance with recitals 16 and 17 that Banco CAM, Unnim Banc, Catalunya Banc, NCG Banco and Banco de Valencia will be able to issue under the Scheme will amount to EUR […][*], EUR […], EUR […], EUR […] and EUR [...], respectively. Those banks are under the obligation to submit a restructuring plan (see recital 38).

29. The Spanish authorities claim that the Scheme is compatible with the internal market because it is necessary to remedy a serious disturbance in the Spanish economy pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU)[15].

IV. ASSESSMENT

State aid character of scheme

30. As set out in Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

31. As indicated in its decisions on the Original Scheme, the Commission agrees with the position of Spain that the Scheme constitutes aid to the Beneficiaries pursuant to Article 107(1) TFEU.

32. The reintroduction of the Scheme does not modify the nature of the measures and therefore constitutes aid pursuant to Article 107(1) TFEU.

33. In particular, the provision of guarantees by the State allows the Beneficiaries to obtain liquidity at advantageous conditions. It gives an economic advantage to the Beneficiaries and strengthens their position compared to that of their competitors in Spain and other Member States. It must, therefore, be regarded as distorting competition. In light of the characteristics of the financial services markets in the Union, the Scheme is capable of affecting trade between Member States. The advantage is selective since it only benefits the Beneficiaries of the Scheme and is provided through State resources.

Compatibility

34. In its decisions on the Original Scheme, the Commission considered the notified measures compatible with the internal market under Article 107(3)(b) TFEU.

35. The Commission considers that the exceptional circumstances at the origin of the notified measures still persist and, therefore, recognises the need for the reintroduction of the Scheme. In particular, the exacerbation of tensions in sovereign debt markets that has taken place throughout 2011 has put the banking sector under increasing pressure, particularly in terms of access to term funding. That evaluation is confirmed by the Bank of Spain in its letter of 16 January 2012.

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[*] Business secret: contains confidential information, where possible, figures have been replaced by ranges in [brackets].

[15] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

36. The Commission notes that the major terms and conditions for the guarantees approved under the Original Scheme will remain unchanged except for the pricing and the introduction of an up-front fee to rationalise the effective use of the Scheme. The modifications on pricing have been introduced to align the Scheme with the 2011 Prolongation Communication for guarantees issued after 1 January 2012.

37. In particular the new pricing formula to be applied from 1 January 2012 takes into account the greater differentiation by risk of banks' CDS spreads in recent times, by referring to median CDS spreads over a three-year period ending one month before the grant of guarantees. Since increases in CDS spreads in recent years are partially due to influences that are not specific to individual banks, in particular the growing tensions in sovereign debt markets and an overall increase in the perception of risk in the banking sector, that formula should isolate the intrinsic risk of individual banks from changes in CDS spreads of sovereigns and of the market as a whole.

38. As regards the combination of the Scheme with other aid measures, as indicated in the Annex to the Restructuring Communication[16], any restructuring plan should take account of all State aid received as individual aid or under a scheme during the restructuring period and such restructuring plan needs to satisfy all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To that end, an individual, ex ante, notification is necessary. Furthermore, the Commission recalls that based on point 16 of the Restructuring Communication, if aid not initially foreseen in a notified restructuring plan is necessary for the restoration of viability, that additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Commission’s final decision on that bank. In that regard, the Spanish authorities have informed the Commission, in the context of the Scheme, that the maximum amount of guaranteed debt securities - calculated in accordance with recitals 16 and 17 - to be issued by Banco CAM, Unnim Banc, Catalunya Banc, NCG Banco and Banco de Valencia (all of which are under the obligation to present a restructuring plan) will be EUR […], EUR […], EUR […], EUR […] and EUR […], respectively.

39. As to the reporting obligations, in addition to the six month report, Spain agrees to provide the Commission with a concise mid-term review of the operation of the Scheme by 15 April 2012 and to complement its future reports on the operation of the Scheme with updated data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances. It will allow the Commission to assess the appropriateness, necessity and proportionality of possible further prolongations of the Scheme beyond 30 June 2012 and the conditions for such prolongations. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the Scheme's effectiveness. Spain commits to communicate to the Commission, within three months following each issue of guaranteed bonds, the actual guarantee fee charged in relation to each issue of guaranteed debt.

[16] OJ C 195, 19.08.2009.

40. The Commission positively notes also the commitment of the Spanish authorities to present a viability review for the Beneficiary that requests new guarantees under the Scheme which takes or keeps the total amount of its outstanding guaranteed liabilities above 5% of its total liabilities and above the absolute amount of EUR 500 million. That commitment is an adequate safeguard, since the Scheme should not enable Beneficiaries with structural weaknesses in their business models to postpone or avoid the necessary adjustments.

41. On the basis of the above, the notified measure is compatible with the internal market until 30 June 2012.

V. DECISION

The Commission has decided not to raise objections against the reintroduction of the Scheme until 30 June 2012, since it fulfils the conditions to be considered compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The Commission notes that Spain has exceptionally accepted that the decision be adopted in the English language.

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Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President