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State aid SA.39991 (2014/N) – Portugal Eleventh Prolongation of the Portuguese Guarantee Scheme

European Union: European Commission

EUROPEAN COMMISSION

Brussels, 4.2.2015
C(2015) 586 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.39991 (2014/N) – Portugal
Eleventh Prolongation of the Portuguese Guarantee Scheme

Sir,

1. PROCEDURE

(1) On 29 October 2008 the Commission approved the measure under the Portuguese Guarantee scheme ("the scheme") by its decision in State aid case NN60/2008 ("the original decision")[1].

(2) On the basis of subsequent notifications, the Commission approved the prolongation of the scheme in its decisions of 22 February 2010 in State aid case N 51/2010[2], 23 July 2010 in State aid case N 315/2010[3], 21 January 2011 in State aid case SA.321584, 30 June 2011 in State aid case SA. 331785, on 21 December 2011 in

1 OJ C 9, 14.01.2009, p. 1, a corrigendum to which appears in OJ C 25, 31.01.2009, p. 25
2 OJ C 96, 16.04.2010, p. 1
3 OJ C 283, 20.10.2010, p. 5
4 OJ C 111, 9.4.2011, p. 5.
5 OJ C 344, 24.11.2011, p. 1.

S. Ex.ª o Ministro dos Negócios Estrangeiros
Rui MACHETE
Largo do Rilvas
P – 1399-030 - Lisboa

State aid case SA. 34034[6], 27 June 2012 in State aid case SA.34958[7], on 17 December 2012 in State aid case SA.35743[8], on 1 August 2013 in State aid case SA.36869[9], on 19 December 2013 in State aid case SA.37698[10] and on 30 July 2014 in State aid case SA.38900[11]

(3) On 28 November 2014, Portugal notified an eleventh prolongation of the scheme until 30 June 2015.

(4) For reasons of urgency, Portugal accepts that exceptionally the present decision is adopted in the English language.

2. FACTS

2.1. Description of the scheme

(5) To stabilise the financial market, Portugal passed law 60-A/2008 of 20 October 2008[12] and its implementing provisions, Portaria nº 1219-A/2008 of 23 October 2008[13], Portaria nº 946/2010 of 22 September 2010[14] and Portaria nº 80/2012 of 27 March 2012[15].

(6) The total budget of the prolonged scheme is EUR 24,67 billion[16].

(7) The beneficiaries of the scheme are all credit institutions incorporated in Portugal, including subsidiaries of foreign banks with registered office in Portugal. Only institutions which are solvent for the purposes of Portuguese law may benefit from the scheme.

(8) Under the approved Portaria n° 80/2012, the scheme covers the issuance of non-subordinated debt with a minimum maturity of three months and a maximum maturity up to five years. In case of guarantees on the issuance of covered bonds (on mortgages and on the public sector), the maturity can go up to seven years.

(9) The remuneration for guarantees on liabilities will be calculated in accordance with the formula set out in the 2011 Prolongation Communication[17], and as described in the

6 OJ C 99, 03.04.2012, p. 2.
7 OJ C 246, 15.8.2012, p. 1.
8 OJ C 36, 17.12.2013, p. 1.
9 OJ C 2, 07.01.2014, p. 1.
10 OJ C 50, 21.02.2014, p. 1.
11 OJ C 348, 3.10.2014, p. 28.

12 Diário da República, 1.ª série, n.º 203.
13 Diário da República, 1.ª série, n.º 206
14 Diário da República, 1.ª série, n.º 185.
15 Diário da República, 1.ª série, n.º 62.
16 Article 136 of the 2014 Portuguese State Budget.
17 Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

Commission decision in State aid case SA.34958[18]. The indicative guarantee fees for the period 1 January 2015 to 30 June 2015 can be found in the Annex and are based on an updated sample of European banks established by the Commission on 06 November 2014.

(10) A detailed description of the scheme is provided in the original decision, in particular recital 9 concerning the legal basis, recitals 5 to 8 concerning the objective of the scheme and recitals 10 to 21 on the general description of the scheme.

2.2. Actual use of the scheme according to an update of 15 October 2014

(11) Along with the notification, the Portuguese authorities submitted a report dated 15 October 2014 on the operation of the scheme.

(12) Regarding the functioning of the Guarantee Scheme, the outstanding amount of guarantees at the end of 2014 was EUR 3.5 billion, (compared to EUR 12.675 billion at the end of May 2014). While some guarantees have matured, there was also a prolongation of guarantees in the second half of 2014. The outstanding amount represents around 15% of the total amount available of EUR 24,67 billion.

(13) During 2014, Portuguese banks have successfully issued debt (both secured and unsecured) with maturities ranging from 3 to 5 years for a total amount of EUR 5.35 billion.

3. POSITION OF PORTUGAL

(14) Portugal requests a prolongation of the scheme until 30 June 2015.

(15) Portugal submits that the scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"), but is of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary to remedy a serious disturbance in the economy of Portugal.

(16) Portugal submitted a letter by the Bank of Portugal[19] further supporting the need for the proposed prolongation to safeguard the stability of the financial system in Portugal, because prevailing market conditions do not allow for a termination of the scheme. The Bank of Portugal states that the conditions of access to medium and long-term debt markets for Portuguese credit institutions remain constrained and contaminated by sovereign risk, in particular by Portugal's non-investment grade rating.

[18] Recitals 13 to 16. See footnote 7.

[19] Letter by the Bank of Portugal of 20 November 2014.

(17) Portugal reasserted the existing commitments relating to the scheme, as reflected in recital (17) of the previous prolongation decision.[20]

i. to grant aid measures under the scheme only to solvent credit institutions which have no capital shortfall[21]; banks which have already received approved rescue aid at the date of entry into force of the 2013 Banking Communication, i.e. before 1 August 2013, but have not yet obtained a final approval of the restructuring aid, can also receive support under a scheme without individual notification. In such case an update to the restructuring plan has to be submitted if the restructuring plan had not already provided for the envisaged guarantee measure;

ii. to grant the guarantees under the scheme only for the new issuance of senior debt (subordinated debt is excluded);

iii. to provide guarantees only on debt instruments with maturities from three months up to five years (or a maximum of seven years in the case of covered bonds) and to limit the guarantees with a maturity of more than three years to one-third of the total outstanding amount of guarantees granted to the individual bank;

iv. to determine the minimum level of State guarantee remuneration in line with the provisions of art. 4. of Executive Order nr. 1219-A/2008, of 23 October (as amended by Executive Order nr. 80/2012, of 27 March), in accordance with the formula set out in the Commission's Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (C(2011) 8744 final, p. 7.);

v. to communicate to the Commission, within three months following each issuance of guaranteed bonds, the actual fee charged;

vi. that any credit institution that is granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of this decision) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million, will be required to present a restructuring plan within two months of the granting of the guarantees;

vii. that any institutions which cause the guarantee to be called upon will be required to submit individual restructuring or liquidation plans within two months from such event;

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[20] See footnote 11.

[21] "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

viii. to impose a ban on advertising referring to the State support on the beneficiaries of the scheme and to prevent them from employing any aggressive commercial strategies, which would not take place without the State support;

ix. to present every three months (15 April, 15 July, 15 October and 15 January, at the latest) a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged.

x. to complement reports on the operation of the scheme with updated available data on the cost of comparable non-guaranteed debt issuances (as regards nature, volume, rating, currency).

(18) In line with the requirements of the 2011 Prolongation Communication[22], Portugal provided an indicative fee (estimation) for each financial institution eligible to benefit from those guarantees. The estimation was based on an application of the scheme's remuneration formula and recent market data.

4. ASSESSMENT

4.1. Existence of State Aid

(19) According to 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.

(20) For the reasons indicated in the original decision, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU because it concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the scheme, participating banks obtain guarantees under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, any advantage from State resources to a bank affects intra-Union trade and therefore threatens to distort competition. The measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the scheme

4.2.1 Legal basis for the compatibility assessment

(21) Under the scheme Portugal intends to provide aid in the form of guarantees in favour of banks.

[22] Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 356, 6.12.2010, p. 7).

(22) Given the exacerbation of tensions in sovereign debt markets that has taken place since 2011 and in light of the persisting circumstances and risks, the Commission considers it appropriate, as confirmed by the 2013 Banking Communication[23], to examine the measure under Article 107(3)(b) TFEU.

(23) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[24] and the Restructuring Communication. The Commission still considers that the conditions for State aid to be approved pursuant to Article 107(3)(b) TFEU are present. The Commission confirmed that view by adopting the 2013 Banking Communication[25].

(24) The Commission does not dispute the position of the Portuguese authorities that while in June 2014, Portugal exited its three year Economic Adjustment Programme which included the implementation of an ambitious reform agenda and contributed to regaining economic growth and restoring investor confidence for the sovereign, regular access of banks to funding in financial markets remains constrained. Those limitations should continue to be addressed in order to safeguard financial stability and credit availability in the Portuguese economy. Despite the ability of Portugal to issue medium and long-term debt and notwithstanding the issuance of debt by larger Portuguese financial institutions in the international debt market, it cannot be concluded that the Portuguese banking system's funding conditions have fully returned to normal and in particular that the access conditions to the capital market have been fully restored.

(25) The Commission also notes that notwithstanding the return of the State and some banks[26] to the markets for medium- and long-term debt, banks in Portugal still rely significantly on Central Bank funding, though on a decreasing trend. Therefore, the Commission cannot conclude that market access conditions for the Portuguese banking system as a whole have been fully restored. The Commission notes that the availability of the scheme enhances the ability of the Portuguese financial institutions to access the capital markets in the future. Hence, the Commission finds that the scheme aims at remedying a serious disturbance in the Portuguese economy.

(26) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

[23] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1).

[24] Commission Communication - Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2).

[25] See points 4 to 6.

[26] In 2014, five Portuguese banks (BES, CGD, Banif, BCP and Santander/Totta) issued a total of EUR 5,35 billion of unguaranteed debt in the market. The respective issuances were rated between B- and BBB+ at the timing of the issuance and have maturities between 3 to 10 years.

(27) In order for an aid to be compatible under Article 107(3)(b) TFEU, it must comply with the general principles for compatibility under Article 107(3), viewed in the light of the general objectives of the Treaty. Therefore, according to the Commission's case practice[27] any aid or scheme must comply with the following conditions: (i) appropriateness (ii) necessity and (iii) proportionality.

(28) The 2013 Banking Communication and the Restructuring Communication formulate assessment criteria which reflect those general principles and their requirements in light of the specific policy context.

4.2.2 Compatibility assessment of the scheme

Appropriateness

(29) The scheme should be appropriate to remedy a serious disturbance in the Portugal's economy. The objective of the guarantee scheme is to temporarily offer appropriate measures to establish backstops for the financial system in a timely and efficient manner, where banks face difficulties in obtaining sufficient funding. The Commission observes that the crisis has eroded confidence in the creditworthiness of the banks, which results in difficulties in obtaining necessary funding on the financial markets. Hence, a backstop mechanism by the Member State, which in case of urgency ensures that banks would have access to funding, is an appropriate means to strengthen banks and thus to restore market confidence.

(30) Points 23 and 60(a) of the 2013 Banking Communication explain that guarantee schemes will continue to be available in order to provide liquidity to banks but that such schemes should be limited to banks without a capital shortfall. The Commission observes that Portugal has committed to restrict the scheme only to banks without a capital shortfall as certified by the competent supervisory authority.

(31) Moreover, the Commission notes that Portugal has committed to grant guarantees only for new issues of banks' senior debt, as prescribed in point 59(a) of the 2013 Banking Communication.

(32) In addition, the Commission notes that the aid measure does not violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution, which in this specific case relate to Article 32(4)(d)(ii). The scheme criteria ensure that the institutions benefitting from the scheme would not be deemed failing or likely to fail on the sole basis of their participation in the scheme. If the scheme criteria did not ensure that outcome, the scheme could not be deemed appropriate since it would not be apt to remedy the serious disturbance in the Portuguese economy.

(33) The first subparagraph of Article 32(4) of Directive 2014/59 establishes that an institution shall be deemed to be failing or likely to fail and placed into resolution, (if all the other pre-conditions for resolution are met), where, inter alia, extraordinary

[27] See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka"(OJ C 314, 29.10.2013, p. 1) and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka" (OJ C 314, 29.10.2013, p. 2).

public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes the form, inter alia, of a State guarantee of newly issued liabilities.

(34) The second subparagraph of Article 32(4) of Directive 2014/59 provides that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature and must be proportionate to remedy the consequences of the serious disturbance and must not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(35) The Commission notes that the scheme is limited to solvent institutions. The guarantees granted under the scheme are of a temporary nature since the window of their issuance is limited to six months and their maturity is limited to five years (seven years in the case of covered bonds) and are of a precautionary nature since they only cover newly issued liabilities. The guarantees granted under the scheme are also appropriate to remedy the consequences of the serious disturbance, as explained in recital 25. Therefore the Commission concludes that the aid measure does not violate the intrinsically linked provisions of Directive 2014/59.

Necessity

(36) With regard to the scope of the measure, the Commission notes positively that Portugal has limited the size of the guarantee scheme by setting its maximum budget at EUR 24,67 billion and that the scheme applies until 30 June 2015.

(37) The Commission notes that Portugal has committed to grant guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds) and limit guarantees with a maturity of more than three years to one-third of the outstanding guarantees granted to the individual bank, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.

(38) Regarding the remuneration level, the Commission observes that Portugal, in line with point 59(c) of the 2013 Banking Communication, has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication which requires, in particular, the application of a pricing method based largely on market data.

(39) For Member States currently or recently subject to a financial assistance programme, it is appropriate to consider the CDS spreads of individual banks located there as temporarily non-representative of the intrinsic risk of those banks, because the respective CDS rates reflect not only the banks' intrinsic risk profile, but also the sovereign risk. This appears to continue to be the case in Portugal for the time being, although recent economic developments indicate a positive outlook for Portugal's sovereign risk and CDS.

(40) On that basis, the Commission does not object to Portugal's intention to continue to determine the guarantee fee for banks which have a traded CDS on the basis of the CDS of the sample of Union banks in the "BBB- and lower" rating category. The Commission will review its assessment of the macro-economic situation and appropriateness of that exceptional pricing mechanism whenever a further prolongation of the scheme is notified.

Proportionality

(41) As regards proportionality, the Commission notes, first, that Portugal, in line with point 59(d) of the 2013 Banking Communication, has committed to submit a restructuring plan within two months for any bank granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of the decision) exceed both a ratio of 5% of the bank's total liabilities and a total amount of EUR 500 million. That commitment ensures that the use of guarantee scheme will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments.

(42) Second, the Commission notes that Portugal has committed, in line with point 59(f) of the 2013 Banking Communication, to a number of behavioural safeguards such as a ban on advertisements referring to the State support and a ban on any aggressive commercial strategies which would not take place without the State support. Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.

(43) Finally, the Commission welcomes that Portugal undertakes to submit individual restructuring or liquidation plans, within two months, for banks which cause the guarantee to be called upon, in line with point 59(e) of the 2013 Banking Communication.

(44) As regards the combination of the scheme with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

(45) Furthermore, based on point 16 of the Restructuring Communication, the Commission recalls that, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, such additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. All State aid measures received by a bank as individual aid or under the scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

Monitoring

(46) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Portugal undertakes to present every three months a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged

and to supplement it with updated available data on the cost of comparable non-guaranteed debt issuances (nature, volume, rating and currency).

Conclusions on the compatibility of the aid measure

(47) On the basis of the above, the Commission finds the notified prolongation to be in line with the 2013 Banking Communication and the Restructuring Communication. The amended Portuguese Guarantee Scheme remains an appropriate, necessary and proportionate measure to remedy a serious disturbance of Portugal's economy and does not alter the Commission's previous assessment in the original decision of 29 October 2009 and the prolongation decisions of 22 February 2010 in State aid case N 51/2010, 23 July 2010 in State aid case N 315/2010, 21 January 2011 in State aid case SA.32158, 30 June 2011 in State aid case SA. 33178, on 21 December 2011 in State aid case SA. 34034, 27 June 2012 in State aid case SA.34958, on 17 December 2012 in State aid case SA.35743, on 1 August 2013 in State aid case SA.36869 and on 19 December 2013 in State aid case SA.37698. The notified prolongation therefore complies with the requirements set out above, and in particular with the 2013 Banking Communication and the Restructuring Communication, and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

(48) In line with the Commission's decisional practice, the Portuguese Guarantee Scheme can therefore be prolonged until 30 June 2015. 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.

CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the scheme.

Portugal exceptionally accepts that the present decision be adopted in the English language, for reasons of urgency.

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 agree 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

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

European Commission
Directorate-General for Competition
State Aid Greffe
B - 1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Margrethe VESTAGER
Member of the Commission

Annex

Indicative guarantee fees as of 16 November 2014	
Institute	**Premium per institute (basis points)**
Banco Comercial Português, S.A.	[…]
Novo Banco, S.A.	[…]
Banks without CDS spread	106

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