

## Special Information Briefing COVID-19 (No. 19):

Key details on the third tranche of the guarantee facility provided in RDL 8/2020 and 15/2020, to alleviate the economic effects of COVID-19

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Madrid, 13 May 2020

## 1. Introduction

To alleviate the economic effects of COVID-19, on 5 May 2020, a Resolution of the Spanish Council of Ministers was published (the "**Council of Ministers' Resolution**"), approving, among other things, the implementation and the terms and conditions of:

- the third tranche of the Official Credit Institute's ("the **ICO**") guarantee facility for an amount of EUR 20 billion intended to guarantee the financial debt (existing or new) of self-employed individuals, SMEs and companies that do not qualify as SMEs, with respect to credit institutions, financial credit institutions, electronic money institutions, and payment institutions, in relation to certain working capital and liquidity needs of such companies and self-employed individuals (the "**Third Tranche**");
- the tranche of the facility for re-guarantees granted by Compañía Española de Reafianzamiento, S.M.E., Sociedad Anónima ("**CERSA**") for an amount of EUR 500 million (the "**Re-guarantees Tranche**"); and
- the tranche of the guarantee facility for the issuance of commercial paper ("*pagaré*") listed on the Alternative Fixed Income Market (MARF) which will amount to EUR 4 billion (the "**MARF Tranche**").

The Council of Ministers' Resolution implements one of the measures initially established in the Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19 ("**RDL 8/2020**"), consisting of the approval of a guarantee facility on behalf of the State, for a total amount of up to EUR 100 billion, initially intended to guarantee the financial debt (existing or new) of companies and self-employed individuals with respect to certain regulated institutions in the financial sector in relation to certain working capital and liquidity needs of such companies and self-employed individuals, in order to mitigate the adverse effects of a liquidity crisis in the business community caused by COVID (the "**Guarantee Facility**").

For further information on the measures included in the aforementioned RDL 8/2020 and the key details of the Guarantee Facility, please consult our Information Briefing of 18 March 2020, which can be found [here](#).

The Guarantee Facility is in keeping with the Temporary Framework for State aid measures to support the economy in the face of the current COVID-19 outbreak, which was adopted by a Communication of the European Commission of 19 March 2020<sup>1</sup> (the "**Temporary Framework**")

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<sup>1</sup> Communication from the Commission of 19 March 2020, Temporary Framework for State aid measures to support the economy during the current COVID-19 outbreak. C (2020) 1863 final. Available [here](#).

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and has been declared compatible State aid by the Commission's decision of 24 March 2020<sup>2</sup> (the "**Commission's Decision**"), which was published on 27 March 2020.

For further information on the first tranche of guarantees issued under the Guarantee Facility, including the additional information provided in this regard by the Commission's Decision, please consult our Information Briefing of 28 March 2020, which can be found [here](#).

Following the entry into force of RDL 8/2020, on 24 March and 10 April 2020, the Council of Ministers approved the first two tranches of guarantees managed by the ICO under the Guarantee Facility, for a total of EUR 20 billion each, the first of which provided EUR 10 billion for self-employed individuals and SMEs and another EUR 10 billion for companies. The second tranche was exclusively for self-employed individuals and SMEs.

Following the approval of the first two tranches issued under the Guarantee Facility, RDL 8/2020 was amended by virtue of Royal Decree-Law 15/2020, of 21 April, on urgent complementary measures to support the economy and employment ("**RDL 15/2020**").

In addition to its other functions, RDL 15/2020 amended, reinforced and extended the Guarantee Facility provided for in Article 29 of RDL 8/2020, including the following provisions:

- it confirms that the financing options eligible to be covered by guarantees issued under the Guarantee Facility include discount and collection management operations (such as factoring operations) as well as payment management operations (such as confirming operations) which are necessary to maintain the levels of economic activity and employment;
- the deadline for the granting of guarantees under the Guarantee Facility was extended until 31 December 2020;
- it provides that guarantees issued under the Guarantee Facility could be allocated to CERSA, in order to increase the latter's capacity to issue re-guarantees in relation to transactions entered into by SMEs and self-employed individuals; and
- it provides that guarantees issued under the Guarantee Facility could be used to guarantee commercial paper listed on the Fixed Income Market of the Association of Financial Intermediaries (AIAF) and in the Alternative Fixed Income Market (MARF), in order to encourage the preservation of sources of liquidity other than traditional banking (i.e. capital markets).

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<sup>2</sup> European Commission Decision of 24 March 2020, State aid SA.56803 - Spain COVID-19 - Guarantee scheme for companies and self-employed individuals to support the economy in the current COVID-19 crisis. C (2020) 1925 final. Available [here](#). The original version of the decision is in English.

For further information on the measures provided for in RDL 15/2020, please consult our Information Briefing of 22 April 2020, which can be found [here](#).

In this Briefing, we will analyse the Third Tranche of the Guarantee Facility, as it is set out in the Council of Ministers' Resolution.

## 2. Specific features of the Third Tranche approved under the Guarantee Facility

The Council of Ministers' Resolution includes the features of the Third Tranche managed by the ICO under the Guarantee Facility, for an amount of up to EUR 20 billion, divided into two sub-tranches of EUR 10 billion each:

- a first sub-tranche for renewals of existing financial operations and new loans granted to self-employed individuals and SMEs; and
- a second sub-tranche for renewals of existing financial operations and new loans granted to companies that do not qualify as SMEs.

In accordance with the provisions of the Council of Ministers' Resolution, all the terms and conditions provided for the first and second tranches of the Guarantee Facility shall be deemed to apply automatically to the Third Tranche as well.

Furthermore, the Council of Ministers' Resolution provides that the deadline for requesting guarantees under the Third Tranche is 30 September 2020, however, as stated in the Commission's Decision, this deadline may be extended until 31 December 2020 by a new Council of Ministers' Resolution, as set out in the Temporary Framework.<sup>3</sup>

Moreover, the Council of Ministers' Resolution provides that the collaborating entities may not charge any financial costs or expenses on the amounts not drawn down by the client on the financing operation covered by the guarantee granted under the Guarantee Facility, although the agreement between the ICO and the collaborating entities provides that this measure will apply until the collaborating entity has effectively made available to the client the already guaranteed financing which is the object of the financing operation.

With regard to the distribution of the Third Tranche among the collaborating entities, the Council of Ministers' Resolution also refers to the distribution criteria established for the second tranche of the Guarantee Facility, however, in regard to the Third Tranche the Council of Ministers' Resolution provides that the distribution of the maximum volume assigned shall only be valid until 30 June 2020 (from which time the amounts of guarantee coverage assigned and not used by the collaborating entities shall be distributed among the others in proportion to the amount of guarantee coverage which they have used up to that date).

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<sup>3</sup>.Sections (18)(a) and (19)(a) of the Commission's Decision and section 25(c) of the Temporary Framework.

### 3. Details of the MARF Tranche and the guarantees to issuing companies in MARF

The Council of Ministers' Resolution includes the details of the MARF Tranche under the Guarantee Facility for an amount of up to EUR 4 billion, provided by the Ministry of Economic Affairs and Digital Transformation.

The purpose of the MARF Tranche is, as provided for in RDL 15/2020, to diversify the sources of liquidity of the companies benefiting from the MARF Tranche by promoting alternative sources to traditional banking (i.e. those provided by the capital markets).

From a subjective standpoint, the Council of Ministers' Resolution provides that the guarantees issued under the MARF Tranche shall only be issued in relation to the issuance of commercial paper from non-financial companies that were not in a crisis situation<sup>4</sup> on 17 March 2020, that have their registered office in Spain and that, on the entry into force of RDL 15/2020 (i.e. on 23 April 2020), had promissory note programmes in place and listed on the Alternative Fixed Income Market (MARF) (the "**Eligible Companies**").

On the other hand, from an objective standpoint, the commercial paper guaranteed under the MARF Tranche must:

- be issued under a commercial paper programme listed on the Alternative Fixed Income Market (MARF); and
- be issued after the approval of the Council of Ministers' Resolution and the relevant execution of the guarantee agreement and no later than 30 September 2020.

In addition, the Council of Ministers' Resolution provides for the following features, which are specific to the MARF Tranche of the Guarantee Facility:

- the maximum amount of guarantees issued in respect of an Eligible Company shall not exceed the amount of the promissory note programme listed on MARF in force on the date of entry into force of RDL 15/2020 (i.e. 23 April 2020);
- the amount of the guarantee issued for each issuance of commercial paper shall not exceed 70% of the amount of each issuance;
- the term of the guarantee shall correspond to that of the guaranteed promissory note and shall not, in any event, exceed 24 months;

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<sup>4</sup> In accordance with the definition of "company in crisis" set out in Section 2 of Article 18 of the Commission Regulation (EU) No 651/2014 of 17 June 2014. In particular, the companies issuing the guaranteed commercial paper shall not be subject to bankruptcy proceedings on 17 March 2020 (either because they have been declared bankrupt or because they meet the requirements of Article 2.4 of the Bankruptcy Law for being declared bankrupt).

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- the fees on the guarantees will be: (a) 30 basis points per year on the guaranteed amount for commercial paper with a maturity of 12 months or less; or (b) 60 basis points per year on the guaranteed amount for commercial paper with a maturity of between 12 months and 24 months;
- the fees on the guarantee shall be paid by the Eligible Companies to the ICO, and such amount (together with the reimbursements of amounts from issuances of guaranteed promissory notes) shall be transferred to the Provisional Fund approved by Royal Decree-Law 12/1995;
- the ICO will charge a flat-rate management and administration fee of 0.05%, calculated on the volume of the guaranteed portfolio;
- the deadline for applying for the guarantees is 30 September 2020, however, this deadline may be extended by a new Council of Ministers' resolution, provided that it is in line with EU regulations on State aid;
- in any case, the programmes registered in MARF shall include the guarantees granted under the Guarantee Facility after the execution of the corresponding guarantee agreement; and
- the amounts to be paid by the ICO, where appropriate, in relation to the executed guarantees, shall be delivered through the system agreed with Bolsas y Mercados Españoles Renta Fija S.A.U., after identifying the commercial paper whose guarantee is to be executed.

Notwithstanding any other obligations provided in the regulations governing the Guarantee Facility and in the agreements to be executed by the ICO, Bolsas y Mercados Españoles Renta Fija S.A.U., the underwriters participating in the programmes for the issuance of guaranteed commercial paper and the Eligible Companies, the Council of Ministers' Resolution provides for the following obligations regarding Eligible Companies:

- the Eligible Company must demonstrate, through the underwriters, to Bolsas y Mercados Españoles Renta Fija S.A.U. and to the ICO, compliance with the requirements, conditions, and limits set out in the Council of Ministers' Resolution (including, without limitation, the purpose of the guaranteed commercial paper to cover working capital and/or liquidity needs)
- to submit the issuance of guaranteed commercial paper under the MARF Tranche to the jurisdiction of the Spanish courts (without exceptions);
- to collaborate with the ICO and Bolsas y Mercados Españoles Renta Fija S.A.U., as the governing company of the MARF market, for the successful completion of operations.

## 4. Details of the Re-guarantees Tranche

As provided for in RDL 15/2020, the Re-guarantees Tranche approved under the Council of Ministers' Resolution provides for the possibility of assigning guarantees issued under the Guarantee Facility to CERSA, in order to support its capacity to counter-guarantee, re-guarantee or issue partial coverage of the risk assumed by the Mutual Guarantee Companies for SMEs, thereby favouring the granting of credit to SMEs and enabling them to meet their liquidity and working capital needs.

The Council of Ministers' Resolution provides for the following features, which are specific to the Re-guarantees Tranche of the Guarantee Facility:

- The percentage of the re-guarantee payable by the Ministry of Economic Affairs and Digital Transformation shall be up to a maximum of 80 percentage points. This maximum percentage, however, will be subject to the following additional rules: (a) when the operation complements the re-guarantee contributed to CERSA by the European Investment Fund under different European Union programmes, it shall not exceed 90 percentage points; and (b) when the operation has re-guarantees granted by CERSA and guaranteed at 80% by the European Investment Fund, the maximum percentage of the guarantee to be paid by the Ministry of Economic Affairs and Digital Transformation will be increased to 10 percentage points.
- Guarantees may be requested for all operations executed by CERSA from 1 April 2020.
- The deadline for applying for guarantees is 30 September 2020, although this deadline may be extended by a new Council of Ministers' resolution, provided that it is in line with EU regulations on State aid.
- The maximum term of the guarantee issued under the Re-guarantees Tranche shall correspond to the term of the re-guarantee approved by CERSA, up to a maximum of 5 years.

## 5. Issues applicable to all tranches regulated under the Council of Ministers' Resolution

Without prejudice to the provisions of sections 2, 3 and 4 above, the Third Tranche, the MARF Tranche, and the Re-guarantees Tranche share a number of common features, which would also apply to the first and second tranches of the Guarantee Facility:

- The amounts corresponding to the execution of guarantees issued under the Guarantee Facility and the management and administration expenses of the ICO in relation to these guarantees will be met from the budget item of the Ministry of Economic Affairs and Digital Transformation established for this purpose and in accordance with the terms indicated in the schedules to the Council of Ministers' Resolution and the authorisation of limits provided for in schedule IV to the Council of Ministers' Resolution.

- Companies or self-employed individuals based in tax havens or, as specified in the agreement between the ICO and the collaborating entities, who take advantage of structures in tax havens to reduce their tax obligations in Spain, shall not be eligible to benefit from the Guarantee Facility.
- In addition, the idea that the guarantees issued under the Guarantee Facility shall guarantee obligations (whether arising from financing operations granted by credit institutions or from commercial paper listed on MARF) to cover the liquidity needs of the company or the self-employed individual benefiting from the guarantee (arising from, among other things, the management of invoices, payroll and supplier payments, working capital requirements and maturities of obligations) is reinforced, without the funds being available for use for other purposes such as the payment of dividends or interim dividends.
- CERSA, Bolsas y Mercados Españoles Renta Fija, S.A.U., as the governing company of the MARF market, the ICO and the General Secretariat of the Treasury and Financial Policy are instructed to take the necessary steps, within 20 days of the approval of the Council of Ministers' Resolution, for the effective launching and implementation of the tranches of the Guarantee Facility included in the Council of Ministers' Resolution.
- All tranches approved under the Council of Ministers' Resolution are subject to the European Union's State aid regulations.
- The ICO, with the collaboration of Bolsas y Mercados Españoles Renta Fija S.A.U. as the governing company of the MARF market, and CERSA will inform the Ministry of Economic Affairs and Digital Transformation, on a monthly basis, on the use and monitoring of the MARF Tranche and the Re-guarantees Tranche, respectively (in the case of the Re-guarantees Tranche, with respect to new transactions included in it). Likewise, CERSA shall inform the Ministry of Economic Affairs and Digital Transformation on a quarterly basis of the evolution of the risk and the execution of guarantees issued under the Re-guarantees Tranche.

The information contained in this Information Note is of a general nature and does not constitute legal advice. This document was prepared on 13 May 2020 and Pérez-Llorca does not assume any commitment to update or review its contents.