

Special Information Briefing COVID-19 (No. 21):

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

## Index

1. Introduction

2. Specific features of the Fourth Tranche approved under the Guarantee Facility

Madrid, 20 May 2020

## 1. Introduction

As part of the measures adopted to alleviate the economic effects of the COVID-19 pandemic, on 20 May 2020, the Spanish Council of Ministers' Resolution dated 19 May 2020 was published (the "**Council of Ministers' Resolution**") which approved the implementation and the terms and conditions of the fourth tranche of the Official Credit Institute's ("**ICO**") guarantee facility for the amount of EUR 20 billion to guarantee the debt (new or existing) granted to SMEs and self-employed individuals by certain regulated institutions in the financial sector (the "**Fourth Tranche**").

The Council of Ministers' Resolution implements one of the measures initially established in 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 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-19 (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 on 19 March 2020<sup>1</sup> (the "**Temporary Framework**") 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

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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](#).

<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.

Facility. The first tranche provided EUR 10 billion for self-employed individuals and SMEs and another EUR 10 billion for companies. The second tranche for an amount of EUR 20 billion was earmarked 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 Royal Decree-Law 15/2020, of 21 April, on urgent complementary measures to support the economy and employment ("RDL 15/2020"), which reinforced and extended the Guarantee Facility provided for in Article 29 of RDL 8/2020. RDL 15/2020, in addition to its other functions, extended the deadline for the granting of guarantees under the Guarantee Facility until 31 December 2020, enabled the option of using the guarantees to guarantee promissory notes listed on the Fixed Income Market of the Association of Financial Intermediaries and the Alternative Fixed Income Market ("MARF"), and reinforced the re-guarantee granted by Compañía Española de Reafianzamiento, S.M.E., Sociedad Anónima ("CERSA")

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](#).

On 5 May 2020, the Council of Ministers approved the third tranche of the Guarantee Facility for an amount of EUR 20 billion, which was earmarked for self-employed individuals, SMEs and companies that did not qualify as SMEs. Under said Resolution, the Council of Ministers also approved the tranche of the Guarantee Facility for re-guarantees granted by CERSA for an amount of EUR 500 million and the tranche of the Guarantee Facility for promissory notes listed on MARF for an amount of EUR 4 billion.

For further information on the third tranche of the Guarantee Facility, please consult our Information Briefing of 12 May 2020, which can be found [here](#).

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

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

The Council of Ministers' Resolution includes the features of the Fourth Tranche managed by the ICO under the Guarantee Facility, for an amount of up to EUR 20 billion to guarantee the debt (new or existing) granted to self-employed individuals and SMEs by credit institutions, financial credit institutions, electronic money institutions, and payment institutions.

The Council of Ministers' Resolution provides that all the terms and conditions included in the Council of Ministers' Resolutions of 24 March and 10 April 2020, which approved the first and second tranches of the Guarantee Facility, and the relevant aspects of the Council of Ministers' Resolution of 5 May 2020, relating to the third tranche of the Guarantee Facility, shall be automatically applicable to the Fourth Tranche.

In this regard, and in accordance with the terms of the previous tranches aimed at self-employed individuals and SMEs, the guarantee will cover 80% of the amount of the new loans and renewals of financial operations and will have the same term as the financing granted, up to a maximum of five years.

In addition, as provided for in the Council of Ministers' Resolution of 24 March 2020 approving the first tranche of the Guarantee Facility and applicable to all tranches, the purpose of the Guarantee Facility is to guarantee the debt (new or existing) granted by financial institutions to companies and self-employed individuals in order to meet their financing needs arising, inter alia, from payroll expenses, invoices, working capital requirements or other liquidity needs, including those arising from the maturity of financial or tax obligations, without the funds being available for use for other purposes such as the payment of dividends or interim dividends

In terms of its subjective scope, the Fourth Tranche is intended exclusively for SMEs and self-employed individuals affected by the economic effects of the COVID-19 pandemic, who may request guarantees under this tranche to meet certain liquidity needs, provided that they were not in default on 31 December 2019 or in bankruptcy proceedings on 17 March 2020<sup>3</sup>.

As provided for in the Council of Ministers' Resolution, the deadline for applying for guarantees under the Fourth Tranche shall be 30 September 2020. However, this deadline may be extended by a Council of Ministers' Resolution, provided that it is in line with EU regulations on State aid.

The distribution of the Fourth Tranche among the participating entities shall be carried out following the same criteria as those established for the second tranche of the Guarantee Facility, however, the Resolution of the Council of Ministers provides for the Fourth Tranche, as it did for the third tranche, that the distribution of the maximum volume assigned shall only be valid until 30 June 2020. From that date, the amounts of guarantee cover assigned and not used by the participating entities shall be distributed among the others in proportion to the amount of guarantee cover that they had used up to that date.

The Council of Ministers' Resolution provides that, in consideration for its participation, the ICO will charge a flat rate management and administration fee of 0.05%, calculated on the volume of the guaranteed portfolio pro-rata for five years.

The amounts that relate to the enforcement of the guarantees of the Fourth Tranche and the management and administration expenses of the ICO will be met using the Ministry of Economic Affairs and Digital Transformation's budget items established for this purpose.

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<sup>3</sup> For this purpose, SMEs shall be deemed to be companies that meet this condition in accordance with Article 2 of Annex I to the 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.

Finally, in order to contract the external support services necessary for the implementation and monitoring of the provisions set out in the Council of Ministers Resolution, the ICO is authorised to contract or extend existing contracts by direct award and up to a limit of EUR 1 million per contract.<sup>4</sup>

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 20 May 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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<sup>4</sup> This provision is made in accordance with the exception provided for in Article 120 of Law 9/2017 of 8 November on Public Sector Contracts.