

Key details on the fifth 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 Fifth Tranche approved under the Guarantee Facility
3. Specific features of the Tourism Tranche
4. Specific features of the Automotive Tranche

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1. Introduction

Within the framework of the measures adopted to alleviate the economic effects of the COVID-19 pandemic, on 17 June 2020, the Resolution of the Spanish Council of Ministers dated 16 June 2020 was published (the “**Council of Ministers’ Resolution**”) which approved the implementation and the terms and conditions of:

- the fifth tranche of the Official Credit Institute’s (“**ICO**”) guarantee facility for an amount of EUR 12.5 billion intended to guarantee the financing (new or existing) granted to companies and self-employed individuals, by certain regulated institutions of the financial sector, of which up to EUR 7.5 billion will be distributed among SMEs and self-employed individuals and up to EUR 5 billion to companies that do not qualify as SMEs (the “**Fifth Tranche**”);
- a specific tranche for an amount of EUR 2.5 billion intended to guarantee the financing (new or existing) granted to SMEs and self-employed individuals operating in the tourism industry or similar areas (the “**Tourism Tranche**”); and
- a specific tranche for an amount of EUR 500 million intended to guarantee the new financing granted to companies and self-employed individuals for the acquisition of motor vehicles for professional use (the “**Automotive 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 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-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 of 19 March 2020¹ (the “**Temporary Framework**”).

¹ 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](#).

and has been declared compatible State aid by the Commission's decision of 24 March 2020² (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 2020 and 10 April 2020, the Council of Ministers approved the first two tranches of guarantees managed by the ICO under the Guarantee Facility, for an amount of EUR 20 billion each. The first tranche 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 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. In addition to its other functions, RDL 15/2020 extended the deadline for the granting of guarantees under the Guarantee Facility until 31 December 2020, enabled the possibility of using the guarantees to guarantee promissory notes listed on the Fixed Income Market of the Association of Financial Intermediaries and in 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 intended 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.

In addition, on 19 May 2020, the Council of Ministers approved the fourth tranche of the Guarantee Facility for an amount of EUR 20 billion, which was exclusively for self-employed individuals and SMEs.

For further information on the third and fourth tranches of the Guarantee Facility, please consult our Information Briefings of 12 May 2020 and 20 May 2020, which can be found [here](#) and [here](#).

² 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.

Having made available, up to this point, guarantees for an amount of EUR 84.5 billion, the Council of Ministers' Resolution completes the release of the remaining EUR 15.5 billion up to the EUR 100 billion in guarantees approved under RDL 8/2020.

In this Briefing, we will analyse the Fifth Tranche of the Guarantee Facility, as well as the Tourism Tranche and the Automotive Tranche as these are 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 Fifth Tranche managed by the ICO under the Guarantee Facility, for an amount of up to EUR 12.5 billion provided by the Ministry of Economic Affairs and Digital Transformation.

The Fifth Tranche is intended to guarantee the debt (new or existing) granted to companies and self-employed individuals by credit institutions, financial credit institutions, electronic money institutions, and payment institutions, and is divided into two separate sub-tranches:

- a first sub-tranche of up to EUR 7.5 billion for new or existing debt granted to self-employed individuals and SMEs; and
- a second sub-tranche of up to EUR 5 billion for new or existing debt granted to companies that do not qualify as SMEs.

The Council of Ministers' Resolution provides that all the terms and conditions included in the Council of Ministers' Resolutions of 24 March 2020, 10 April 2020, 5 May 2020 and 19 May 2020 which approved the first four tranches of the Guarantee Facility, shall be automatically applicable to the Fifth Tranche.

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 the Fifth Tranche, the purpose of the Guarantee Facility is to guarantee indebtedness (new or existing) granted by financial institutions to companies and self-employed individuals in order to meet their financing needs arising, *inter alia*, from the payment of payrolls, 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 other purposes such as the payment of dividends or interim dividends.

As was the case with the tranches under the Guarantee Facility, the guarantees under this tranche may be requested by companies and self-employed individuals to meet certain liquidity needs, provided that they were not in default on 31 December 2019 or in bankruptcy proceedings on 17 March 2020³.

³ For this purpose, SMEs shall be deemed as 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.

The Council of Ministers' Resolution establishes that the deadline for applying for guarantees under the Fifth 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 Fifth Tranche among the participating entities shall be carried out in accordance with the same criteria as the second tranche of the Guarantee Facility, however, the distribution of the maximum amount assigned shall only be valid until 30 June 2020. After that date, the amounts of guarantee coverage assigned and not used by the participating entities shall be distributed among the others in proportion to the amount of guarantee coverage that they have used up to that date.

3. Specific features of the Tourism Tranche

To promote the tourism industry in Spain in light of the economic effects of COVID-19, the Council of Ministers' Resolution approved the Tourism Tranche managed by the ICO under the Guarantee Facility for an amount of up to EUR 2.5 billion.

The guarantees issued under the Tourism Tranche will be used to guarantee new and existing loans granted to self-employed individuals and SMEs operating in the tourism industry and related activities by credit institutions, financial credit establishments, 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 2020, 10 April 2020, 5 May 2020 and 19 May 2020 which approved the first four tranches of the Guarantee Facility, shall be automatically applicable to the Tourism Tranche.

Regarding the subjective scope, the Tourism Tranche will be aimed at SMEs and self-employed individuals operating in the tourism industry in one of the National Classification of Economic Activities numbers (CNAE) included in the Council of Ministers' Resolution.

Similarly, the Council of Ministers' Resolution provides that the amount of the nominal value of the loan to be guaranteed under the Tourism Tranche shall not exceed EUR 1.5 million per company or self-employed individual, and the coverage of the guarantee will be, as with the other tranches intended for self-employed individuals and SMEs, up to 80%.

Regarding the aim of the financing guaranteed under the Tourism Tranche, the Council of Ministers' Resolution opens the possibility of guaranteeing financing that may be used not only to cover liquidity needs but also to finance the expenses or investments required to improve, expand or adapt the facilities, equipment, and services provided by its beneficiaries.

The deadline for applying for guarantees under the Tourism Tranche shall be 30 September 2020. However, in line with the provisions of the other tranches under the Guarantee Facility, the Council of Ministers may extend this deadline, provided that it is in line with EU regulations on State aid.

The distribution of the Tourism Tranche among the financing entities will be carried out according to demand.

4. Specific features of the Automotive Tranche

The Council of Ministers' Resolution includes the main features of the Automotive Tranche, for an amount of up to EUR 500 million provided by the Ministry of Economic Affairs and Digital Transformation, intended to guarantee the new financing (including leasing and renting) granted to companies and self-employed individuals.

Therefore, the beneficiaries of the Automotive Tranche will be those companies and self-employed individuals who require financing for the acquisition, leasing, or renting of new motor vehicles for professional use.

With regard to the purpose of the guaranteed financing, the Automotive Tranche limits the coverage of the guarantees to new financing assumed by companies and self-employed individuals for acquiring or leasing new motor vehicles for professional use.

In addition, the Council of Ministers' Resolution provides that all terms and conditions included in the Council of Ministers' Resolutions of 24 March 2020, 10 April 2020, 5 May 2020 and 19 May 2020 which approved the first four tranches of the Guarantee Facility, shall be automatically applicable to the Automotive Tranche.

The deadline for applying for guarantees under the Automotive 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.

Finally, the distribution of the Automotive Tranche among the financing entities will be carried out according to demand.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 18 June 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.