

Special Information Briefing on COVID-19 (Nº 36):

Features of the sixth tranche of the guarantee facility established by RDL 8/2020 and 15/2020 to alleviate the economic effects of COVID-19

Index

1. Introduction
2. Specific characteristics of the Sixth Tranche approved under the Guarantee Facility

1. Introduction

As part of the framework of measures adopted to alleviate the economic effects of COVID-19, the Resolution of the Council of Ministers of 28 May 2021 (the "**Resolution of the Council of Ministers**") was published on 1 June 2021. This Resolution approves the implementation and the terms and conditions of the sixth tranche of the Official Credit Institute's ("ICO") guarantee facility of EUR 15 billion. This aims to guarantee the debt (particularly, arising from new investments) granted to self-employed individuals, SMEs and larger companies by certain regulated financial entities. Up to EUR 10 billion of this amount will be distributed to SMEs and self-employed individuals, and up to EUR 5 billion will be distributed to companies that do not qualify as SMEs (the "**Sixth Tranche**").

The Resolution of the Council of Ministers implements one of the measures originally established by [Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to address the economic and social impact of COVID-19 \("RDL 8/2020"\)](#). This measure consists of the approval of a State guarantee facility of up to EUR 100 billion. The purpose of this guarantee facility is to guarantee existing or new debt borrowed from certain regulated financial entities by companies and self-employed individuals. It specifically concerns certain working capital and liquidity needs of such companies and the self-employed, thereby seeking to mitigate the adverse effects of a liquidity crisis in the business sector caused by COVID-19 (the "**Guarantee Facility**").

For more information on the measures provided for in RDL 8/2020 and on the features of the Guarantee Facility, you can read our Information Briefing of 18 March 2020 [here](#).

The Guarantee Facility is part of the Temporary Framework of state aid measures to support the economy in light of the COVID-19 pandemic. It was adopted by Communication of the European Commission on 19 March 2020¹ (the "**Temporary Framework**") and has been declared compatible state aid by decision of the Commission of 24 March 2020² (the "**Commission's Decision**"), which was published on 27 March 2020.

For more information on the first tranche of guarantees issued under the Guarantee Facility, with the added information provided by the Commission's Decision, please see our Information Briefing of 28 March 2020 [here](#).

Following the entry into force of RDL 8/2020, on 24 March and 10 April 2020, the first two tranches of guarantees managed by the ICO under the Guarantee Facility, of EUR 20 billion each, were made available by resolutions of the Council of Ministers. The first tranche made available EUR 10 billion for the self-employed and SMEs, and a further EUR 10 billion for companies that did not qualify as SMEs. The second tranche was earmarked exclusively for the self-employed and SMEs.

¹ European Commission Communication of 19 March 2020, Temporary Framework for State aid measures to support the economy in light of the current COVID-19 crisis, C (2020) 1863 final. Available [here](#).

² European Commission's Decision of 24 March 2020, State aid SA.56803 - Spain COVID-19 - Guarantee scheme for businesses and the self-employed to support the economy during the current COVID-19 crisis. C (2020) 1925 final. Available [here](#). The authentic version of the decision has been adopted in English.

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 additional urgent measures to support the economy and employment \("RDL 15/2020"\)](#). This reinforced and expanded the Guarantee Facility provided for in Article 29 of RDL 8/2020. RDL 15/2020 extended the deadline for the granting of guarantees under the Guarantee Facility until 31 December 2020, allowed promissory notes included in the Fixed Income Market of the Association of Financial Asset Intermediaries and the Alternative Fixed Income Market (*Mercado Alternativo de Renta Fija*) ("**MARF**") to benefit from the guarantees, and reinforced the re-guarantee granted by the Spanish Counterguarantee Company (*Compañía Española de Reafianzamiento, Sociedad Anónima*) ("**CERSA**").

For more information on the measures provided for in RDL 15/2020, please see our Information Briefing of 22 April 2020 [here](#).

On 5 May 2020, the third tranche of the Guarantee Facility, for an amount of EUR 20 billion, was approved by the resolution of the Council of Ministers. This tranche was earmarked for self-employed individuals and companies. Under the same resolution, the tranche of the facility was approved for guarantees granted by CERSA for an amount of EUR 500 million and the tranche of the Guarantee Facility for issues of promissory notes included in the MARF for an amount of EUR 4 billion.

On 19 May 2020, the Council of Ministers approved the fourth tranche of the guarantee facility for an amount of EUR 20 billion. This was exclusively earmarked for SMEs and self-employed individuals. Furthermore, by resolution of the Council of Ministers of 16 June 2020, the fifth tranche of the Guarantee Facility, for an amount of EUR 12.5 billion, was approved. This resolution also approved a EUR 2.5 billion tranche for the tourism sector and a EUR 500 million tranche for the automotive sector.

For more information on the third, fourth and fifth tranches of the Guarantee Facility, please see our Information Briefings of [12 May 2020](#), [20 May 2020](#) and [18 June 2020](#), respectively.

Having so far released approximately EUR 96 billion in guarantees, and in light of the strong increase in demand for credit, the Government has agreed to release the Sixth Tranche, in order to support SMEs, larger companies and self-employed individuals in obtaining the necessary financing to carry out investments to support the recovery of the Spanish economy, as well as to cover their liquidity needs.

In this Briefing, we analyse the terms and conditions of the Guarantee Facility's Sixth Tranche, as provided in the Resolution of the Council of Ministers.

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

The Resolution of the Council of Ministers provides the specific features of the Sixth Tranche managed by ICO under the Guarantee Facility. It will have up to EUR 15 billion provided by the Ministry of Economic Affairs and Digital Transformation.

Pérez-Llorca

The Sixth Tranche will be used to cover existing or new debt granted to companies and self-employed individuals by credit institutions, financial credit institutions, electronic money institutions and payment institutions, and is divided into two sub-tranches:

- a first sub-tranche of EUR 10 billion, intended to guarantee loans granted to small and medium-sized enterprises (SMEs) and the self-employed; and
- a second sub-tranche of EUR 5 billion to guarantee the financing transactions of companies that do not qualify as small and medium-sized enterprises (SMEs).

The Resolution of the Council of Ministers states that all the terms and conditions provided in the Council of Ministers' resolution of 28 July 2020, which establishes the terms and conditions of the first tranche of the Guarantee Facility, including its annexes and amended by the Council of Ministers' resolution of 3 November 2020, shall automatically apply to the Sixth Tranche, as well as the Council of Ministers' resolutions of 11 May 2021, which (i) approves the Code of Best Practice for the renegotiation framework for customers with guaranteed financing provided for in Royal Decree-law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic ("**RDL 5/2021**"); and (ii) extend the application deadline, adapt the conditions of the guarantees regulated by RDL 8/2020 and RDL 25/2020, and implement the system for the recovery of enforceable guarantees established by Article 16 of RDL 5/2021.

For more information on the Code of Best Practice and the Council of Ministers' resolution on the conditions and system of recovery for COVID-19 guarantees, please see our Information Briefing of May 2021 [here](#).

In this regard, under the Resolution of the Council of Ministers of 24 March 2020, approving the first tranche of the Guarantee Facility and applicable to the Sixth Tranche, the purpose of the Guarantee Facility is to cover the debt granted by financial institutions to companies and the self-employed to meet the financing needs arising from, inter alia, the payment of salaries, invoices, working capital requirements or other liquidity needs, including those arising from the maturity of financial or tax obligations. The funds may not be used for other purposes such as the payment of dividends or interim dividends.

Similar to the other tranches of the Guarantee Facility, companies and self-employed individuals who were not in arrears on 31 December 2019 or insolvency proceedings on 17 March 2020 may apply for guarantees under this tranche to meet certain liquidity needs³.

³ For these purposes, SMEs will be considered to be those companies that meet this condition in accordance with Article 2 of Annex I of 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.

Pérez-Llorca

The deadline for applying for guarantees under the Sixth Tranche, as provided in the Resolution of the Council of Ministers, shall be 1 December 2021. However, this deadline may be extended by resolution of the Council of Ministers, in accordance with the EU's State Aid regulations.

Regarding the maximum amount per debtor and the maximum term of the guarantee, the Resolution of the Council of Ministers establishes that:

- for transactions with debtors that receive total public aid of no more than EUR 1.8 million, the term of the guarantee issued will be the same as the term of the financing, up to a maximum of 10 years;
- for transactions subject to Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (or the relevant sector-specific Regulation), the term of the guarantee issued shall be the same as the term of the financing, up to a maximum of 5 years;
- for transactions with debtors receiving public aid totalling more than EUR 1.8 million, the term of the guarantee issued shall be the same as the term of the financing, up to a maximum of 8 years, and the nominal amount to be guaranteed shall not exceed the greater of: (i) twice the debtor's annual payroll costs, taking as a reference the costs for the financial year 2019; and (ii) 25 % of the debtor's revenue in 2019. However, with appropriate justification and based on a declaration by the debtor regarding its liquidity needs, the amount may exceed the criteria set out in (i) and (ii) above to cover the liquidity needs of the 18-month period following the granting of the financing in the case of self-employed and SMEs, or, in the case of companies that do not qualify as SMEs, the 12-month period following the granting of the financing.

The distribution of the amount of the Sixth Tranche guarantees among the companies will be made on-demand i.e. allocating the uncommitted amounts in the order in which the companies request them.

The Resolution of the Council of Ministers provides that, as with the previous tranches of the Guarantee Facility, as consideration for its participation, the ICO will charge a flat management and administration fee of 0.05%, calculated on the value of the guaranteed loan on a five-year pro-rata basis.

Finally, the authorised limits for acquiring expenditure commitments charged to future years in application of the provisions of Article 47.3 of Law 47/2003, of 26 November, General Budgetary Law⁴, shall be further increased by the management and administration expenses in the

⁴ To finance management and administration costs by the Ministry of Economic Affairs and Digital Transformation, under budget line 27.03.931M.359 "*Other financial expenses*".

Pérez-Llorca

implementation of the granting of guarantees under the Sixth Tranche, in accordance with the provisions of the Resolution of the Council of Ministers.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 7 June 2021 and Pérez-Llorca makes no commitment to update or revise its contents.