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MAIN ASPECTS OF THE AGREEMENT SETTING UP THE FUNCTIONING OF THE FUND TO SUPPORT STRATEGIC COMPANIES'SOLVENCY

1. Purpose

The Fund to support the solvency of strategic companies ("**Fund**") is aimed at offsetting the impact of the health emergency on solvent companies' balance sheets, when these are considered strategic for the national or regional productive and economic fabric, among other reasons, on account of their significant social and economic impact, their role in terms of security, public health, infrastructure, communications or their contribution to the smooth operation of the markets, in cases where credit or liquidity support measures are not sufficient to ensure continuity of their activity.

Financing operations through the Fund is intended as a last resort and must comply with the European Union's State Aid rules, in order to ensure that operations comply with the principles of proportionality, equal treatment and protection of the public interest.

2. Functioning

The Fund will be managed by the Management Council through the state-owned industrial holding company, known as SEPI, which is responsible for analysing and assessing operations, prior to the decision of the Management Council on each application.

The Management Council will be made up of the President of SEPI, who will act as its chairperson, and of the following four members:

- The head of the State Secretariat for the Economy and Business Support.
- The head of the Sub-Secretariat for Finance.
- The head of the General Secretariat for Industry and Small and Medium-sized Enterprises.
- The head of the State Secretariat for Energy.

Following approval by the Management Council, the latter must refer the operation to the Council of Ministers for ratification.

3. Eligibility for operations financed by the Fund

- Opening of the procedure is subject to the explicit written request of the company's legal representatives, in accordance with Royal Decree Law 25/2020.
- The granting and/or disbursement of state support will be conditional on two key documents being approved by the competent bodies:
    - (a) the Provisional State Financial Support Agreement, which will govern the economic conditions of the investment and set the terms and conditions for repayment of loans to the Fund; and
    - (b) the Shareholders' Agreement or the Management Agreement with the Company, as appropriate, which will define the strategic decisions of the company that are subject

to the prior approval of the Management Council, in the most suitable form according to the type of operation, in order to ensure the proper and adequate allocation of public resources, as well as compliance with the conditions set out.

4. Eligibility criteria

To be eligible for any of the Fund's financial support instruments for solvency, the company must meet the following conditions:

- Be a non-financial company with a registered office and main work centres located in Spain.
- Not be a company in financial distress on 31 December 2019 (under the terms of Commission Regulation (EU) No 651/2014).
- Not have filed for voluntary bankruptcy, have been declared insolvent in any proceedings, have been declared bankrupt unless an agreement has entered into force, have been subject to court proceedings or have been debarred without the period of debarment established in the judgment decreeing the insolvency having concluded. However, they may act if duly justified at the expense of the Fund, in particular if the declaration of bankruptcy was not made before 31 December 2019.
- In the event of no support from the Fund, the recipient would be unable to operate or would have serious difficulties to remain in business.
- Provide evidence of the significant negative impact that a forced cessation of activity would imply at national or regional level.
- Demonstrate medium and long term viability, by submitting a Viability Plan to address its critical situation, describing the projected use of the state support sought under the Fund, environmental risks, forecasts to tackle them and its energy strategy.
- Submit a repayment plan for the state support with a repayment schedule and the measures that would be taken to guarantee repayment.
- Report on the range of state support measures it has benefited from over the last ten years.
- Not have been sentenced, with a final unappeasable ruling, to loss of eligibility to receive state subsidies/grants or for the crimes of prevarication, bribery, misappropriation of public funds, influence peddling, fraud and illegal payments or urban development offences.
- Not have brought about, on the grounds of any conviction, the definitive termination of any agreement entered into with the Authorities.
- Be up to date with payment obligations for repayment of state subsidies/grants.
- Be up to date with tax or social security obligations as of 31 December 2019.

The decision to use the Fund will be based on the systematic or strategic importance of the business sector or undertaking in terms of its relationship with public health and safety or its impact on the economy as a whole, as well as its innovative nature, the key nature of the services it provides or its role in achieving the medium-term objectives in terms of the green transition, digitalisation, increased productivity and human capital. SEPI will also check compliance with the conditions and assess, if necessary with the help of independent experts, whether the information provided is valid and adequate.

5. Instruments

Provisional state support operations to strengthen business solvency, financed from the Fund, may consist of any capital instruments and/or hybrid capital instruments, such as equity loans, convertible debt, subscription of shares or stock. In addition, the Fund may also intervene through the granting of loans or the subscription of privileged, ordinary or subordinated, insured or unsecured debt.

The instruments used will be selected in such a way that they are best adapted to meet the needs of the recipient while being those that least distort competition.

6. Amount

Operations financed from the Fund may not be less than EUR 25 million per recipient, except in duly substantiated exceptional cases.

The maximum amount of provisional state support operations may not exceed the minimum amount required to allow the undertaking to become viable again and may not result in an increase in net assets of the recipient undertaking in excess of those recorded on 31 December 2019.

7. Payment, conversion rate and subscription price

The minimum payment for hybrid capital instruments will be aligned, either at current value or as an effective annual rate, with the reference rates set by the European Commission in the Temporary Framework[1] (12-month Euribor) plus the margins provided for in the Agreement, ranging from 225 to 800 base points for SMEs and from 250 to 950 base points for big companies, according to the time that has passed since the support was provided.

The Provisional State Financial Support Agreement will set payment levels and payment schedules for the support instruments. The conversion rate for these hybrid instruments into capital will be set at a level 5 % lower than the notional price without subscription rights at the time of conversion. If, two years after this conversion, state assistance is maintained, the amount of the corresponding reimbursement will be increased by at least 10 %, payable as debt or an equivalent instrument.

Participation in the recipient's share capital covered by the Fund, apart from conversion, will be at a price not exceeding the average price of the recipient's share during the fifteen days prior to the application for the Fund. For non-listed companies, an independent expert appointed by the Management Council will determine their market value in accordance with established professional methods and practices, and the operation will be carried out at a price not exceeding that value.

8. State's withdrawal

If the State has a share in the capital, repayment of the participation must be linked to economic recovery and stabilisation, with due regard for the circumstances and outlook for the market in which the recipient operates.

The buy-back price will be the higher of (a) the market price at the time of repayment; or (b) the nominal investment plus an annual payment equal to the sum of 200 base points (except in the eighth and subsequent years) and the minimum payment indicated above.

[1] Temporary framework for state aid measures to support the economy in the context of the coronavirus outbreak, adopted by the European Commission on 19 March and amended by the Communication of 8 May.

The amount of the repayment for participation in the share capital will be increased by at least 10%, payable as debt or an equivalent instrument, if after five years from the contribution of the capital, the initial participation share has not decreased by at least 40%. If a participation from the Fund is retained after seven years from the contribution of capital, the amount of the repayment will be increased by a further amount of at least 10%, payable as debt or an equivalent instrument, on the participation remaining at that time. For listed companies, these increases in the repayment will apply after four and six years respectively under conditions to be determined in each case.

The recipient may at any time buy back the participation in the capital acquired by the State or pay off in advance the loans and hybrid instruments granted or subscribed to by the State, as well as the payments due, under conditions to be determined in each case. Alternatively, the Management Council may freely agree to the transfer of the securities and rights in which the operations financed by the Fund are carried out to a third party, using a procedure open to potential buyers that ensures equal treatment, or by sale in an organised market.

9. Restrictions until final repayment

The recipient will be subject to the following restrictions until final repayment, subject to any amendments that may be made to the Temporary Framework, and must adopt the necessary corporate arrangements to ensure compliance:

- No commercial advertising of beneficiary status.
- No aggressive commercial expansion financed by the financial assistance.
- No acquisition of holdings of more than 10% in undertakings active in the same sector, or in upstream or downstream markets, until 75% of the recapitalisation measures have been repaid, unless the beneficiary is not a large undertaking or has received authorisation from the European Commission.
- Mandatory separation of accounts to ensure that provisional state support received from the Fund does not flow back into support for activities in difficulty as of 31 December 2019.
- No distribution of dividends, payment of non-mandatory coupons or acquisition of own shares, except those owned by the Fund.
- Directors' remuneration (or other senior positions) may not exceed the set proportion in force at the end of the 2019 financial year, until 75% of the support has been repaid.
- Compliance with applicable labour regulations.
- Compliance with the Viability Plan and, in particular, those relating to investment in productive capacity, innovation, green transition, digitalisation, increased productivity and human capital.

However, these restrictions will not apply in full in specific cases where the shareholders are involved in the recapitalisation of the company together with the State.

10. Other key aspects

The Agreement also governs the transparency of operations, providing that the State must make relevant information publicly available (such as the name of the company, the nominal amounts of support granted and the terms) within three months of conducting the operation. Recipients must also publish information concerning the use of the aid received on their company websites within 12 months of the date on which it was granted and, thereafter, on a regular basis every 12 months until the amount has been fully repaid.

Lastly, the Agreement stipulates the composition of the Management Council (section 2 above), its internal operating system and the duties that it will carry out, including the decision on applications for provisional state support, the submission of its approvals to the Council of Ministers for ratification and the appointment of the Government in the exercise of the rights and powers that correspond to it as a result of its participation in the share capital of strategic companies.