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**SENSITIVE**[*]: *COMP Operations*

**Subject: State Aid SA. 58458 (2020/N) – Spain**
**COVID-19: Trade credit reinsurance scheme**

Excellency,

## 1. PROCEDURE

(1) On 15 October 2020, the Spanish authorities informed the Commission about a mechanism to provide State reinsurance to trade credit insurers established in Spain in order to limit the risks associated with trade credit insurance, provided in return for a commitment given by those trade credit insurers to maintain the existing trade credit insurance limits.

(2) By electronic notification of 23 November 2020, Spain notified a measure in the form of State reinsurance ("the measure") pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU").

(3) Spain exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958[1] and to have this decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

(4) Spain considers that the COVID-19 outbreak has affected the real economy and that the extreme contraction or even collapse in the economic activity and trade due to the COVID-19 outbreak may generate significant liquidity gaps for a large number of non-financial corporations. Liquidity being a key risk driver in credit worthiness assessment, the Spanish authorities have been monitoring the

[*] Handling instructions for SENSITIVE information are given at https://europa.eu/!db43PX

[1] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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functioning of the credit insurance market since the outbreak of the COVID-19. In this regard, already in April a Royal Decree-Law[2] was adopted allowing the *Consorcio de Compensación de Seguros* (CCS) to act as a reinsurer of the credit risks assumed by the insurance undertakings active in the credit insurance market in order to maintain sufficient reinsurance capacity.

(5) The effective implementation of other support measures made available since the COVID-19 outbreak, such as the public guarantees on loans granted by the ICO and other granting authorities[3] have likely contributed to at least delay the effects of the pandemic in the credit insurance market. However, the prolonged crisis situation stemming from the pandemic forces providers of trade credit insurance to adjust the coverage limits in the insurance policies and a reduction of the lines of credit per debtor. Any continuation and acceleration of this trend in trade credit insurance could represent a real limitation for the normal development of economic transactions and lead to a liquidity shortage in the real economy.

(6) It has therefore become urgent to put in place the envisaged support measures. The set-up of a public trade credit reinsurance scheme will effectively contribute to the maintenance of coverage levels in trade credit insurance, by adding the reinsurance capacity of the CCS to that of private reinsurers already active in the market. In return, participating trade credit insurance providers commit to maintain their direct trade insurance activities.

(7) The measure forms part of an overall package of measures adopted by the Spanish authorities and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(8) The measure is based on Article 107(3)(b) TFEU to remedy a serious disturbance of the economy. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")[4] is not applicable, because guarantees on credit insurance activities are not covered therein. However, the measure is designed in analogy to the principles set out in the Temporary Framework.

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[2] Royal Decree-Law 15/2020, of April 21, on urgent complementary measures to support the economy and employment.

[3] See decision SA.56803 (2020/N) "*COVID-19 - Guarantee scheme to companies and self-employed to support the economy in the current COVID-19 outbreak*", as amended by decision SA.58096 (2020/N) on 5 August 2020, and decision SA.56851 (2020/N), "*Umbrella Scheme - National Temporary Framework for State aid in the form of direct grants, repayable advances, tax or payments advantages, guarantees on loans and subsidised interest rates for loans to support the economy in the current COVID outbreak*", as amended by SA.57019 (2020/N) on 24 April 2020 and SA.58778 (2020/N) on 22 October 2020.

[4] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1-9), as amended on 3 April 2020 (OJ C 112I, 4.4.2020, p. 1–9), on 8 May 2020 (OJ C 164, 13.5.2020, p. 3–15), on 29 June 2020 (OJ C 218, 2.7.2020, p. 3–8), and 13 October 2020 (OJ C 340I , 13.10.2020, p. 1–10).

### 2.1. The nature and form of the measure

(9) The measure takes the form of a "quota-share" reinsurance programme by which the CCS would reinsure a percentage of up to 60% of the risks held by each of the participating trade credit insurers, collecting the same percentage of the premiums in exchange.

### 2.2. Legal basis

(10) The legal basis for the measure is Article 7 of the Royal Decree-law 15/2020 of 21 April on urgent supplementary measures to support economy and employment.

### 2.3. Administration of the measure

(11) The CCS is responsible for administering the measure on behalf of the State.

(12) The CCS is a state-owned company attached to the Ministry of Economic Affairs and Digital Transformation. According to its legal framework[5], the CCS performs several functions related to the insurance market, enhancing its stability and providing coverage where not available. These functions include provision of insurance, winding-up of insurance undertakings, informative functions and administration and management of insurance-linked funds.

(13) Article 3 of the Legal Statute of the CCS concretely entitles CCS "*to assume coverage by entering into co-insurance agreements or accepting reinsurance in those cases in which reasons of public interest recommend so, taking into account the situation and circumstances of the insurance market*".

(14) The measure will be implemented by way of a capped reinsurance, instrumented by means of quota-share agreements (the "Agreement") to be concluded between CCS and the participating trade credit insurers by which the latter cede a percentage of their risks and collected premiums to CCS. The Spanish State covers this specific measure with a public guarantee provided to CCS.

### 2.4. Relevant context of the measure

(15) Trade credit insurance is a risk management product offered to all types of companies wishing to protect their accounts receivables from losses due to credit risks. In the absence of such products, sellers of goods or services may ask buyers to switch to paying in advance or at the time of delivery. It would have a direct impact on the ability of sellers to continue their business as usual. It would also have an indirect impact on the liquidity requirements of buyers up to a point where business activities may cease if liquidity were to be unavailable or too costly. This again would hurt suppliers. Hence, any reductions in limits of insurance coverage or sudden withdrawal of such coverage, would further weaken the resilience of the economy in the face of the COVID-19 outbreak.

(16) An important function of the trade credit products that insurers offer to the policy holders (the sellers of goods or providers of services) lies in the capacity of the insurers to constantly monitor the creditworthiness of buyers and immediately

[5] Law No. 7/2004, of October 29, on the Legal Statute of CCS.

alert the policyholder of a deterioration of this creditworthiness. In the event of a creditworthiness downgrade of a buyer, under an ongoing insurance framework contract the credit insurance can thus immediately reduce the limit assigned to that buyer, up to the point that the buyer could be asked for an up-front payment. In normal times, this risk-monitoring function is relevant for policyholders, since in all trade credit insurance contracts, the policyholder still retains typically between 10% and 20%, but in any case at least 5% of the amount of receivables on their own risk.

(17) At the end of 2019, the total amount of outstanding trade credit limits of the main Spanish private trade credit insurers was around EUR 150 billion. About 34000 Spanish suppliers of goods and services use trade credit insurance to insure trade credit provided to 2.4 million trading partners. The Spanish authorities report that the trade credit market has already started to contract slightly in the course of the first 6 months of 2020 due to the effect of the COVID-19 pandemic and a further reduction is expected if no action were to be taken. In 2019, premiums collected amounted to approx. EUR 600 million and the ratio of losses to premiums has been 55%. This loss ratio is currently expected to increase to around 90% in 2020 and could reach over 120% in the first two quarters of 2021; however, these estimates are subject to considerable uncertainty.

(18) Under the present circumstances, given the abrupt deterioration of economic activity since the outbreak of the crisis and the prolonged crisis situation, the fear of an overall deterioration of creditworthiness and a materialisation of insolvencies due to impaired profitability, the Spanish authorities estimate that this measure is necessary and proportional to avoid that the trade credit insurers drastically reduce or completely withdraw trade credit limits. Such a reduction of limits would further reduce economic activity by aggravating the liquidity situation of companies.

### 2.5. Sectoral and regional scope of the measure

(19) The measure is open to all trade credit insurers legally authorised to operate in Spain that were not already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[6] on 31 December 2019. For reasons of efficiency, trade credit insurers must earn at least EUR 10 million of annual premiums in the trade credit business to be able to participate[7].

(20) The Agreement is signed between the CCS and any credit insurer wishing to join it under the same operating conditions as those in force in its reinsurance agreements but without prejudice to the conditions of the Agreement[8].

[6] As defined in Article 2(18) of 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, OJ L 187 of 26.6.2014, p. 1.

[7] The Spanish authorities consider that the administration and monitoring of the measure involves significant fixed costs which makes it uneconomical to include businesses of such size.

[8] The operating conditions are the standard contractual provisions under normal market conditions.

### 2.6. Budget and duration of the measure

(21) The budget of the measure is EUR 500 million.

(22) Support under the measure may be granted as of the date of its approval by the Commission, until 30 June 2021. The measure will concern exclusively risks arising from short-term trade credit with a maturity of up to 24 months granted by insurance policyholders to a buyer

(a) for which the date of issuance of the relevant invoices (regardless of the date of conclusion of the relevant Agreement) falls between 1 October 2020 and 30 June 2021;

(b) which are extended under policies underwritten in 2020 or 2021; and

(c) for which the claim is submitted before the claims notifications deadline stated in the insurance contract and in any case before 30 September 2025[9].

### 2.7. Basic elements of the measure

(23) The capped reinsurance will be granted by the CCS in the name and on behalf of the Spanish State to the trade credit insurers participating in the measure. The reinsurance will cover their losses related to insured eligible trade credit portfolios and take the form of a "quota-share" reinsurance programme.

(24) The CCS will collect a percentage of the premiums in exchange of assuming the same percentage of losses on the claims filed against the insurance company ("cession percentage").

(25) The cession percentage assumed by the CCS will amount to a maximum of 60%. At the time of contracting with CCS, the participating trade credit insurers can choose a lower cession percentage. If that is the case, for risks underwritten in the period from 1 January 2021 to 30 June 2021 the cession percentage may be increased only to the extent that the overall reinsurance percentage (private and CCS) does not exceed that applying to risks underwritten in 2020 and only up the maximum cessation percentage of 60%.[10]

(26) In any case, the percentage of risk retention by the participating trade credit insurer must not be less than 10% for each underwriting year. Therefore, the sum of coverage provided by private re-insurance and coverage under the measure must not surpass 90%. Spain submits that, by retaining a minimum amount of 10% of losses in case of default, participating trade credit insurers will still have an incentive to provide an individualised credit risk assessment of purchasers in a

9 To the extent that the measure concerns agricultural products within the meaning of Annex 1 to the WTO Agreement on Agriculture, then as regards such products, the measure must comply with any relevant requirements of paragraph 15 of the WTO Ministerial Decision on Export Competition of 19 December 2015 (WT/MIN(15)/45 — WT/L/980) on maximum repayment term and self-financing.

10 The overall reinsurance percentage is the sum of quota-share reinsurance obtained from private reinsurers and from the State under this measure.

market logic, a function that is also vital for policyholders who also participate in potential losses (see recital (16)).

(27) The maximum amount paid under the measure to each participating trade credit insurer will not exceed the ceiling allocated to it on the basis of premiums ceded to CCS within the quota share agreement, which is a proxy for its market share, adjusted downward proportionally if the insurer opts for a lower than 60% cession percentage.

(28) The CCS will pay the insurers a percentage of the ceded premiums to compensate for operating expenses, which is the lesser of (a) 35% of the insurance premiums transferred and (b) the percentage corresponding to the effective cost incurred by the participating credit insurer, calculated as the ratio of acquisition and administration expenses over the total insurance premiums charged, as per the financial statements at 31 December 2019.

(29) In exchange for the guarantee, participating trade credit insurers commit to not reduce the risks limits below those existing on 1 October 2020. They may only deviate from this commitment on a case-by-case basis towards each individual debtor/buyer based on their internal risk assessment policies. This means that no mass actions or linear measures at portfolio level or at sector level are allowed. A participating trade credit insurer can only reduce trade credit limits in the following circumstances:

a) high risk of non-payment is observed, resulting from an internal analysis carried out by the ceding company that reveals a deterioration in the debtor's (buyer's) solvency;

b) the ceding company has received notices or notifications of payment difficulties from the debtor;

c) the policyholder has not, or has only partially, used the credit limit over the previous 12 months and the credit limit is limited to the portion used; or

d) the political risk associated with the country in which the buyer is established is assessed as being so high that it may lead to non-payments.

(30) Notwithstanding the foregoing, the ceding company shall retain autonomy in decision-making with respect to insurable risks, which shall remain the responsibility of the ceding company.

(31) The Spanish authorities set up a reporting mechanism to monitor the compliance of the participating trade credit insurers with the principles laid out in the Agreements. The participating credit insurers must report to the CCS on a quarterly basis a list of the coverage limits for the current quarter and the previous quarter, by policy and debtor. The CCS has the right to audit the level and changes of coverage.

(32) The participating insurers make available to the CCS all information related to the direct insurance and reinsurance policies, premiums, claims and recovering management related to this Agreement and relevant for its purposes. In particular, the participating insurers shall send the CCS information on the evolution of the

ceded risks, the premiums and the corresponding claims, as they do to the rest of the reinsurers and at the same time as to them.

(33) The CCS can request the participating insurers to demonstrate that any reduction in coverage limit is justified by the circumstances described in recital (29).

(34) The CCS will report quarterly to the ceding companies the remaining amount of maximum loss for the remaining periods of application to this Agreement.

(35) Spain considers that the quota-share reinsurance removes risks from the portfolios of the participating trade credit insurers, in exchange for their commitment not to reduce the existing trade credit limits. Trade credit insurers can usually manage their risk effectively by adjusting insurance limits for a given buyer for future trades as an immediate reaction to sudden credit risk changes as well as to their own capacity to bear risk going forward. The participating credit insurers' commitment to refrain from using their normal risk adjustment techniques for the sake of a wider policy consideration – *i.e.*, avoiding the drastic reduction of credit limits – requires that they receive a partial reinsurance on exposures in exchange.

### 2.8. Monitoring and reporting

(36) Spain will publish information on the measure, specifying all applicable conditions, on the official website of CCS. At the latest on 30 June 2022, the Spanish authorities will provide a report to the Commission outlining how the measure was implemented and confirming that the conditions under which the State reinsurance is granted have been respected by CCS and by the participating trade credit insurers.

## 3. ASSESSMENT

### 3.1. Lawfulness of the measure

(37) By notifying the measure before putting it into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU.

### 3.2. Existence of State aid

(38) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(39) The measure is imputable to the State, since it is granted by CCS, a public law entity, on behalf of the Spanish State. It is financed through State resources, since it is backed by a guarantee from the Spanish State.

(40) The measure confers an advantage on the participating credit insurers as direct beneficiaries but entails design features to ensure that the advantage is as much as possible passed on to the wider economy. The measure removes risks from the portfolios of the participating insurers, in exchange of their commitment not to reduce the existing credit limits subject to limited exceptions as described in recital (29). Therefore, the measure allows participating trade credit insurers to

operate in an improved economic environment, as compared to the market conditions that would prevail absent that measure.

(41) The measure also confers an indirect economic benefit on the real economy for the policyholders and their debtors (buyers). Trading sellers will be able to continue using trade credit insurance without a reduction of the credit limits that would follow if the trade credit insurers were to set limits according to their usual underwriting principles in the face of the prolonged crisis situation and reduced private reinsurance capacity (see recitals (5) and (6)). The commitment not to reduce limits will avoid that buyers are faced with a demand for advance payment, adding to their existing liquidity crunch. In that way the measure also provides positive secondary effects to the wider economy.

(42) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular participating trade credit insurers.

(43) The measure is liable to distort competition, since it strengthens the competitive position of the participating trade credit insurers. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(44) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Spanish authorities do not contest that conclusion.

### 3.3. Compatibility

(45) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure can be declared compatible with the internal market.

(46) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "to remedy a serious disturbance in the economy of a Member State".

(47) By adopting the Temporary Framework, the Commission acknowledged that "the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings". The Commission concluded that "State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs".

(48) The measure aims at facilitating trade between companies at a time when the normal functioning of markets, including the trade credit insurance market, is severely disturbed by the COVID-19 outbreak, and that outbreak is affecting the wider economy.

(49) While the Commission has provided guidance in the Temporary Framework as to when aid under Article 107(3)(b) TFEU can be declared compatible with the internal market in light of the current shock to the economy, the Temporary Framework is not directly applicable to the measure proposed by Spain, as it does not cover guarantee of trade credit insurance.

(50) Therefore, the measure proposed by Spain has to be assessed based on general criteria for compatibility under Article 107(3)(b) TFEU. However, the Temporary Framework can provide general guidance and its principles can be applied mutatis mutandis as far as appropriate.

(51) The measure applies to overall portfolios of both domestic and export-related transactions within the same guarantee mechanism. The Commission therefore has to assess the overall measure under Article 107(3)(b) TFEU.

(52) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU provision must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other. It also requires taking into account the possibly systemic importance and position of the beneficiaries and the sector concerned and any safeguards proposed to avoid undue negative effects on competition and trade between Member States.

(53) As regards the part of the measure which concerns short-term export-credit risks, the Commission considers that all commercial and political risks associated with exports to the countries listed in the Annex to the Short-term export-credit Communication are temporarily non-marketable at this stage.[11] Consequently, as stated in point 29 of the Communication, there is in principle no obligation for Member States to notify reinsurance of short-term export-credit risks until the end of this year, provided that the conditions in Section 4.3 are respected. Nevertheless, the Commission will also consider the respect of the relevant conditions in the Communication for sake of completeness.

(54) For the avoidance of doubt, the Commission notes that the Banking Communication of 2013 (the “Banking Communication”)[12] is not applicable to the measure, as the beneficiaries of the proposed measure are not credit institutions. The Commission considers further that it is also not appropriate to apply the principles of the Banking Communication by analogy to the current situation[13], because the measure is not intended to address concerns related to financial stability or existing liquidity or solvency needs of the credit insurers. This is because the insurers could simply avoid assuming any further risks that may over-burden their capital position by withdrawing existing limits going forward. By incentivising participating credit insurers to uphold limits also in the future, the measure addresses the direct consequences of the COVID-19 outbreak

[11] Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (OJ C 392, 19.12.2012, p. 1) as amended (OJ C 101 I, 28.3.2020, p. 1).

[12] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ, C 216 of 30 July 2013, p. 1).

[13] See point (26) of the Banking Communication.

in the real economy. As a result, applying the Banking Communication to the measure would not be appropriate.

### *3.3.1. Appropriateness*

(55) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the Spanish economy. This would not be the case if the disturbance disappeared in the absence of the measure or if the measure were not appropriate to remedy the disturbance.

(56) The measure aims at maintaining credit limits by trade credit insurers and indirectly preventing liquidity shortages to companies at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak. The ensuing economic shock is unprecedented and affects demand and supply at the same time. The Commission recognises that this outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States. The measure is one of a series of measures conceived at national level by the Spanish authorities to remedy this serious disturbance in their economy. The importance of the measure to maintain credit limits during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Spanish economy.

(57) In addition, the measure is also unique as regards the direct beneficiaries and the specificities of the trade credit sector. Trade credit insurers can usually manage their risk effectively by adjusting insurance limits for a given purchaser for future trades as an immediate reaction to sudden credit risk changes as well as to their own capacity to bear risk going forward. Any measure that should have the intended effect needs to take this peculiarity into account, namely that the beneficiaries would not require support, unless they should be convinced to refrain from using their normal risk adjustment techniques for the sake of a wider policy consideration. Avoiding the drastic reduction of credit limits is specifically the wider policy consideration in question here.

(58) The measure will be effective for the Spanish economy, as it is expected to be applied by a significant number of the largest trade credit insurers active in Spain, which account for a combined market share of approximately 65%. In addition, the measure is open to any other trade credit insurer authorised to operate in Spain which earn more than EUR 10 million of annual premium in the trade credit insurance business (recital (19)). The Commission considers that this participation threshold, which the Spanish authorities introduced for efficiency reasons, has no detrimental impact on competition as it only affects residual and non-strategic trade credit business units of large insurance companies. All specialised trade credit insurers in Spain earn significantly more than EUR 10 million in premiums annually and cover 96.3% of the Spanish market.

(59) The Commission considers that the measure will thus allow the policyholders (suppliers) to be able to continue relying on the credit limits as of 1 October 2020 as insurance coverage. This will in turn prevent suddenly increasing liquidity needs for the buyers that would have likely occurred in the absence of the measure, as suppliers would have been forced to demand advance payments.

(60) Furthermore, the Commission accepts that the serious disturbance in the Spanish economy due to the effects of the COVID-19 outbreak could worsen, if existing trade credit insurance limits were to be fully adapted to the prolonged crisis situation and the reduced capacity of private reinsurance. The impact on liquidity needs for purchasers that would be required to provide advance payments as well as the potential losses spreading on to suppliers would be significant, sudden and widespread across the whole economy. This upholding of existing limits that would otherwise be withdrawn will thus provide systemic stabilisation for the whole economy.

(61) The Commission notes that in order to benefit from the proposed measure, trade credit insurers have committed themselves to maintain limits as of 1 October 2020, subject to certain limited exceptions (recital (29)) and to monitoring by the Spanish State (recitals (31) and (32)). The Commission therefore considers that the measure has the intended effect to stabilise the trade credit market in Spain and to avoid large-scale reductions of the current trade credit limits in the face of the prolonged crisis situation and the reduced capacity of private reinsurance, avoiding thereby the negative effects which would lead to a significant deterioration of the economic situation in Spain.

(62) In light of the above, the Commission considers that the measure proposed by Spain is appropriate, because it addresses the current malfunctioning of the credit insurance market with its associated imminent and serious risks of a significant further damage to the real economy of Spain.

### *3.3.2. Necessity*

(63) In order to meet the compatibility criterion of necessity, the aid measure must in its amount and form be necessary to achieve its objective. That implies that it must be of the minimum amount necessary to reach this objective.

(64) First, it is important to note the extreme and fully unexpected situation of trade credit insurers. It is inherent to the system of trade credit insurance that the insured delivery of a good or service deviates in time from the moment of payment. It is true that the prediction of credit worthiness of purchasers is the core competency of the insurance providers and is conducted based on complex models, involving numerous parameters. However, the current and unprecedented situation with the sudden widespread economic shock that affects demand and supply at the same time, the sudden increase in the demand for liquidity in the real economy and associated concerns on future credit worthiness of companies, was not predictable, which significantly aggravated the situation of credit insurers. Until now, other support measures referred to in recital (5) may have somewhat delayed the effects of the pandemic and the credit insurers have not yet taken any significant de-risking actions, but the prolonged crisis situation stemming from the pandemic puts them in an aggravated situation.

(65) Second, it should be considered that the normal risk remediation technique the trade credit insurers would take in face of the prolonged crisis situation and in absence of the measure – namely the significant de-risking going forward via reducing limits – is what the measure intends to avoid by implementing clear rules as described in recital (29) to which the participating trade credit insurers must adhere when considering limit reductions. The Commission considers that

this measure is conditional upon obtaining the acceptance of those rules, and therefore the requirement to maintain credit limits by the insurers.

(66) Third, insurers already in difficulty on 31 December 2019 are excluded from participating in the measure. The Commission therefore considers that the measure only addresses insurers affected by the COVID-19 outbreak.

(67) Fourth, the measure is limited in time and applies only to risks underwritten between 1 October 2020 and 30 June 2021 as described in recital (22). As it excludes transactions and losses that have occurred before 1 October 2020, it is limited to events that occurred after the COVID-19 outbreak.

(68) Fifth, the coverage provided should be seen in relation to the remuneration provided. In return for the guarantee coverage of up to 60%, participating credit insurers will transfer to the CCS the same share of the insurance premiums collected between 1 October 2020 and 30 June 2021 less a share of a maximum of 35% of those collected insurance premiums to cover their operating costs (recitals (25) and (28)). The remuneration would thus result in the insurers passing on up to 60% of their profits net of operating cost on their activity for the duration of the Agreement to the State even before the materialisation of any losses.

(69) Finally, the estimated maximum budget of the measure of EUR 500 million represents 0.3% of the total outstanding credit limits of EUR 150 billion. Any further losses above this level will not be covered by the scheme and have to be borne by the industry. The budget of the measure represents the maximum losses incurred by the State under the measure and implies, assuming a 60% coverage of losses, an increase in losses by over 4 times in comparison to 2019[14]. In light of the current uncertainties, such an increase in losses cannot be excluded given the unprecedented economic impact of the COVID-19 outbreak. Given this uncertainty, it is also not possible to extrapolate the future based on past experience. Therefore, the Commission considers a threshold of this magnitude as justified.

(70) It should also be taken into account that the measure is in any case contingent upon actual losses in the real economy. In the current unprecedented situation, any estimates of future economic activity and the evolution of insolvencies are still fraught with a high degree of uncertainty. At this stage of the COVID-19 crisis, a quantification of default probabilities in the real economy is still difficult and subject to large variations. With this in mind, the Commission considers that the maximum amount of losses estimated to be EUR 500 million is calibrated to address the factual and unprecedented uncertainties in which insurers are operating and which requires a coverage also of less likely scenarios. The amount therefore appears justified to reach the intended result, namely to stabilise the

[14] Losses in 2019 amounted to ca. EUR 330 million (calculated as 55% loss ratio of annual premiums of EUR 600 million, see recital (17)). On a *pro rata temporis* basis for the duration of the scheme (9 months), the relevant base loss amount is thus EUR 247 million (9/12 * EUR 330 million). The budget of EUR 500 million plus the premiums net of operating costs ceded to the State (EUR 600 million *60%*9/12*65%=EUR 175.5 million) are thus exhausted at a loss of EUR 1125 million, of which the State covers 60% (equal to EUR 675.5=EUR 500 million + EUR 175.5 million) and the insurers the remaining 40%. The EUR 1125 million total losses during the duration of the scheme are 4.5 times the base loss amount of EUR 247 million.

trade credit insurance activity and to avoid negative effects leading to widespread reduction or cancellation of trade credit insurance limits of the real economy.

(71) Based on the above, it can be concluded that the measure is limited to the minimum amount and form necessary to achieve the objective pursued. No less distortive instrument is available that would be as effective.

### *3.3.3. Proportionality*

(72) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(73) The measure is designed in a way to keep market forces working under the safety net provided. By sharing losses and premiums, it is excluded that the participating private credit insurers conduct an adverse selection and transfer only bad risks to the State. It is further to be noted that the scheme is designed as a top-up scheme and does not replace existing private reinsurance coverage.

(74) This model of sharing risks and return also ensures that the vital function of credit risk assessment provided by the industry is upheld. By retaining a significant amount of risk, the insurers still have an incentive to provide an individualised credit risk assessment of purchasers – a function that is also vital for policyholders who also participate in potential losses. It therefore appears that the chosen model is well justified as a methodology that effectively limits State intervention while still providing the envisaged result that would not be achievable as an outcome of pure market forces alone.

(75) As already considered in recital (50) above, the Temporary Framework – although not directly applicable – serves as a reference point to identify relevant principles to assess the proportionality of the measure.

(76) The measure limits public coverage of risk under the scheme to a maximum of 60% (see recital (25)), and ensures that in any case, 10% of the overall risk will be retained by the insurer, also including existing private reinsurance (see recital (26)). The State coverage is thus significantly below the ceiling of 90% proportional risk sharing by the State as provided for in point 25(f)(i) of the Temporary Framework.

(77) The guarantee premium to be paid amounts to up to 60% of the premiums net of operating costs, charged by the trade credit insurers between 1 October 2020 and 30 June 2021. Based on 2019 figures, this would amount to a maximum total amount of guarantee premiums of approximately EUR 175.5 million[15] to be paid to the State. Such remuneration would be significantly above the minimum premiums defined in point 25(a) of the Temporary Framework for a one-year guarantee protection.

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15 Amount corresponding to 60% of EUR 600 million annual premium volume, adjusted *pro rata temporis* for the duration of the scheme of 9 months and a 35% cost compensation (EUR 600 million *60%*9/12*65%=EUR 175.5 million).

(78) Based on the points above, the Commission considers that the measure proposed by Spain ensures a participation of trade credit insurers that is at least as strict as the one foreseen in the Temporary Framework.

(79) As regards the underlying logic of point (31) of the Temporary Framework, namely that any advantage of aid should be passed on to the economic operators in the real economy directly affected by the current shock to the largest extent possible, the following should be considered:

(a) First, in order to benefit from the proposed measure, insurers have to commit to keep available the insurance limits of their policyholders as described in recital (29).

(b) Second, the measure is open to all trade credit insurers legally authorised to operate in Spain (recital (19)). This will safeguard competition between these providers and therefore provide an additional lever to ensure that benefits are channelled through to the real economy to the largest extent possible.

(c) Third, participating credit insurers are also retaining a significant part of the losses under the measure (recitals (25) and (26)). That design ensures that the insurer's decision-making process incorporates economic considerations and is not detached from a market logic. This ensures an overall risk monitoring by the insurers, and is in line with the intention of section 3.2 of the Temporary Framework.

(80) Based on the above, the Commission considers that the measure as proposed by Spain is proportionate to reach the intended goal while minimising the distortive effects on competition.

#### 3.3.4. *Conclusion on compatibility*

(81) Based on the above considerations, the Commission concludes that the measure is compatible under Article 107(3)(b) TFEU.

#### 3.3.5. *Short-term export-credit Communication*

(82) Following the amendment to the Short-term export-credit Communication of 28 March 2020 and the fourth prolongation of the Temporary Framework of 13 October 2020, the Commission considers all countries currently as non-marketable or as temporarily non-marketable risk countries.

(83) In as far as the measure covers export-credit insurance with a risk period of less than two years that may fall under the Short-term export-credit Communication, the Commission notes that the quality of cover will be consistent with market standards, as it is comparable to the one offered by the private insurers in normal conditions.

(84) The Commission notes that the measure is temporary in nature as it only covers trade credit provided before or on 30 June 2021 with the aim to remedy the disturbance caused by the COVID-19 outbreak in the trade credit insurance market in Spain. The measure is therefore designed to keep the credit insurance available in the Spanish economy within the pre-crisis limits to the largest possible extent.

(85) The cover is accessible to all commercial insurers in Spain in an open, transparent and non-discriminatory manner (recital (19)). The measure essentially allows the market to remain as it was for all private insurers, with respect to all short-term credits and for all Spanish policyholders. In that regard, the reinsurance is being offered on a large scale to all types of risks, including a significant number of creditworthy buyers with clean claims record and good financial ratings. The remuneration resulting from the risk and premium sharing is therefore justified and adequate in light of objective of the measure to preserve the existing credit insurance limits available for a limited period of time to the real economy in Spain.

(86) On the basis of the above and in view of the principle set out in point 31 of the Short-term export-credit Communication, the Commission considers that the measure fulfils the requirements of the Short-term export-credit Communication in as far as it is applicable.

## 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

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Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

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For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION