EUROPEAN COMMISSION

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Subject: State Aid SA. 51042 (2018/N) – Portugal - 17th Extension of the Portuguese Guarantee Scheme

Sir,

1. PROCEDURE

(1) On 29 October 2008 the Commission approved the Portuguese Guarantee Scheme ("the scheme") by its decision in State aid case NN 60/2008 ("the original decision")[1].

(2) On the basis of subsequent notifications, the Commission approved the prolongation of the scheme by its decisions of 22 February 2010 in State aid case N 51/2010[2], of 23 July 2010 in State aid case N 315/2010[3], of 21 January 2011 in State aid case SA.32158[4], of 30 June 2011 in State aid case SA. 33178[5], of 21

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[1] OJ C 9, 14.1.2009, p.2, a corrigendum to which appeared in OJ C 25, 31.01.2009, p.28.
[2] OJ C 99, 17.4.2010, p. 4.
[3] OJ C 283, 20.10.2010, p. 7.
[4] OJ C 111, 9.4.2011, p. 7.
[5] OJ C 344, 24.11.2011, p. 3.

S. Ex.ª o Ministro dos Negócios Estrangeiros
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December 2011 in State aid case SA. 34034[6], of 27 June 2012 in State aid case SA.34958[7], of 17 December 2012 in State aid case SA.35743[8], of 1 August 2013 in State aid case SA.36869[9], of 19 December 2013 in State aid case SA.37698[10], of 30 July 2014 in State aid case SA.38900[11], of 4 February 2015 in State aid case SA.39991[12], of 22 July 2015 in State aid case SA.42404[13], of 13 January 2016 in State aid case SA.43996[14], of 29 July 2016 in State aid case SA.45761[15], of 17 February 2017 in State aid case SA.47168[16] and of 7 November 2017 in State aid case SA.48550[17]. By its decision in case SA.48550, the Commission authorised the prolongation of the scheme for 6 months from the adoption date of the decision.

(3) On 8 May 2018, Portugal notified a seventeenth extension of the scheme for 6 months from the adoption date of the present decision. The notification was completed by further submissions of information on 12 June 2018.

(4) By letter dated 11 June 2018, Portugal agreed exceptionally to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958[18] and to have the present decision adopted and notified in English.

2. FACTS

2.1. Description of the scheme

(5) To stabilise the financial market, Portugal passed law 60-A/2008 of 20 October 2008[19] and its implementing provisions, Portaria nº 1219-A/2008 of 23 October 2008[20], Portaria nº 946/2010 of 22 September 2010[21], Portaria nº 80/2012 of 27 March 2012[22] and law 114/2017 of 29 December 2017[23].

(6) The total budget of the extended/prolonged scheme is EUR 20 billion according to the notification made by Portugal.

(7) The beneficiaries of the scheme are all credit institutions incorporated in Portugal, including subsidiaries of foreign banks with registered office in Portugal. Only institutions which are solvent for the purposes of Portuguese law may benefit from the scheme.

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6 OJ C 99, 3.4.2012, p. 4.
7 OJ C 246, 15.8.2012, p. 3.
8 OJ C 36, 17.12.2013, p. 3.
9 OJ C 2, 7.1.2014, p. 3.
10 OJ C 50, 21.2.2014, p. 29.
11 OJ C 348, 3.10.2014, p. 28.
12 OJ C 94, 20.3.2015, p. 10.
13 OJ C 369, 6.11.2015, p. 6.
14 OJ C 20, 20.1.2017, p. 9.
15 OJ C 274, 18.8.2017, p. 2.
16 OJ C 110, 7.4.2017, p. 8.
17 OJ C 3, 5.1.2018, p. 6.
18 Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
19 Diário da República, 1.ª série, n.º 203.
20 Diário da República, 1.ª série, n.º 206.
21 Diário da República, 1.ª série, n.º 185.
22 Diário da República, 1.ª série, n.º 62.
23 Diário da República, 1.ª série, n.º 249.

(8) Under Portaria n°80/2012, the scheme covers the issuance of non-subordinated debt with a minimum maturity of three months and a maximum maturity up to five years. In case of guarantees on the issuance of covered bonds (on mortgages and on the public sector), the maturity can go up to seven years.

(9) The remuneration for guarantees on liabilities will be calculated in accordance with the formula set out in the 2011 Prolongation Communication[24], as described in the Commission decision in State aid case SA.34958[25]. The indicative guarantee fees for the period of 6 months from the adoption of the present decision can be found in the Annex and are based on an updated sample of European banks established by the Commission on 6 April 2018.

(10) A detailed description of the scheme is provided in the original decision, in particular recital 9 concerning the legal basis, recitals 5 to 8 concerning the objective of the scheme and recitals 10 to 21 on the general description of the scheme. Portaria n° 80/2012 introduced the requirement in terms of maturities described in recital 8.

2.2. Actual use of the scheme

(11) Along with the notification, the Portuguese authorities submitted a report on the operation of the scheme from 15 October 2017 until 15 January 2018.

(12) During the current reporting period, no new liabilities have been issued under the scheme, and all the outstanding guarantees have matured.

(13) The Portuguese authorities have not provided the latest regular report on the recent operation of the scheme. The Commission has no indications to date that would suggest that the scheme would have been accessed since the last reporting date.

2.3. New elements introduced with the last notifications

(14) The terms and conditions of the extended scheme remain the same as compared to the previous scheme.

3. POSITION OF PORTUGAL

(15) Portugal requests an extension of the scheme for 6 months from the adoption date of the present decision.

(16) Portugal submits that the scheme constitutes State aid within the meaning of Article 107(1) TFEU, but is of the view that the proposed extension is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary to remedy a serious disturbance in the economy of Portugal.

(17) Portugal submitted an opinion by the Bank of Portugal[26] further supporting the need for the proposed extension to safeguard the stability of the financial system in Portugal, because prevailing market conditions would not allow for a termination of the scheme. In particular the Bank of Portugal considers that despite the limited

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[24] Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

[25] Recitals 13 to 16. See footnote 7.

[26] Opinion by the Bank of Portugal included in Portugal's submission of information on 12 June 2018.

use of the scheme in a more favourable context due to the positive effects of the expanded asset purchase programme by the European Central Bank, there still remain risks associated to a possible increase of the sovereign bond yields that might affect Portugal. In this context, the Portuguese financial institutions might be affected. The Bank of Portugal also considers that financial stability should be ensured with instruments that not only can be used in the short term, but also maintaining a safeguard where it considers there is a possibility of adverse shocks.

(18) Although the last issuance under this scheme occurred in the beginning of 2013, Portugal considers that the existence of the scheme for extraordinary granting of guarantees is still an important safeguard instrument for the Portuguese financial system, providing protection to the collateral buffers, in the process of regaining broader market access. Portuguese sovereign bond yields have decreased over the past 6 months, which also benefited the financing conditions of domestic issuers, however, the spreads of sovereign yields would remain at an elevated level. According to Portugal, no debt issuances were performed with State guarantee in the reporting period.

(19) In view of the above, the Bank of Portugal considers the availability of the scheme may prove to be relevant to improve the Portuguese banking system's funding conditions and, in particular, to enhance the ability of Portuguese financial institutions to access the capital markets when circumstances so require.

(20) Portugal reasserted the existing commitments relating to the scheme, as reflected in recital 17 of the Commission decision of 30 July 2014 in State aid case SA.38900, namely:

(a) to grant aid measures under the scheme only to solvent credit institutions which have no capital shortfall[27]; banks which have already received approved rescue aid at the date of entry into force of the 2013 Banking Communication[28], i.e. before 1 August 2013, but have not yet obtained a final approval of the restructuring aid, can also receive support under the scheme without individual notification. In such a case an update to the restructuring plan has to be submitted if the restructuring plan had not already provided for the envisaged guarantee measure;

(b) to grant the guarantees under the scheme only for the new issuance of senior debt (subordinated debt is excluded);

(c) to provide guarantees only on debt instruments with maturities from three months up to five years (or a maximum of seven years in the case of covered bonds) and to limit the guarantees with a maturity of more than three years to one-third of the total outstanding amount of guarantees granted to each individual bank;

(d) to determine the minimum level of State guarantee remuneration in line with the provisions of Article 4 of Executive Order nr. 1219-A/2008, of 23

[27] "No capital shortfall" is certified by the competent supervisory authority, as it is established, in line with point 28 of the 2013 Banking Communication, in a capital exercise, stress test, asset-quality review or an equivalent exercise at Union, euro area or national level, which has to be confirmed by the competent supervisory authority.

[28] 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, 30.7.2013, p. 1).

October (as amended by Executive Order nr. 80/2012, of 27 March), in accordance with the formula set out in the Commission's Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis;

(e) to communicate to the Commission, within three months following each issuance of guaranteed bonds, the actual fee charged;

(f) that any credit institution that is granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of this decision) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million, will be required to present a restructuring plan within two months of the granting of the guarantees;

(g) that any institutions which cause the guarantee to be called upon will be required to submit individual restructuring or liquidation plans to the Commission within two months from such event;

(h) to impose a ban on advertising referring to the State support received by the beneficiaries of the scheme and to prevent the latter from employing any aggressive commercial strategies, which would not take place without the State support;

(i) to present every three months (15 April, 15 July, 15 October and 15 January, at the latest) a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged.

(j) to complement reports on the operation of the scheme with updated available data on the cost of comparable non-guaranteed debt issuances (as regards nature, volume, rating, currency).

(21) On 11 October 2017 the Commission adopted a decision[29] approving the sale of the bridge bank Novo Banco in the context of the resolution of Banco Espírito Santo. In this context, Portugal proposed new aid measures and notified a restructuring plan until end-2021. In the commitment letter annexed to that Decision, Portugal committed that Novo Banco will not access other state support measures for liquidity purposes, namely the Portuguese Guarantee Scheme.

(22) In line with the requirements of the 2011 Prolongation Communication, Portugal provided an indicative fee (estimation) for financial institutions. Portugal applied the formula for banks without CDS prices. The estimation was based on an application of the scheme's remuneration formula and recent market data.

[29] Commission decision in State aid n° SA.49275 (2017/N) – Portugal, OJ C 97, 15.3.2018. p. 1

4. ASSESSMENT

4.1. Existence of State aid

(23) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(24) For the reasons indicated in the original decision, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU because it concerns the provision of State resources to a certain sector, i.e. the financial sector, which is open to intense international competition. Under the scheme, participating banks obtain guarantees under conditions which would not be available to them under market conditions, and so receive an advantage. Given the characteristics of the financial sector, any advantage from State resources to a bank affects intra-Union trade and threatens to distort competition. The measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the scheme

4.2.1. Legal basis for the compatibility assessment

(25) Under the scheme Portugal intends to provide aid in the form of guarantees in favour of banks.

(26) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". In the 2013 Banking Communication, point 6, the Commission noted that in circumstances of persisting stress in financial markets and in the presence of a risk of wider negative spill-over effects, the requirements for the application of Article 107(3)(b) TFEU to State aid in the financial sector would continue to be fulfilled. The application of that derogation remains, however, possible only as long as the crisis situation persists, creating genuinely exceptional circumstances where financial stability at large is at risk.

(27) The Portuguese authorities have submitted the view of the Bank of Portugal that regular access of banks to funding in financial markets remains vulnerable at the current juncture, despite recent positive developments concerning the restoration of health in the Portuguese banking sector and concerning Portugal's sovereign rating. Notwithstanding the positive signs as regards the Portuguese economy observed recently, for the limited time of this prolongation, the Commission considers that there would still be a risk of an adverse shock and that the scheme would continue to aim at remedying a serious disturbance in the Portuguese economy.

(28) Therefore, the Commission continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

(29) In order for an aid to be compatible under Article 107(3)(b) TFEU, it must comply with the general principles for compatibility under Article 107(3), viewed in the light of the general objectives of the Treaty. Therefore, according to the

Commission's decisional practice[30] any aid or scheme must comply with the following conditions: (i) appropriateness (ii) necessity and (iii) proportionality.

(30) The 2013 Banking Communication and the Restructuring Communication[31] formulate assessment criteria which reflect those general principles and their requirements in light of the specific policy context.

4.2.2. *Compatibility assessment of the scheme*

Appropriateness

(31) The scheme should be appropriate to remedy a serious disturbance in the Portuguese economy. The objective of the scheme is to temporarily offer appropriate measures to establish backstops for the financial system in a timely and efficient manner, in cases where banks face difficulties in obtaining sufficient funding due to lack of market confidence. A backstop mechanism by the Member State, which in case of urgency ensures that banks would have access to funding, can be an appropriate means to strengthen banks and thus to restore market confidence.

(32) Points 23 and 60(a) of the 2013 Banking Communication explain that guarantee schemes can be made available in order to provide liquidity to banks in case of urgency but that such schemes should be limited to banks without a capital shortfall. The Commission observes that Portugal has committed to restrict the scheme only to banks without a capital shortfall as certified by the competent supervisory authority.

(33) The Commission, additionally, notes that Portugal has committed to grant guarantees only for new issues of banks' senior debt, as prescribed in point 59(a) of the 2013 Banking Communication.

(34) The Commission finally notes that one Portuguese bank, Novo Banco, will not be eligible to access the scheme, according to the commitments put forward by Portugal in case SA.49275(2017/N) on the sale of Novo Banco with additional aid in the context of the 2014 Resolution of Banco Espírito Santo, S.A.[32]

Necessity

(35) With regard to the scope of the measure, the Commission notes positively that Portugal has limited the size of the scheme by setting its maximum budget at EUR 20 billion and that the scheme applies for 6 months from the adoption date of the present decision.

(36) The Commission notes that Portugal has committed to grant guarantees only on debt instruments with maturities from three months to five years (or a maximum of seven years in the case of covered bonds) and limit guarantees with a maturity of

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[30] See Commission decision of 6.9.2013 in State Aid Case SA.37314 "Rescue aid in favour of Probanka" (OJ C 314, 29.10.2013, p. 1) and Commission decision of 6.9.2013 in State Aid Case SA.37315 "Rescue aid in favour to Factor Banka" (OJ C 314, 29.10.2013, p. 2).

[31] Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

[32] See point 21.

more than three years to one-third of the outstanding guarantees granted to the individual bank, which complies with the requirements in points 59(b) and 60(b) of the 2013 Banking Communication.

(37) Regarding the remuneration level, the Commission observes that Portugal, in line with point 59(c) of the 2013 Banking Communication, has committed to follow the pricing and other conditions for State guarantees laid down in the 2011 Prolongation Communication which requires, in particular, the application of a pricing method based largely on market data.

(38) The guarantee fee required by 2011 Prolongation Communication foresees a pricing method also for banks without representative CDS data, which Portugal argues would still be appropriate to use.[33] It seems appropriate to consider the CDS spreads of individual banks located in the countries recently subject to a financial assistance programme as temporarily non-representative of the intrinsic risk of those banks.

(39) For the time period of this prolongation, the Commission does not object to Portugal's intention to determine the guarantee fee for banks which still have a traded CDS on the basis of the CDS of the sample of Union banks in the "BBB-rating and lower" rating category. The Commission notes that the financial assistance programme in Portugal ended in May 2014 and will review its assessment of the macro-economic situation and appropriateness of that exceptional pricing mechanism whenever a further extension of the scheme is notified.

Proportionality

(40) As regards proportionality, the Commission notes, first, that Portugal, in line with point 59(d) of the 2013 Banking Communication, has committed to submit a restructuring plan within two months for any bank granted guarantees on new liabilities or on renewed liabilities for which, at the time of the granting of the new guarantee, the total outstanding guaranteed liabilities (including guarantees accorded before the date of the decision) exceed both a ratio of 5% of the bank's total liabilities and a total amount of EUR 500 million. That commitment ensures that the use of the scheme will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments.

(41) Second, the Commission notes that Portugal has committed, in line with point 59(f) of the 2013 Banking Communication, to a number of behavioural safeguards such as a ban on advertisements referring to the State support and a ban on any aggressive commercial strategies which would not take place without the State support. Such safeguards help ensure that the participating institutions do not misuse the received State support to expand their activities.

(42) Finally, the Commission welcomes that Portugal undertakes to submit individual restructuring or liquidation plans, within two months, for banks which cause the guarantee to be called upon, in line with point 59(e) of the 2013 Banking Communication.

[33] See point 19.

(43) As regards the combination of the scheme with other aid measures, the Commission recalls that, as indicated in the Annex to the Restructuring Communication, the restructuring plans to be submitted should contain all State aid received as individual aid or under a scheme during the restructuring period.

(44) Furthermore, based on point 16 of the Restructuring Communication, the Commission recalls that, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, such additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. All State aid measures received by a bank as individual aid or under the scheme during the restructuring period will be taken into account in the Commission's final decision on that bank.

Monitoring

(45) The Commission welcomes, in line with point 60(c) and (d) of the 2013 Banking Communication, that Portugal undertakes to present every three months a report on the operation of the scheme, on guaranteed issuances and on the actual fees charged and to supplement it with updated available data on the cost of comparable non-guaranteed debt issuances (nature, volume, rating and currency).

Conclusions on the compatibility of the aid measure

(46) On the basis of the above, the Commission finds the notified extension to be in line with the 2013 Banking Communication and the Restructuring Communication. For the limited time of this prolongation, the scheme is considered to remain an appropriate, necessary and proportionate measure to remedy a serious disturbance of Portugal's economy.

(47) In line with the Commission’s decisional practice, the scheme can therefore be extended for 6 months from the adoption date of the present decision.

(48) The Commission notes that Portugal exited its Macro-economic Adjustment Programme more than four years ago in May 2014. Notwithstanding these positive developments in the Portuguese economy, the Commission believes that, for the limited time of this prolongation, the scheme still aims at remedying a serious disturbance in the Portuguese economy, although the signs of this disturbance are progressively disappearing. Therefore, should a further extension of the present scheme be required, the latter would require the Commission’s approval and will have to be based on a thorough actualised review of the developments in financial markets and of the scheme’s necessity, notably whether the risks referred to in recital (27) would still be considered significant. In light of the spreads of the sovereign being in the process of coming down significantly and the economy being projected to continue growing robustly, a request for further extension will be based on a comprehensive demonstration by Portugal whether the economic situation in Portugal would still be seriously disturbed overall, whether financial markets in Portugal would still experience widespread stress and whether the scheme would be appropriate to remedy this.

5. COMPLIANCE WITH THE INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014[34]

(49) The Commission notes that the scheme does not seem to violate intrinsically linked provisions of Directive 2014/59/EU on bank recovery and resolution ('BRRD') and namely Article 32(4)(d)(ii) and Article 18(4)(d)(ii) of Regulation (EU) 806/2014 on the Single Resolution Mechanism ('SRM-R'). The criteria of the scheme ensure that the institutions benefitting from it will not be deemed failing or likely to fail on the sole basis of their participation in the scheme.

(50) The first subparagraph of Article 32(4) BRRD and Article 18(4) SRM-R establishes that an institution shall be deemed to be failing or likely to fail and placed into resolution, (if all the other pre-conditions for resolution are met), where, *inter alia*, extraordinary public financial support is required, except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes the form, *inter alia*, of a State guarantee of newly issued liabilities.

(51) The second subparagraph of Article 32(4) BRRD and Article 18(4) SRM-R provide that in order not to trigger resolution such State guarantees on newly issued liabilities must be confined to solvent institutions and must be conditional on final approval under the Union State aid framework. Those measures must be of a precautionary and temporary nature and must be proportionate to remedy the consequences of the serious disturbance and must not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(52) The Commission notes that the scheme is limited to solvent institutions. The guarantees granted under the scheme are of a temporary nature since the window of their issuance is limited to six months and their maturity is limited to a maximum maturity up to five years. In case of guarantees on the issuance of covered bonds (on mortgages and on the public sector), the maturity can go up to seven years. The Commissions notes positively that the guarantees granted under the scheme are of a precautionary nature since they only cover newly issued liabilities. The guarantees granted are also proportionate to remedy the consequences of the serious disturbance as explained in recitals (40) to (44). The Commission therefore concludes that the notified extension does not seem to violate any intrinsically linked provisions of Directive 2014/59/EU nor of Regulation (EU) No. 806/2014. The scheme is in compliance with the requirements of Article 32(4) of BRRD and Article 18(4) SRM-R, therefore, apt to remedy the consequences of the serious disturbance in the Portuguese economy.

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[34] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190; Regulation (EU) no 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1.

6. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) TFEU and not to raise objections to the scheme.

Portugal exceptionally accepts that the present decision be adopted in the English language, for reasons of urgency.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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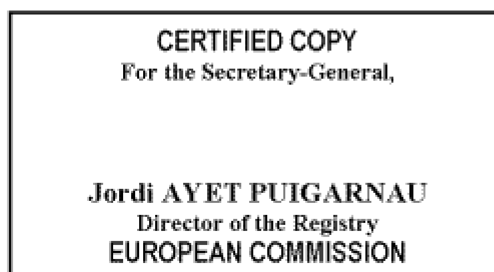
Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



ANNEX

Indicative guarantee fees as of 4 June 2018	
Institute	**Premium per institute (basis points)**
Banks without CDS spread	85

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