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Portuguese Guarantee Scheme

Julia A. Arnous¹

March 20, 2019

Abstract

By October 2008, Portuguese banks' access to liquidity was severely restricted due to strains in international wholesale markets. On October 12-13, 2008, the Portuguese government notified the European Commission of a guarantee scheme (Scheme) intended to promote solvent credit institutions' access to liquidity. Under the Scheme, the Portuguese government would guarantee financing agreements and banks' issuance of non-subordinated short- and medium-term debt. To obtain a guarantee under the Scheme, banks had to pay a fee based on the maturity of the debt and a risk proxy for the issuer. Banks that called on a guarantee were required to either pay back the Portuguese state or exchange the loan for preference shares. Eight or more banks participated in the Scheme, including three of the largest Portuguese banks. The outstanding amount of guarantees peaked in 2012 at or around €16.8 billion. Initially set to close on December 31, 2009, the Scheme's issuance window was repeatedly extended. As of the date of writing, the issuance window was most recently extended until February 9, 2019. The most recent issuance under the Scheme was made in early 2013. The last remaining bond initially guaranteed under the Scheme matured on February 17, 2017. The Scheme is considered to have been successful in promoting debt issuance and increasing liquidity in the Portuguese financial system.

Keywords: Portugal, financial crisis, guarantee scheme, state aid, liquidity, interbank credit

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Portuguese Guarantee Scheme

At a Glance

By October 2008, Portuguese banks' access to liquidity was severely restricted due to strains in international wholesale markets.

On October 12-13, 2008, the Portuguese government notified the European Commission (EC) of a guarantee scheme (Scheme) intended to promote solvent credit institutions' access to liquidity. Titled *Concessão extraordinária de garantias pessoais pelo Estado, para o reforço da estabilidade financeira e da disponibilização de liquidez nos mercados financeiros*, the Scheme was approved by the EC on October 29, 2008.

The Scheme was part of the Portuguese government's Initiative to Strengthen Financial Stability (IREF) which also included a recapitalization scheme, an increase in the bank deposit guarantee, and measures to promote bank transparency. The goal of the Scheme was to support financial stability and the availability of liquidity in Portuguese financial markets.

Under the Scheme, the Portuguese government would guarantee financing agreements and banks' issuance of non-subordinated short- and medium-term debt. To participate in the Scheme, banks were required to be solvent and incorporated in Portugal. The announced budget was €20 billion, and around 51-100 credit institutions were eligible to participate.

To obtain a guarantee under the Scheme, banks had to pay a fee based on the maturity of the debt and a risk proxy for the issuer. Banks that called on a guarantee were required to either pay back the Portuguese state or exchange the loan for preference shares.

Eight or more banks participated in the Scheme, including three of the largest Portuguese banks. The outstanding amount of guarantees peaked in 2012 at or around €16.8 billion. Initially set to close on December 31, 2009, the Scheme's issuance window was repeatedly extended. As of the date of writing, the issuance window was most recently extended until February 9, 2019. The most recent issuance under the Scheme was made in early 2013. The last remaining bond initially guaranteed under the Scheme matured on February 17, 2017.

Summary Evaluation

The Scheme is considered to have been successful in promoting debt issuance and increasing liquidity in the Portuguese financial system. However, it has been criticized as merely providing collateral for ECB borrowing.

Summary of Key Terms	
Purpose:	To promote the liquidity of solvent credit institutions in Portugal.
Announcement Date	October 12, 2008
Operational Date	October 29, 2008
Date of First Guaranteed Loan Issuance	November 24, 2008
Issuance Window Expiration Date	Dec. 31, 2009 (initial) February 9, 2019 (current)
Program Size	€20 billion initially. Fluctuated between €9 billion and €35 billion before returning to €20 billion
Usage	Eight or more credit institutions, including three of the largest Portuguese banks. The peak utilization was estimated at €16.8 billion
Outcomes	No defaults. Over €700 million in guarantee commissions between 2008 and the end of 2014
Notable Features	Required repayment by bank in the event of default could initially be exchanged for preference shares

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I. Overview

Background

Portuguese banks were heavily reliant on wholesale funding in the lead-up to the global financial crisis (IMF 2008). As international wholesale markets became increasingly strained, credit standards rose and Portuguese banks faced mounting challenges in accessing funding (id.). As was occurring across Europe, credit default swap (CDS) spreads for Portuguese banks rose (id.). Smaller, domestically oriented banks were particularly affected (id.). By October 2008, access to liquidity was severely restricted, even for healthy banks.

The Portuguese government saw a danger that banks would cease to serve their traditional function of lending to individuals and companies. Portuguese authorities grew increasingly concerned about the implications for the broader Portuguese economy.

Program Description

To promote solvent credit institutions' access to liquidity, on October 12-13, 2008, the Portuguese government notified the European Commission (EC) of a guarantee scheme (Scheme) (EC 12/17/2008). Titled *Concessão extraordinária de garantias pessoais pelo Estado, para o reforço da estabilidade financeira e da disponibilização de liquidez nos mercados financeiros*, the Scheme was approved by the EC on October 29, 2008 with an issuance window ending December 31, 2009 (id.).

The EC authorized the Scheme to “remedy a serious disturbance” under Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU). New Portuguese legal authority was also needed to launch the Scheme. On October 20, 2008, a new law—*Lei n° 60-A/2008*—was passed creating authority for exceptional granting of guarantees. Implementing provisions were laid out in a decree order, *Portaria n° 1219-A/2008* of 10/23/2008; subsequent decree orders were issued in 2010, 2012, and 2014.

The Scheme formed part of the Portuguese government's Initiative to Strengthen Financial Stability (IREF). The goal of the Scheme was to support financial stability and the availability of liquidity in Portuguese financial markets. At the same time, the authorities sought to avoid disrupting Eurosystem liquidity management.

Under the Scheme, the Portuguese government would guarantee financing agreements and the issuance of non subordinated short- and medium-term debt. In order to be eligible, banks were required to be solvent and incorporated in Portugal. The announced budget was €20 billion, and around 51-100 credit institutions were eligible to participate (EC 12/17/2008). To obtain a guarantee under the Scheme, banks had to pay a fee based on the maturity of the debt and a risk proxy for the issuer. Banks that called on a guarantee were required to either pay back the Portuguese state or exchange the loan for preference shares. Portugal financed the Scheme by issuing public debt securities (EC 12/17/2008). Beneficiaries' aggregate balance sheet growth was monitored and limited. Under certain circumstances, beneficiaries of the Scheme were required to submit restructuring plans.

The Scheme initially covered only unsubordinated, euro-denominated debt with maturity between 3 months and 5 years. Portugal later expanded the Scheme to include covered bonds with a maturity of up to 7 years.

Outcomes

Eight or more Portuguese banks participated in the Scheme over the course of its operation.²

Three of the largest Portuguese credit institutions—Caixa Geral de Depósitos S.A. (Caixa); Banco Espírito Santo S.A. (BES); and Millennium/Banco Comercial Português S.A. (BCP)—issued debt instruments within the Scheme’s first six weeks of operation, each in an amount over €1 billion (EC 2/22/2010).³

The first guaranteed bond issuance under the Scheme was made on November 24, 2008 by state-owned Caixa Geral de Depósitos, S.A. (Caixa). The bank reported that “[t]he issue totalled €1.25 billion, or 25% above the initially established amount of €1 billion (the state’s guarantee permitted an issue of between EUR 1 and 2 billion). The increase was based on the huge demand which was much higher than the available offer. The bonds, with a maturity of 3 years, have a coupon rate of 3.875% (85 [basis points] over the mid swaps level)” (Caixa 2009; Caixa 12/5/2008).

According to Caixa’s head of funding, the bank “had long discussions internally about whether Caixa should come to the [government-guaranteed debt] market or not given that we are 100% government owned. But in the end it was a political decision and it was decided that we would be the best credit [institution] to open this market” (GlobalCapital 2010).

Caixa’s first issuance was delayed by prolonged negotiations with the Portuguese Treasury department and hampered by extensive price calculations. The bank reported that “Portugal was the first non-triple-A jurisdiction to launch government-guaranteed debt and therefore the pricing discovery was very difficult; it was probably one of the most difficult deals that we have done” (*id.*).

The first several months of the Scheme saw the suspension of issuances of senior debt without a state guarantee; not until February 2009 did a Portuguese bank launch a non-government-guaranteed bond issue (Caixa 2009). Caixa, the issuer, noted that “[t]he crisis of confidence which has been dominating the markets has led investors to concentrate almost all of their investments in guaranteed debt instruments [...]” (*id.*).

As market conditions improved over the course of 2009, bond maturities lengthened and banks drew less on the Scheme, instead turning to non-guaranteed issuances, and later,

² Review of the evidence shows that at least eight credit institutions participated in the Scheme; other banks may also have participated. Participants include Caixa Geral de Depósitos S.A. (Caixa); Millennium – Banco Comercial Português S.A.; Banco Internacional do Funchal S.A. (BANIF); Banco Espírito Santo S.A. (BES); Banco Invest S.A.; and Banco Finantia S.A.

³ Of the five largest Portuguese banks, only two—BPI and Santander Totta—did not participate in the Scheme in its first 18 months of operation (Macedo Vitorino 2010). Both Santander and BPI issued press releases on October 24, 2008 announcing that they might make issuances under the Scheme. BPI noted in its 2008 results a “potential issue guaranteed by the Portuguese State (1.7 th.M.€),” reporting that “the Bank may, if it so wishes, resort to the debt issue guaranteed by the Portuguese State up to an amount of 1 700 M.€” (BPI 2009).

covered bonds (GlobalCapital 2010). Guaranteed issuances by other banks followed in December 2008, January 2009, and April 2009. Then, no debt was issued under the Scheme until mid-2011 (EC 2/22/2010).

Initially set to close on December 31, 2009, the Scheme's issuance window was repeatedly extended. Extended for a seventeenth time on August 9, 2018, the Scheme's issuance window will remain open until February 9, 2019 (EC 2018). Premiums for the Scheme increased in 2010. The budget for the Scheme fluctuated, reaching a low of €9 billion (2010 to mid-2011) and a high of €35 billion (mid-2011) before returning in 2017 to the original amount of €20 billion.

The outstanding amount of guarantees peaked in 2012 at or around € 16.8 billion (see EC 6/27/2012). By the end of 2014, the outstanding amount had fallen to €3.5 billion, approximately 15% of the amount then available, €24.7 billion. This amount remained outstanding until February 2017.

The last issuance under the Scheme was made in early 2013 (EC 2018). As of August 2018, there had been no further issuances, and no guarantees were outstanding (*id.*).

According to the Portuguese Banking Association (ABP), between 2008 and 2014, "public support to the financial system yielded significant revenues" to Portugal, and guarantee fees made up a significant portion of those revenues (APB 2016). Credit institutions paid the Portuguese state an estimated €700 million in guarantee commissions between the start of the program and the end of 2014 (APB 2015, 2016). According to projections made in 2015 by the Portuguese Association of Banks (APB), Portuguese banks would pay a total of €807.4 million in commissions between 2008 and 2017.

Debt issued through the Scheme competed with, *inter alia*, debt issued under the guarantee programs of other states. In announcing its first bond issue launch under the Scheme, Caixa noted that there had been high participation by investors despite the current and potential high volume of debt offerings guaranteed by other states (Caixa 12/5/2008).

Certain issuances under the Scheme were made through private placement. In May 2011, in announcing an issuance under the Scheme, Millennium BCP noted that "[t]he bonds may be placed through a private placement with institutional investors" (Millennium 5/24/2011). In the same month, Caixa specified that an upcoming issuance would be privately placed in the domestic institutional market (Caixa 5/18/2011).

Sovereign CDS premia affected swap spreads and issuers' total costs (Levy and Schich 2010). Generally speaking, Panetta et al. find that "the largest component of the spread reflects the characteristics of the guarantor, and not those of the issuer" (Panetta et al. 2009). Along with Spain and Ireland, Portugal had among the highest spreads at launch between October 2008 and May 2009 (*id.*).

Citing Levy and Zaghini (2010), Levy and Schich (2010) point to "the disconnect between the issuing bank's creditworthiness and the cost of issuing guaranteed bonds," noting that "Portuguese banks (Banco Commercial Português, Banco Espírito Santo, both rated A, and Caixa Geral de Depósitos, which was rated A+) paid much larger spreads at launch (90–100 basis points over the swap rate) than German banks such as Commerzbank (rated A), Bayerische Landesbank and HSH Nordbank AG (both rated BBB+), which paid less than 20

basis points” over the period from October 2008 to May 2009. Similarly, the guaranteed bonds issued by the German banks were higher rated (AAA) than the guaranteed bonds issued by the Portuguese banks (AA) (*id.*).

According to a Bank for International Settlements (BIS) report, “the value of guarantees seems to have diminished for the weaker euro area countries” between the end of 2009 and 2011, due to increased sovereign risk (BIS 2011).

In December 2013, Moody’s changed the outlook for four banks’ Ba3 Portuguese government-guaranteed debt ratings from negative to stable in light of the corresponding change in outlook on the Ba3 Portuguese sovereign bond rating, noting that “Moody’s rates Portuguese government-guaranteed debt at the sovereign rating level” (Moody’s 2013).

Debt instruments that were guaranteed by Portugal were accepted as collateral for ECB funding, which was a significant source of liquidity for Portuguese banks over the course of both the global financial crisis and the sovereign debt crisis (Millennium 2017).

2009 and 2010 saw a significant increase in the proportion of government-guaranteed and covered bonds across the euro area and among Portuguese banks in particular (BIS 2011). Much like their Greek and Irish counterparts, Portuguese banks turned to ‘safer’ bonds to meet their need for Eurosystem-eligible collateral (*id.*). In mid-2011, Portuguese banks “increased their use of Eurosystem liquidity and made greater use of domestic government bonds or government-guaranteed bank bonds to collateralise this funding” (*id.*). Following the May announcement of the IMF-EU support package for Portugal, the Financial Times reported that “€35 billion worth of [Portuguese]-government guaranteed bank bonds is probably heading straight for the European Central Bank’s repo facilities” (FT 5/9/2011).⁴

In July 2011, in the wake of Portugal’s downgrade by Moody’s to ‘junk’, the ECB announced that it would cease to apply the Eurosystem’s minimum credit rating threshold in assessing the eligibility of Portuguese government-guaranteed debt instruments as collateral for Eurosystem credit operations (Trichet ; see also Reuters 7/7/2011).⁵ The ECB waiver was withdrawn upon Portugal’s exit from the EU/IMF program in June 2014 (Bindseil et al. 2017).⁶ Analysts identified the waiver as key to ensuring that Portuguese banks had sufficient eligible collateral to obtain ECB funding, noting before the waiver’s announcement

⁴ Caixa, for example, reported that its July and December 2011 issuances, “fully repurchased by Caixa, were used to collateralise European Central Bank liquidity injection operations” (Caixa 2016). Portugal emphasized in its 2013 accounting that in general, debt issued under the Scheme was being kept in the issuers’ portfolios: “De notar que estas emissões de dívida garantida pelo Estado foram, na sua generalidade, retidas em carteira pelos bancos emitentes e utilizadas como colateral em operações de financiamento junto do BCE” (Portugal 1/16/2015).

⁵ See Article 3: Continued eligibility as collateral of marketable debt instruments guaranteed by the Portuguese Government, of the *Decision of the ECB of 7 July 2011 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Portuguese Government (ECB/2011/10) (2011/410/EU)*. The ECB had previously waived collateral requirements for debt instruments issued or guaranteed by Greece (May 2010) and Ireland (May 2011). It did the same for Cyprus in 2013 (Bindseil et al. 2017).

⁶ See Decision of the ECB of 20 March 2013 (ECB/2013/5).

that “[w]ith this measure the ECB probably will substantially reduce the risk of a shortage of eligible collateral of Portuguese banks to get liquidity from the ECB” (FT 5/9/2011, citing Citi 2011).

Van Rixtel and Gasperini (2013) emphasize that in Portugal and other ‘peripheral countries’, issuers retained debt including government-guaranteed bonds for use as ECB collateral. They note that “[i]n the first half of 2012, significantly larger shares of gross bond issuance by Italian, Portuguese and Spanish banks were ‘retained’, ie kept by the issuer to be used as collateral in financial transactions, rather than sold to investors” (van Rixtel and Gasperini 2013). As of March 1, 2015, however, Portuguese banks were no longer allowed to use as Eurosystem collateral uncovered government-guaranteed bonds that they or a closely linked entity had issued (EC 3/22/2013). This followed the ECB’s July 2012 decision to freeze at then-current levels ‘own-use’ of government-guaranteed bonds, with any increases requiring prior approval (ECB 7/20/2012, announcing ECB 7/3/2012).

Reporting requirements for the Scheme also changed over time. Beginning in late 2011, in accordance with Article 14, paragraph 3 of *Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States*⁷, Portugal was required as an EU member state to “publish relevant information on contingent liabilities with potentially large impacts on public budgets, including government guarantees, non-performing loans, and liabilities stemming from the operation of public corporations, including the extent thereof” (EU Council 2011).

II. Key Design Decisions

1. The Scheme was part of a larger Portuguese rescue package.

The Scheme formed part of the Portuguese government’s Initiative to Strengthen Financial Stability (IREF). IREF included a recapitalization scheme, notified to the EC on November 5, 2008 and approved by the EC on May 20, 2009 under State Aid N 556/2008. With the exception of one state-owned bank, Portuguese credit institutions did not participate in the Portuguese recapitalization scheme during the global financial crisis, though they did draw on this line during the sovereign debt crisis (APB 2015; see also GlobalCapital 2010).

IREF also included an increase in the Portuguese bank deposit guarantee; measures promoting bank transparency; and a “law aim[ing] to create conditions for credit institutions to strengthen ownership equity” (Torres 2009).

2. Lei n° 60-A/2008 provided the legal authority for the Scheme.

New Portuguese legal authority was also needed to launch the Scheme. On October 20, 2008, a new law—Lei n° 60-A/2008—was passed creating authority for exceptional granting of guarantees. Implementing provisions were laid out in a decree order, Portaria n°

⁷ This directive formed part of the European Parliament and Council’s November 2011 Enhanced Economic Governance package.

1219-A/2008 of 10/23/2008; subsequent decree orders were issued in 2010, 2012, and 2014.

3. The European Commission provided additional legal authority for the Scheme.

Portugal notified the EC of the Scheme on October 15, 2008. On October 29, 2008, the EC approved the Scheme until December 31, 2009. This meant that guarantees could be granted until the end of December 2009.

The Scheme was finalized in conjunction with the EC; there were “intensive exchanges” between the EC and Portuguese authorities before the EC approved the Scheme as “an appropriate tool for boosting investor confidence without creating undue market distortions” (EC 10/30/2008).⁸

4. The Scheme was administered by the Bank of Portugal, the Portuguese Secretary of State for Treasury and Finance, the Treasury and Finance Directorate-General (DGTF) and the Institute of Management of Treasury and Public Credit (IGTCP).

5. The budget of the Scheme started at €20 billion and fluctuated between €9 billion and €35 billion before returning to €20 billion.

The budget for the Scheme was initially set at €20 billion. The annual budget for the Scheme was “set so as to ensure that the overall issuance of guaranteed debt remains stable from year to year” (EC 12/19/2013).

The budget for the Scheme fluctuated, reaching a low of €9 billion (2010 to mid-2011) and a high of €35 billion (mid-2011) before returning in 2017 to the original amount of €20 billion.

The budget for the scheme reached its peak when in 2011 Portugal received a joint IMF-EU rescue package that totaled €78 billion over three years. The package was “designed to allow Portugal some breathing space from borrowing in the markets” (IMF 2011). In May 2011, as part of this support plan, the Portuguese authorities increased the total budget for the Scheme from €20 billion to €35 billion, noting that the government-guaranteed bonds could “be used by banks for ECB refinancing purposes subject to the approval of the Governing Council” (IMF 2011). The Memorandum of Understanding on Specific Economic Policy Conditionality between Portugal, the EC, the ECB, and the IMF, provided that, “[s]ubject to approval under EU competition rules, the authorities are committed to facilitate the issuance of government guaranteed bank bonds for an amount of up to €35 billion, including the existing package of support measures” (Portugal 5/17/2011).

⁸ The EC approval process for Portugal was more drawn out than the process for Sweden (approved on October 30th), which took three days. On October 13, 2008, upon publication of the 2008 State Aid Communication, the EC announced that it would “aim to approve schemes that comply with this guidance very quickly (within 24 hours, if possible),” adding that “[s]upport schemes such as guarantees or recapitalisation schemes can be cleared by the Commission very quickly if they fulfil conditions which guarantee that they are well-targeted and proportionate to the objective of stabilising financial markets and contain certain safeguards against unnecessary negative effects on competition” (EC 10/13/2008).

Portugal financed the Scheme by issuing public debt securities (EC 12/17/2008). This is particularly significant in light of Portugal's rising public debt. At the beginning of 2008, Portugal's public debt stood at €115.6 billion (68.3% of GDP); by the end of the year, public debt had risen to €123.1 billion, or 71.6% of GDP (DBRS 2011). APB found that overall, the "impact of [Portuguese] State aid to the financial system was similar to that in the euro area and represented 18% of the increase in public debt between 2008 and 2014" (APB 2016).

In turn, according to the Portuguese Association of Banks, "the public debt crisis [led] to the increase in the usage of guarantees from the State" between 2011 and 2015 (APB 2015).

In addition to the Scheme's impact on public debt, DBRS cited guarantees provided under the Scheme (€4.9 billion, or 2.8% of GDP, at June 2011) among the factors having contributed to "a sharp increase in contingent liabilities" (id.).

Portugal reported to the EC that "the net cash balance at the moment of the scheme's wind-up, whether due to being unused or resulting from reimbursements of credit institutions as well as from the guarantee fees, will be used to repay the public debt that was issued" (EC 12/17/2008).

6. Participants in the Scheme had to be solvent and incorporated in Portugal.

Subsidiaries of foreign banks with a registered office in Portugal were included.

Beginning in August 2013, beneficiaries of the Scheme could have "no capital shortfall' according to the most recent Union-wide capital exercise⁹ [...] or other equivalent national exercises by the national supervisory authority" (EC 8/1/2013).

As a result of the solvency requirement, the Portuguese authorities did not extend its state guarantee to the ailing Banco Privado Português (BPP) within the framework of the Scheme (EC 2009). The authorities were instead required to rely on earlier authority, Portuguese Law n.º112/97 (1997), in providing the state guarantee to BPP. The 1997 law established authority for the Portuguese government, or related legal entities, to make guarantees.

Similarly, the EC was unable to extend under the Scheme the maturity and guarantee on bonds that had been transferred to the bridge bank Novo Banco because beneficiaries of the Scheme were required to be solvent and to have no capital shortfall; while still considered solvent, Novo Banco had been found to have a capital shortfall under the adverse scenario in November 2015 stress testing (EC 2015). The three bonds in question were therefore extended (for one year, with revised coupons) outside the framework of the Scheme (id.).

The Bank of Portugal and the Institute of Management of Treasury and Public Credit¹⁰ had to confirm a credit institution's eligibility to participate in the Scheme.

For the aid to be granted, banks had to submit documentation proving the aid was "essential to ensure the applicant's normal financing" (EC 12/17/2008). Applicants were also required

⁹ As noted by the EC, "the 2011 European Banking Authority ('EBA') capital exercise required at least a capitalisation of 9% as defined by EBA" (EC 8/1/2016).

¹⁰ "Instituto de Gestão da Tesouraria e do Crédito Público, I.P."

to submit a draft financing agreement or documentation on the proposed debt issuance specifying the relevant terms and conditions (*id.*).

The Portuguese Minister of Finance had to approve each bank's application.

7. It appears that Portugal instructed a government-owned bank to make the first issuance in order to demonstrate the Scheme's efficacy.

The first guaranteed bond issuance under the Scheme was made on November 24, 2008 by state-owned Caixa. According to Caixa's head of funding, the bank "had long discussions internally about whether Caixa should come to the [government-guaranteed debt] market or not given that we are 100% government owned. But in the end it was a political decision and it was decided that we would be the best credit [institution] to open this market" (GlobalCapital 2010).

8. The Scheme did not cover subordinated debt.

Subordinated debt could not be guaranteed under the Scheme (EC 12/17/2008).

The exclusion of subordinated debt was consistent with the guidance set forth in the EC's October 2008 communication on The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (2008 State Aid Communication) (EC 10/13/2008).

The Scheme did not cover interbank money market deposits; did not cover liabilities already under another guarantee; and did not cover operations in non-transparent jurisdictions.

The exclusion of interbank money market deposits was consistent with the ECB's October 2008 recommendation that "government guarantees on interbank deposits should not be provided" (ECB 2008).

9. At the outset, the Scheme did not cover debt with maturity of under 3 months or over 5 years.

The Scheme covered debt with a minimum maturity of 3 months. The maximum maturity of guaranteed debt was 3 years, or exceptionally 5 years. Coverage of debt with a 5-year maturity had to be "duly justified by the Portuguese Central Bank" (EC 12/17/2008).

As amended in February 2010, the Scheme provided that debt with maturities between three and five years would be guaranteed "only in exceptional circumstances," and that such debt would not exceed one third of the Scheme's total volume (EC 2/22/2010).

On March 27, 2012, the Portuguese government issued a Decree Order, Portaria n.º 80/2012¹¹, that materially expanded the types of debt covered under the Scheme. Per the 2012 decree, "[i]n case of guarantees on the issuance of covered bonds (on mortgages and on the public sector), the maturity can go up to seven years" (EC 2012). The Order provided that "[t]he part of the guaranteed liabilities with a maturity longer than three years will not exceed one-third of the total value of the liabilities covered by the State guarantee" (*id.*).

¹¹ *Diário da República*, 1.ª série, n.º 62.

Guarantees on debt with maturity of over 3 years were limited to “one-third of the total outstanding amount of guarantees granted to each individual bank” (EC 2017).

In the 2011 *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* (2011 Communication), the EC specified that “[s]ince pressure on the funding of banks is concentrated in the term funding markets, State guarantees should in general only cover debt with a maturity of between one and five years (seven years in the case of covered bonds)” (EC 2011).

10. The Scheme covered only euro-denominated debt.

Only euro-denominated debt could be guaranteed under the Scheme (EC 12/17/2008).

11. There does not appear to have been any cap on an institution’s participation.

12. Beneficiaries of the Scheme had to pay a fee based on maturity of the debt and risk proxy of the bank.

These fees were based on the October 20, 2008 *Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt* (ECB 2008). For debt with maturity of 3 months to 1 year, the Portuguese authorities charged an annualized fee of 50 basis points (bps). For debt with maturity of over 1 year, the fee was a 50 bps plus the relevant CDS spread. The calculation formula for the CDS spreads was as follows:

For institutions with representative CDS data, The lower of either a) the median value of 5-year CDS spreads during the period from January 1, 2007 to August 31, 2008; or b) the median value of 5-year CDS spreads for a representative sample of credit institutions with the same credit rating for the period from January 1, 2007 to August 31, 2008.

For institutions with no CDS data, or no representative CDS data, but with a credit rating of "A" or higher, the fee was the median value of 5-year CDS spreads, for a representative sample of institutions with the same credit rating during the period from 1 January 2007 to 31 August 2008.

For institutions with no CDS data, or no representative CDS data and a credit rating below "A", the fee was the median value of 5-year CDS spreads, for a representative sample of institutions with a credit rating of "A", during the period from 1 January 2007 to 31 August 2008.

Per the initial terms of the Scheme, the Portuguese government was authorized to raise the fees during the period of the guarantee. Authorities made this decision “to allow the State to increase the price of the guarantee in the case of normalization of the markets, so as to limit the use of the scheme to cases where they are necessary” (EC 12/17/2008).

In 2010, fees were increased “to encourage banks to finance themselves without state support and to limit distortions of competition”.¹² These increases to the ECB pricing formula recommended by of October 2008 were reflected by 20 basis points for banks with

¹² The EC cited the same reasoning in increasing bank premiums under the Spanish, Austrian, Latvian, Irish, Danish, Hungarian, Dutch, Slovene, Greek, and Polish guarantee schemes.

a rating of A+ or A, 30 basis points for banks rated A-, and 40 basis points for banks rated below A-. Banks without rating would be considered to have a BBB rating (EC 7/23/2010).

Minimum fees were calculated based on Article 4 of Executive Order number 1219-A/2008, of October 23, 2008, as amended by Executive Order number 80/2012, of March 27, 2012 (EC 2017). Fees under the Scheme, which covered guarantees under Law 60-A, were significantly higher than fees for guarantees under other laws (Tribunal de Contas 2009).¹³

In 2011, the EC issued a *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* (2011 Communication). The 2011 Communication laid out a new formula for calculating fees under the Scheme and under other guarantee schemes operated by member states.

In December 2011, Portugal modified the fees under the Scheme in accordance with the 2011 Communication (EC 12/21/2011). For banks with CDS data, the new formula was based on CDS spreads and the iTraxx Europe Senior Financials index.¹⁴ For banks without CDS data but with a credit rating, a CDS spread would be taken from the median value of five-year CDS spreads of the same sample period for the rating category of the beneficiary bank. This would be done using a representative sample of large banks in the Euro-area and the supervisory authority would assess if the CDS data of the beneficiary bank was representative.

For banks with no CDS data and no credit rating, a CDS spread would be taken from the median value of five-year CDS spreads of the same sample period for the lowest rating category, based on a representative sample of large banks in the Euro-area. The CDS spread for that category would be adapted based on supervisory assessment.

Because CDS were not considered to provide an adequate measure of credit risk for short-term debt, the fees for guarantees of debt with a maturity of less than one year would be a minimum of the sum of:

- a) a basic fee of 50 bp; and
- b) a risk-based fee equal to 20 bp for banks with a rating of A+ or A, 30 bp for banks with a rating of A-, or 40 bp for banks rated below A- or without a rating.

In 2012, Portugal exceptionally calculated the fee for three large Portuguese banks based on the CDS of a sample of the lowest-rated banks in the EU, rather than using each of the three banks' CDS spreads. According to the Portuguese authorities, the banks' CDS spreads were

¹³ Unlike fees under the Scheme, fees for guarantees provided under Law 112/97 or Law 62-A/2008 were set between 0.2% (minimum) and 2% (maximum) in accordance with an October 19, 1995 order by the Portuguese Minister of Finance (*id.*).

¹⁴ Formula: $\text{Fee} = 40\text{bp} \times (1 + (1/2 \times A/B) + (1/2 \times C/D))$

where A is the beneficiary's median five-year senior CDS spread, B is the median iTraxx Europe Senior Financials five-year index, C is the median five-year senior CDS spread of all Member States and D is the median five-year senior CDS spread of the Member State granting the guarantee. The medians would be calculated over the three years ending one month before the date of issue of the guaranteed bond. For guarantees for covered bonds, the guarantee fee could take into account only one-half of the risk-based fee.

inappropriate measures because—notwithstanding the application of a “new pricing formula [that] isolates the intrinsic risk of individual banks from changes in CDS spreads of sovereigns”—the CDS spreads had “widened along the spreads of the sovereign. As a result, the individual CDS spreads of those credit institutions do not reflect fairly the intrinsic risk of the credit institutions in question and may lead to the remuneration of State guarantees being excessively high” (EC 12/17/2012).

In 2017, in providing the EC with an estimate of guarantee fees, the Portuguese authorities “applied the formula for banks without CDS prices, as according to the Bank of Portugal’s opinion Portuguese bank’s [*sic*] CDS prices are still tainted by sovereign risk and therefore not representative since the calculations are related to a period of three years” (EC 2017).

13. Beneficiaries’ aggregate balance sheet growth was monitored and limited.

Until mid-December 2012, the aggregate balance sheet growth of beneficiaries of the Scheme was capped at whatever value was highest: “the annual rate of growth of Portuguese nominal GDP in the preceding year”; “the average historical growth of the balance sheets in the Portuguese banking sector during the period 1987-2007”; or “the average growth rate of the balance sheet volume in the banking sector in the EU in the preceding six months” (EC 12/17/2008).

If this threshold was exceeded, Portugal would make whatever adjustments to the Scheme were necessary to bring aggregate balance sheet growth back under the threshold.

According to the EC, this feature of the Scheme “help[ed] to ensure that support [was] limited to what [was] necessary for restoring the normal functioning of the markets” (EC 10/30/2008).

14. Beginning in 2013, Portugal banned beneficiaries from referring to the Scheme in their advertising.

Beginning in 2013, Portugal committed “to impose a ban on advertising referring to State support by the beneficiaries of the scheme and to prevent them from employing any aggressive commercial strategies which would not take place without the support of the Portuguese government” (12/17/2012).

The advertising ban and the ban on aggressive commercial strategies were in line with the 2008 State Aid Communication suggestion of “restrictions on commercial conduct, such as advertising invoking the guaranteed status of the beneficiary bank, pricing or on business expansion” (EC 10/13/2008).

The 2013 proscriptions were specifically based on section 4(59)(f) of the *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* (2013 Banking Communication), which states that for a guarantee scheme to be approved, “the recipients of guarantees and liquidity support must refrain from advertising referring to State support and from employing any aggressive commercial strategies which would not take place without the support of the Member State” (EC 2013).

15. Under certain circumstances, beneficiaries of the Scheme were required to submit restructuring plans.

Any beneficiary of the Scheme whose “total outstanding guaranteed liabilities [...] exceed[ed] both a ratio of 5% of total liabilities and the total amount of €500 million” was “required to present a restructuring plan within two months of the granting of the guarantees” (EC 7/30/2014).

16. Initially, if a bank defaulted and called on a guarantee, the bank would be required to either pay back the Portuguese state or exchange the loan for preference shares.

If a bank defaulted and called on a guarantee, the bank would be required to either pay back the Portuguese state or exchange the loan for preference shares. The EC described this feature as one of “various safeguards aimed at minimising distortions of competition” (10/30/2008). Starting in mid-December 2012, the State could no longer “convert its rights as a creditor into preferential shares” (EC 12/17/2012).

17. The Scheme was initially authorized until December 31, 2009 but extended 17 times until February 2019.

For a list of extensions, see Appendix A.

III. Evaluation

The Portuguese government and Portuguese financial institutions generally consider the Scheme to have been successful. In 2010, the Portuguese authorities reported to the EC that the Scheme had “fulfilled, until now, the aims proposed while allowing debt issuance to be unblocked and to improve the level of liquidity in the financial system and the risk of inherent refinancing” (EC 2/22/2010).

The Scheme may have contributed to the 2009 increase in bidding by Portuguese domestic investors in covered bond issues that were outside of the Scheme; Portuguese banks publicized the Scheme to promote investor support for domestic issuers. According to Eduarda Vicente, then head of funding at Caixa, “[t]he bigger domestic bid [in covered bond transactions] is also the result of work that we have been doing with investors on the need for them to sponsor domestic issuers – if they like the product and the price. This is somewhat of an education initiative that started with the introduction of government guaranteed debt” (GlobalCapital 2010).

Speaking in 2010, Caixa’s Vicente described the Scheme as having been necessary at the time of its implementation: “one year ago all markets were closed — we needed the government guaranteed schemes — and during 2009 every product, bit by bit, became accessible for issuers to use” (*id.*). According to Vicente, “the Portuguese banks accessed the government-guaranteed market because it was the only product available at the time” (*id.*). Millennium credited the Scheme with having contributed to 2009 results that surpassed expectations (*id.*).

In 2011, following announcement of an increase in the Scheme's budget as part of the IMF rescue package, analysts at Citi criticized the Scheme as supporting banks' access to ECB funding rather than a return to the wholesale markets. Because the support package would not decrease the perceived riskiness of the Portuguese state, the Portuguese government's guarantee would not help banks obtain funding in wholesale markets; Portuguese banks would instead increase their reliance on the ECB (FT 5/9/2011, citing Citi 2011).

In mid-2011, analysts at Morgan Stanley suggested that the Scheme and other European guarantee schemes were not sufficient to respond to the difficulties then facing European banks, and especially Southern European banks, in obtaining term funding. Analysts recommended a supranational, pan-European guarantee scheme because "bank funding guarantees on a national basis in Southern Europe may not provide the confidence that investors would value," and "such a guarantee in a period of stress at a national level could potentially raise additional concerns on the budget when investors want to see measures towards debt sustainability" (FT 8/15/2011, quoting Morgan Stanley 8/15/2011).

In evaluating the possibility of a supranational scheme, GlobalCapital reiterated that "[g]iven the negative feedback loop between Europe's banks and governments, a guarantee from the Portuguese, Irish — arguably even the Spanish — sovereigns would do little to help banks in these countries find demand or attractive pricing for a new issue. On top of that, adding to the existing government guarantee programmes in these countries is likely to increase investors' wariness of the sovereigns" (GlobalCapital 8/16/2011).

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VI. Appendix

Appendix A: Extensions of the Scheme

Ext. No.	State Aid No.	Date of Extension	Extended Until
1	51/2010	02/22/2010	06/30/2010
2	315/2010	07/23/2010	12/31/2010
3	SA.321584 or SA.32158	01/21/2011	06/30/2011
4	SA. 33178	06/30/2011	12/31/2011
5	SA. 34034	12/21/2011	06/30/2012
6	SA. 34958	06/27/2012	12/31/2012
7	SA.35743	12/17/2012	06/30/2013
8	SA.36869	08/01/2013	12/31/2013
9	SA.37698	12/19/2013	06/30/2014
10	SA.38900	07/30/2014	12/31/2014
11	SA.39991	02/04/2015	06/30/2015
12	SA.42404	07/22/2015	12/31/2015

13	SA.43996	01/13/2016	06/30/2016
14	SA.45761	07/29/2016	12/31/2016
15	SA.47168	02/17/2016	06/30/2017
16	SA.47168	11/07/2017	04/30/2018
17	SA.51042	08/09/2018	02/09/2019