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ROYAL DECREE-LAW 21/2012, OF JULY 13, 2012, ON MEASURES FOR THE LIQUIDITY OF THE PUBLIC AUTHORITIES AND IN THE FINANCIAL ARENA

Additional provision 1 of Budgetary Stability and Financial Sustainability Organic Law 2/2012, of April 27, 2012 (“**Organic Law 2/2012**”) introduced the possibility for autonomous community governments and local corporations to apply to central government for access to extraordinary measures to support liquidity.

In the framework of this provision, Royal Decree-Law 21/2012, of July 13, 2012, on Measures for the Liquidity of the Public Authorities and in the Financial Arena (“**Royal Decree-Law 21/2012**”) was published in the Official State Gazette on July 14, 2012. Pursuant to this Royal Decree-Law, a mechanism is created to provide liquidity support to autonomous community governments on a temporary and voluntary basis with the aim of allowing the autonomous community governments deciding to adhere to the new mechanism to meet their debts as they become due, and to raise the necessary funds to finance the borrowings permitted by budgetary stability legislation. Any autonomous community government adhering to the mechanism must, in return, meet a series of financial and fiscal conditions which are detailed in the Royal Decree-Law 21/2012.

The instrument through which the mechanism is to operate will be the Autonomous Community Liquidity Fund, to be managed by the Official Credit Institute (the “ICO”), and the initial endowment (appropriated from the General State Budget) to the Fund will be €18 billion. Adhesion to the new mechanism will mean arranging the relevant credit facility, drawn from the Autonomous Community Liquidity Fund, with the central government, which will be responsible for managing the payment of the autonomous community government’s debt as it becomes due. The funds in the system for financing each autonomous community (excluding the Basque Country and Navarra) will be used to meet the obligations entered into with the central government when the mechanism is used.

Royal Decree-Law 21/2012 contains 16 articles, 5 additional provisions, 1 transitional provision, 1 repealing provision, 4 final provisions and a Schedule, and is structured into 4 chapters. It entered into force on July 15, 2012.

1. GENERAL FEATURES OF THE NEW MECHANISM FOR PROVIDING LIQUIDITY SUPPORT TO AUTONOMOUS COMMUNITY GOVERNMENTS

1.1 Purpose

The rationale behind the creation of the new mechanism for providing liquidity support to autonomous community governments is to allow those governments to obtain liquidity to meet the financial needs indicated in article 4.2 of Royal Decree-Law 21/2012:

- Maturities of issued securities.
- Maturities of loans granted by European institutions, of which Spain is a member.
- Transactions that cannot be refinanced or, as the case may be, novated by the autonomous community governments themselves, respecting the principle of financial prudence defined by a decision of the Secretariat-General of Treasury and Financial Policy.
- Public deficit financing requirements.

As established in additional provision 4 of Royal Decree-Law 21/2012, the borrowings to be financed by the new mechanism will also include the indebtedness envisaged in the decisions of the Council of Fiscal and Financial Policy for financing the annual payment to be made in the current year to credit the negative settlements in 2008 and 2009 pursuant to additional provision 4 of Law 22/2009, of December 18, 2009, Regulating the System for Financing the Autonomous Communities (other than the Basque Country and Navarra) and Cities with a Charter of Autonomy, and certain tax provisions are amended.

1.2 Timeframe

The liquidity support mechanism will remain in force while autonomous community governments continue to have difficulties in accessing the financial markets. The Government Committee for Economic Affairs will be responsible for determining such circumstance once a year.

1.3 Adhesion to the mechanism

Autonomous community governments seeking to adhere to the new mechanism must submit their applications to the Ministry of Finance and Public Authorities before December 31, 2012. The deadline may be extended by means of a decision of the Government Committee for Economic Affairs.

Adhesion applications must be accepted by the Ministry of Finance and Public Authorities. Acceptance will depend on the financial situation of the applicant.

Once the application is accepted, the applicant's cabinet or competent body will adopt a decision confirming its intention to adhere to the mechanism and giving a commitment to comply with the provisions of Royal Decree-Law 21/2012 and the decisions of the Council of Fiscal and Financial Policy and of the Government Committee for Economic Affairs, and with any provision implementing the financing mechanism.

2. FINANCIAL AND FISCAL CONDITIONS INHERENT IN THE ADHESION BY AUTONOMOUS COMMUNITY GOVERNMENTS TO THE LIQUIDITY SUPPORT MECHANISM

Adhesion to the mechanism will mean acceptance by the autonomous community government (including its public entities and agencies regarded as part of 'general government' as per ESA 1995) of the financial and fiscal conditions provided for in additional provision 1 of Organic Law 2/2012 (preparation of an adjustment plan, periodic reporting, etc.), and in Chapter II of Royal Decree-Law 21/2012, to which we will now refer.

2.1 Financial conditions

- The autonomous community government will be subject to the principles of financial prudence that shall be established for these purposes by a decision of the Secretariat-General of Treasury and Financial Policy.
- The liquidity provided through the mechanism can only be used to meet the financial needs defined in section 1.1 above.
- Neither transactions instrumented through securities nor transactions abroad for credit facilities can be performed without the prior express authorization of the Secretariat-General of Treasury and Financial Policy. This is notwithstanding the necessary authorization from the Council of Ministers in accordance with article 14 of Organic Law 8/1980, of September 22, 1980, on the Financing of the Autonomous Community Governments.
- The Secretariat-General of Treasury and Financial Policy must be notified of the financial conditions of all of the autonomous community government's credit facility transactions, whether short-term or long-term, which are not subject to authorization pursuant to Organic Law 8/1980, of September 22, 1980, on the Financing of the Autonomous Community Governments and Organic Law 2/2012 (i.e., because they are included in a previously authorized economic and financial plan). The notification must be accompanied by a certificate from the general controller's office, or equivalent unit, of the autonomous community government on compliance with the financial conditions.
- Adhesion to, and subsequent acceptance of, the mechanism, entails the arrangement of the relevant credit facility, drawn from the Autonomous Community Liquidity Fund, with the central government, which will manage the payment of the autonomous community government's debt as it matures through the designated

payment agent (the ICO). The financial resources of each autonomous community (excluding the Basque Country and Navarra) will be used to meet the obligations entered into with the central government when this mechanism is used.

2.2 Fiscal conditions

- Within fifteen calendar days from the approval of the decision of the cabinet of the autonomous community government accepting adhesion to the mechanism, the autonomous community government must submit to, and agree with, the Ministry of Finance and Public Authorities an adjustment plan that ensures both the meeting of the stability and public debt targets and the reimbursement of the amounts contributed by the Autonomous Community Liquidity Fund.

If the autonomous community government already has an adjustment plan, as a result of access to other additional mechanisms established by the central government (i.e., adhesion to the supplier payment plan), such modifications as may be necessary to honor the new commitments given must be agreed with the Ministry of Finance and Public Authorities.

A failure to submit the adjustment plan, or a negative assessment of the plan, will result in adhesion to the mechanism being refused. Furthermore, noncompliance with the plan will trigger the coercive measures provided for in articles 25 and 26 of Organic Law 2/2012.

For these purposes, regardless of the mechanism from which it is derived, the adjustment plan will be unique and must be updated at least once a year or, if appropriate, when the autonomous community government's economic and financial plans or rebalancing plans currently in force are updated.

- The general controller's office, or equivalent unit, will submit, as part of the adjustment plan, a treasury plan and details of outstanding debt transactions, which will include the information set forth in article 5.2 of Royal Decree-Law 21/2012. Within the first five business days of each month, the autonomous community government will send the Ministry of Finance and Public Authorities the relevant updates to the information contained in the treasury plan.
- The autonomous community governments must (i) allow access and send each month, or whenever so requested, updated information on the execution of the adjustment plan relating to the items listed in article 6 of Royal Decree-Law 21/2012, and (ii) submit for supervision by the Ministry of Finance and Public Authorities the adoption and implementation of the measures envisaged in the adjustment plan, for which purpose the Ministry may send a monitoring mission.

If the Ministry detects a risk of noncompliance with the measures in the adjustment plan, it will propose their modification by adopting new measures or altering the timetable for execution. Compliance with the proposed measures will be a condition for granting successive loan tranches. If the risk detected concerns the potential nonpayment of government debt on maturity, the procedure established in Organic Law 2/2012 will be triggered (adoption of the coercive measures envisaged in articles 25 and 26).

3. AUTONOMOUS COMMUNITY LIQUIDITY FUND

3.1 Creation and timeframe

An Autonomous Community Liquidity Fund (the “Fund”) is created and will be used to perform transactions for credit facilities arranged by adhering autonomous community governments with the central government in order to meet their financial needs.

The nature of the Fund is that of the funds provided for in article 2.2. of General Budgetary Law 47/2003, of November 26, 2003: (i) it does not have any legal personality, and (ii) its endowment is made through the General State Budget.

The Fund is attached to the Ministry of Finance and Public Authorities through the Office of the Secretary of State for Public Authorities. The Fund will be liquidated and extinguished by a decision of the Council of Ministers after liquidation of the credit facilities arranged with the autonomous community governments following a report from the Government Committee for Economic Affairs.

3.2 Funds for the Autonomous Community Liquidity Fund and how they are raised

The Fund will receive an €8 billion endowment appropriated from the 2012 General State Budget.

Any annual income generated by the Fund will be paid into the Public Treasury. Expenses incurred in managing the Fund will also be paid out of the Fund.

3.3 Economic and financial rules governing the Fund

As regards the rules on the economic and financial, accounting and control aspects of the Fund, Royal Decree-Law 21/2012 refers to the provisions of the General Budgetary Law applying to the funds in article 2.2. of that Law.

The Office of the Secretary of State for Public Authorities is responsible for preparing, making available, approving and rendering accounts for the Fund.

3.4 Management of the Autonomous Community Liquidity Fund

The ICO is entrusted with the financial management of the Fund and its functions include the following:

- Formalizing the relevant loan agreements to be entered into with autonomous community governments.
- Providing financial services relating to authorized transactions paid for out of the Fund (i.e., technical instrumentation, accounting, cash, payment agent and follow-up services, etc.).
- Engaging, at the Fund’s expense and subject to the procurement rules specific to the ICO, transaction-related technical assistance inherent in the ICO’s specific functions as a financial agent of the Fund.

- The ICO will be compensated for the costs incurred in managing the Fund in the form of an annual payment of the relevant remuneration, subject to authorization from the Government Committee for Financial Affairs.

4. ARRANGEMENT OF CREDIT FACILITIES WITH CENTRAL GOVERNMENT THROUGH THE AUTONOMOUS COMMUNITY LIQUIDITY FUND

The central government will arrange credit facilities, drawn from the Autonomous Community Liquidity Fund, with each of the autonomous community governments adhering to the mechanism. The amount of the credit facility cannot exceed (i) the funds needed for the autonomous community government and its dependent entities classified under the 'General Government' sector, as per ESA 1995, to meet the maturities of its financial debt, and (ii) the necessary amounts to finance the borrowings permitted by budgetary stability legislation, subject to the limits established by a decision of the Government Committee for Economic Affairs.

The financial conditions applicable to the credit facilities will be determined by a decision of the Government Committee for Economic Affairs, at the proposal of the Ministry of Finance and Public Authorities and the Ministry of the Economy and Competitiveness. The conditions must, in any case, ensure that the financial expenses and other costs incurred by the Autonomous Community Liquidity Fund are passed on.

Drawdowns from the Autonomous Community Liquidity Fund in favor of autonomous community governments adhering to the mechanism will be made according to a timetable organized into tranches. The drawdown of each tranche will be conditional on compliance with the financial and fiscal conditions, following a report from the Ministry of Finance and Public Authorities.

The resources of the system for the financing of the autonomous community governments (excluding the Basque Country and Navarra) adhering to the mechanism, will be used to meet the obligations entered into with the central government. This will be done by withholding the amounts due to them from their participation in the State' taxes assigned to them.

If the Basque Country and Navarra autonomous community governments adhere to the mechanism, they must previously sign an agreement with the central government under the framework of the Joint Committee on the Accord and the Coordinating Committee, respectively, that earmarks funds to secure the credit facility formalized, as established in additional provision 1 of Royal Decree-Law 21/2012.

5. OTHER RELEVANT PROVISIONS

5.1 Applicability to the local entities of the Basque Country and Navarra autonomous community governments of the mechanism for financing payment to suppliers of local entities

Additional provision 2 of Royal Decree-Law 21/2012 provides that local entities in the Basque Country and Navarra that are included in the model for participation in State' taxes may be eligible for the supplier payment mechanism referred to in Royal Decree-Law 4/2012, of February 24, 2012, Determining Reporting Obligations and Necessary Procedures for Establishing a Mechanism for Financing Payment to Suppliers of Local Entities, and in Royal Decree-Law 7/2012, of March 9, 2012, Creating the Fund for Financing Payments to Suppliers.

To do so, the relevant agreements between the central government and the Basque Country provincial governments or the Navarra autonomous community government, as the case may be, must be signed previously. In those agreements:

- The participation of the local entities in State' taxes concerted or agreed, in accordance with the provisions of the respective Economic Accord with the Basque Country and the Economic Agreement with the Navarra autonomous community government, must be considered the ultimate guarantee.
- The procedure and obligations established in the Royal Decree-Laws must be taken into account.
- The agreements will nevertheless establish any specific provisions on reporting obligations and procedures for the supplier payment mechanism that may be applicable in the Basque Country and Navarra.

5.2 State guarantees for issues of debt certificates and obligations by credit institutions

Royal Decree-Law 21/2012 amends the 2012 General State Budget (Law 2/2012) by inserting a new article, art. 52 bis, with a view to regulating the basic aspects of State guarantees for issues of debt certificates (*bonos*) and notes or obligations (*obligaciones*) by credit institutions, the essential formalities and requirements for their granting, and the fees associated with such guarantees. The amendment allows resuming the granting of such guarantees, following the authorized extension of the scheme under the European Commission Decision dated June 29, 2012, thereby facilitating access by credit institutions to the liquidity and financing they need as they can obtain the above-mentioned European financial assistance.

The requirements for this new period for granting guarantees are as follows:

- Time period. The State Central Administration can grant guarantees until December 15, 2012. Applications can be filed with the Secretariat-General of Treasury and Financial Policy before December 5, 2012. The Secretariat-General will approve the application form in a decision.

- Amount. €55,000 million.
- Issues guaranteed: Guarantees may be granted for issues by credit institutions (i) having their registered office in Spain, (ii) which, in the opinion of the Bank of Spain, are solvent and have *ad hoc* liquidity needs, and (iii) have a market share of at least 0.1% of the total under item 2.4. “Loans. Other sectors” relating to Residents of Spain in the latest EMU 1 statement (Summary Balance Sheet. Operations in Spain) published in the Bank of Spain’s Statistical Bulletin. Within each consolidable group, the central government’s guarantee will be granted, if appropriate, for the transactions performed by applicants.
- Bank of Spain report: before the guarantee is granted, a report will be requested from the Bank of Spain on compliance with the above-mentioned requirements.
- Characteristics of the guarantee: The guarantee will be granted irrevocably, unconditionally and waiving the benefit of discussion (*excussio*) under article 1830 of the Civil Code. Enforcement must be initiated within 5 calendar days following the date of maturity of the secured obligation. The State will also pay as compensation the result of applying to the enforced amount the Euro OverNight Index Average rate published by the Bank of Spain, or such interest rate as may be determined by the Minister for the Economy and Competitiveness, on the date of maturity of the secured obligation for the number of days elapsed between that date and the date of actual payment by the guarantor.
- Fees: the following fees will be payable to the central government for the guarantees granted by it:
 - A fee of 0.5% of the total amount granted, which will accrue when the guarantee is granted and will be calculated by the Secretariat-General of Treasury and Financial Policy. Evidence of its payment must be provided by the institution before the formalization of the guarantee by the Minister for the Economy and Competitiveness.
 - An issuance fee, payable before the issue is made. Amounts paid as fees for the grant of the guarantee will be deducted from this fee. The rules for calculating issue fees will be established by a decision of the Secretariat-General of Treasury and Financial Policy in accordance with the guidelines for calculating the pricing for guarantees contained in the Communication from the European Commission of December 1, 2011 on the application, from January 1, 2012, of State aid rules to support measures in favor of banks in the context of the financial crisis.

In view of the above, a decision can be expected in the next few days from the Secretariat-General of Treasury and Financial Policy fleshing out the details of the guarantee application procedure for Spanish credit institutions.

5.3 European financial assistance for the recapitalization of Spanish financial institutions

A number of regulations have been introduced to facilitate the recapitalization of Spanish banks by the various EU institutions:

- The information supplied by the Bank of Spain for this purpose to the European Commission, the European Central Bank, the European Banking Authority, the IMF, the European Financial Stability Facility and, if appropriate, the European Stability Mechanism will be exempt from the Banks' duty of confidentiality.
- The Spanish Fund for the Orderly Restructuring of the Banking Sector (the "FROB") is authorized to execute such agreements as may be necessary for formalizing and making available Community financial assistance to the central government and the FROB.
- While financial support from the FROB is being issued and arranged in the terms of, and subject to the requirements imposed by, Royal Decree-Law 9/2009, of June 26, 2009, the FROB may anticipate, in the form of a loan in cash or in debt securities, the amount of the financial support requested by the institutions participating in the recapitalization processes. If the support is eventually not arranged or disbursed, the institution will be under an obligation to immediately reimburse the FROB for such advances.
- Lastly, the Credit Institution Deposit Guarantee Fund is given the power to adopt measures aimed at making easier the implementation of European financial assistance for the recapitalization of Spanish credit institutions, and may commit its assets and provide guarantees in this context.

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