



THE EUROPEAN COMMISSION

AND

THE REPUBLIC OF MALTA

**VOLUNTARY GUARANTEE AGREEMENT
PURSUANT TO ARTICLE 11 OF COUNCIL
REGULATION (EU) 2020/672**

**SURE – EUROPEAN INSTRUMENT FOR
TEMPORARY SUPPORT TO MITIGATE
UNEMPLOYMENT RISKS IN AN EMERGENCY
FOLLOWING THE COVID-19 OUTBREAK**

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THIS GUARANTEE AGREEMENT is between

- (1) [•], (“**Guarantor**”) one of the Member States of the European Union listed in Schedule 1; and
- (2) The European Commission (“**the Commission**”)

Respectively a Party to this agreement.

WHEREAS

- (A) Council Regulation (EU) 2020/672 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak (“**Council Regulation (EU) 2020/672**”) permits the Union, under circumstances contained therein, to make available financial assistance up to a maximum amount of EUR 100 000 000 000 to Member States of the European Union in the form of a loan facility according to a loan agreement (“**Loan Agreement**”). According to Article 6(1) of Council Regulation (EU) 2020/672, such financial assistance is to be made available by means of a Council implementing decision.
- (B) Council Regulation (EU) 2020/672 has empowered the Commission on behalf of the Union to borrow on the capital markets and with financial institutions in order to finance the loan facilities (“**Borrowings**”).
- (C) In the event of a partial or total non-payment under a Loan Agreement, the Union may risk not to have available sufficient resources to fulfil the payment obligations arising from the Borrowings.
- (D) Council Regulation (EU) 2020/672 provides that the Member States of the European Union listed in Schedule 1 (together called the “**Guarantors**”) may contribute to SURE by counter-guaranteeing the risk borne by the Union and that such contributions shall be provided in the form of irrevocable, unconditional and on-demand guarantees. Article 11(3) of Council Regulation (EU) 2020/672 provides that the Commission is to conclude an agreement with a contributing Member State on the irrevocable, unconditional and on-demand guarantee, and that such agreement is to set out the payment conditions (a “**Guarantee Agreement**”).
- (E) Article 11(4) of Council Regulation (EU) 2020/672 provides that a Member State who has failed to honour a call shall remain liable to honour it.
- (F) Article 12(1) of Council Regulation (EU) 2020/672 provides that financial assistance shall only become available after all Member States have contributed to SURE by means of a Guarantee Agreement.
- (G) Each Member State of the European Union remains fully and individually liable for the commitments that it has made in a Loan Agreement or under a Guarantee Agreement.

1. GUARANTEE AND INDEMNITY

1.1 Guarantee

The Guarantor hereby unconditionally and irrevocably guarantees to the Union the due and punctual payment on demand of up to 100 per cent of its contribution (the "**Guaranteed Contribution**") and accordingly undertakes to pay to the Union, within ten (10) Business Days (or such shorter period as is specified in this Guarantee Agreement) of receiving a written demand from the Commission in accordance with this Guarantee Agreement (a "**Demand**") up to 100 per cent of its Guaranteed Contribution.

1.2 This Guarantee Agreement is solely related to Borrowings and the associated Loan Agreements that are authorised by a decision adopted by the Council before 31 December 2022 taken under Council Regulation (EU) 2020/672 as originally adopted. Any other Union borrowings on capital markets and with financial institutions and loan agreements shall not give rise to any claim or liability under this Guarantee Agreement.

1.3 Subject to Clause 5.1, the Guaranteed Contribution of the Guarantor is equal to the value set out next to the Guarantor's name in Schedule 1 to this Guarantee Agreement. The Guarantee Contribution Key Percentage of the Guarantor is equal to the percentage set out next to the Guarantor's name in Schedule 2 to this Guarantee Agreement.

1.4 The cumulative total value of any or all Demanded Amounts and Additional Demanded Amounts (as defined by Clauses 1.6 and 1.7 respectively) on the Guarantor may never exceed the Guaranteed Contribution of the Guarantor. The Guarantor shall not be liable to pay an amount in excess of its Guaranteed Contribution.

1.5 The obligations of the Guarantor under this Guarantee Agreement and of other Guarantors under their respective Guarantee Agreements are several only.

1.6 A Demand under this Guarantee may be made by the Commission at any time before or after a scheduled interest payment or a scheduled principal payment or other amount is due (together the "**Amount Due**") under Borrowings, if:

- (i) the Union (for whatsoever reason) has not received in full a scheduled payment as and when due under a Loan Agreement from a Member State of the European Union being financed by Borrowings or it is notified by such Member State or becomes aware following an event of default under the Loan Agreement that such Member State will not or will not be able to make payment in full of a scheduled payment under such a Loan Agreement as and when due; and
- (ii) an Amount Due is, has been or will be due under Borrowings.

In such an event, the Commission shall at its sole discretion determine an amount to be called from the Guarantors ("**Amount of the Call**"), up to a maximum of the Amount Due, to ensure that the Union has sufficient resources to make the necessary payment. In determining the Amount of the Call, the Commission shall draw any amount, which may be zero, that the Commission considers in its sole discretion, having regard *inter alia* to the total contingent liabilities of the Union (including under the Balance of

Payment Facility) and the sustainability of the Union budget, that may be available under the own resources ceiling for payment appropriations.

The Commission shall make Demands on all Guarantors. The Demands shall be pro rata to the relative share of each Guarantor in the Guarantee Contribution Key.

Any Demand shall specify the Amount Due, the extent to which amounts under the own resources ceiling for payment appropriations have been drawn and the Amount of the Call and shall request in writing the Guarantor to transfer an amount equal to its Guarantee Contribution Key Percentage of the Amount of the Call (such amount being the “**Demanded Amount**”), in cleared funds to the account referred to in Clause 1.9. The Demanded Amount shall comply with Clause 1.4. The Guarantor unconditionally and irrevocably guarantees to the Commission the due and punctual payment of the Demanded Amount on demand and the Guarantor shall transfer the Demanded Amount in accordance with the terms of such Demand. The transfer shall occur within ten (10) Business Days.

As per the Loan Agreement, the Member State referred to in Clause 1.6(i) shall within two (2) Business Days of the Demand being made notify to the Commission its ability to meet the Demand.

- 1.7 In the event that any one or more of the Guarantors does not pay its Demanded Amount or the Member State referred to in Clause 1.6(i) has notified its inability to meet the Demand or has failed to notify its ability (the unpaid amount being the “**Additional Shortfall**”), the Commission shall make a further Demand (or Demands) (such Demand(s) being the “**Additional Demand(s)**”) on the other Guarantors to pay their Adjusted Payment Contribution Key Percentage of the Additional Shortfall(s) (the “**Additional Demanded Amount**”). For the purpose of this Clause 1.67, the Adjusted Payment Contribution Key Percentage of a Guarantor means the Guarantee Contribution Key Percentage of each Guarantor adjusted on a *pro rata pari passu* basis the non-paying Guarantor(s), however, being excluded such that its/their Adjusted Payment Contribution Key Percentage is equal to zero for this purpose such that the aggregate of the Adjusted Payment Contribution Key Percentage of the remainder of the Guarantors is equal to 100 per cent.

The Commission shall make Additional Demands on all Guarantors pro rata to the relative share of each of the other Guarantors in the Guarantee Contribution Key, as adapted so as to not take into account the relative share of the Guarantor having failed to honour its duty.

Any Additional Demand shall specify the Additional Shortfall and shall request in writing the Guarantor to transfer an amount equal to Additional Demanded Amount, in cleared funds to the account referred to in Clause 1.9. The Additional Demanded Amount shall comply with Clause 1.4. The Guarantor unconditionally and irrevocably guarantees to the Commission the due and punctual payment of the Additional Demanded Amount on demand and the Guarantor shall transfer the Additional Demanded Amount in accordance with the terms of such Additional Demand. The transfer shall occur within ten (10) Business Days or such time such that sufficient funds have been paid to the account specified in Clause 1.9 to permit payment in full the Amount Due on the scheduled date of payment or, in the event of such an Additional Demand being made by the Commission after the scheduled date of payment, prior to

the expiry of the grace period for non-payment of such amount set out in the Borrowings (in each case provided that the Additional Demand is made more than five (5) Business Days prior to the scheduled due date of the required payment, and, if this is not the case, such Additional Demand shall be paid no later than the fifth (5th) Business Day following the date of receipt of such Additional Demand). This Clause 1.7 shall apply cumulatively *mutatis mutandis* if one or more Guarantors do not pay their respective Adjusted Contribution Key Percentage of an Additional Shortfall.

- 1.8 Following a Demand or Additional Demand, the Commission shall initiate recovery proceedings in respect of the Loan Agreement and, if applicable, the Guarantee Agreement. The Commission shall reimburse the Guarantor from amounts recovered by the Commission in respect of the Loan Agreements or Guarantee Agreements. For amounts recovered following a Demand or an Additional Demand on the Guarantor, the Commission shall by notice request payment details of the Guarantor and upon their receipt reimburse the Guarantor within ten (10) Business Days for any amount provided under the respective Demand or Additional Demand. In the case of a recovery in several instalments, the Guarantor will be reimbursed in proportion to the Guarantor's contribution to the Shortfall or Additional Shortfall. In such a case, priority will be given to repay Additional Demands and only once fully satisfied will Demands be satisfied.
- 1.9 Payments under this Guarantee Agreement shall be made to the account as identified in each Demand.
- 1.10 The Guarantor is not entitled to set-off or deduct any amounts owed to it by the Union from any payments due by the Guarantor under this Guarantee Agreement.

2. **PRESERVATION OF RIGHTS**

2.1 Continuing obligations

The obligations of the Guarantor herein contained shall constitute and be continuing obligations notwithstanding any settlement of account or other matter or thing whatsoever and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the Union's obligations under or in respect of any Borrowings and shall continue in full force and effect for so long as and until all sums due from the Union in respect of the Borrowings have been paid, and all other actual or contingent obligations of the Union thereunder or in respect thereof have been satisfied, in full provided that each Guarantor shall only be liable for its Guaranteed Contribution.

2.2 Obligations not discharged

The obligations of the Guarantor herein contained shall not be discharged, impaired or otherwise affected by:

- 2.2.1 *Indulgence, Waivers or Consents*: time or other indulgence or any waiver or consent being granted or agreed to be granted to the Union or to the Commission in respect of any of its obligations under or in respect of any Borrowings and/or Loan Agreement;

2.2.2 *Amendment*: any amendment, novation, supplement, extension, (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement, waiver or release of, any obligation of the Union under or in respect of any Borrowings or any security or other guarantee or indemnity in respect thereof including without limitation any extension of or any increase of the obligations of the Union in respect of any Borrowings or the addition of any new obligations for the Union provided that none of the foregoing shall result in any increase of the Guarantor's liability under this Guarantee Agreement; or

2.3 *Pari passu*

The Guarantor undertakes that its obligations hereunder will at all times rank *pari passu* with all other present and future, direct, unconditional, unsubordinated and unsecured obligations of such Guarantor.

2.4 Subrogation of Guarantor's Rights

Acknowledging that this Guarantee Agreement does not guarantee the repayment of a Loan Agreement, the Guarantor acknowledges that it is not entitled to any rights of subrogation.

3. **INFORMATION UNDERTAKINGS**

3.1 The Commission shall inform the General Secretariat of the Council of the European Union of the signature of the Guarantee Agreement.

3.2 The Commission shall report to the Guarantors on the outstanding claims under Loan Agreements and liabilities under Borrowings on a quarterly basis.

3.3 The Commission shall immediately notify the Guarantors of becoming aware of any event that may reasonably be expected to result in a call under the Guarantee Agreement.

4. **BENEFIT OF THE GUARANTEE AGREEMENT**

4.1 Benefit

The Guarantor shall honour this Guarantee Agreement on demand.

4.2 Assignment

The Guarantor shall not be entitled to assign or transfer all or any of their rights, benefits and obligations hereunder.

5. **REDUCTION AND EXPIRY OF THE GUARANTEE**

5.1 From 31st December 2025, should a Commission report referred to in Clause 3.2 provide that the outstanding liabilities under Borrowings is less than EUR 25 000 000 000, the Guaranteed Contributions from Guarantors shall irrevocably be reduced on a *pro rata pari passu* basis so that the total Guaranteed Contributions from Guarantors is

equal to the outstanding liabilities under Borrowings. From its date of application, this Clause 5.1 shall apply to each report.

- 5.2 Subject to Clause 5.3, this Guarantee Agreement shall expire on the date (the "**Expiration Date**") which is the earlier of (i) the date when all Borrowings have been irrevocably paid in full, no further Borrowings may be issued under Council Regulation (EU) 2020/672 and any and all obligations of the Guarantor have been fully and irrevocably paid and (ii) 31st December 2053.
- 5.3 In the event of any Demand or Additional Demand under this Guarantee Agreement, the obligation of the Commission to reimburse the Guarantor from amounts recovered in line with Clause 1.8 shall continue until there is a reimbursement in full notwithstanding the occurrence of the Expiration Date.

6. **INTERPRETATION IN CONFORMITY AND PARTIAL INVALIDITY**

All provisions hereof shall be interpreted, in case of doubt, so that they are in conformity with the governing law. If at any time any provision hereof is or becomes illegal, invalid or unenforceable under the governing law, the legality, validity or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

7. **NOTICES**

7.1 Address for notices

All notices, demands and other communications to the Guarantor hereunder shall be made in writing (by letter or fax or e-mail) and shall be sent to the Guarantor at:

[Guarantor's address]

Fax: +[number]

E-mail: [e-mail]

Attention: [name or department]

With a copy to: European Commission

Fax: +[number]

E-mail: [e-mail]

Attention: [name or department]

or, in relation to the Guarantor, to such other address or fax number or for the attention of such other person or department as the Guarantor has notified to the Commission in the manner prescribed for the giving of notices.

7.2 Effectiveness

Every notice, demand or other communication sent in accordance with Clause 7.1 (*Address for notices*) shall be effective upon actual receipt by the Guarantor; *provided that* any such notice, demand or other communication which would otherwise take effect after 4.00 p.m. on any particular day or on a day which is not a Business Day shall not take effect until 10.00 a.m. on the immediately succeeding Business Day.

8. INTERPRETATION

8.1 Definitions

In this Guarantee Agreement:

"Business Day" shall mean a day on which commercial banks and foreign exchange markets are open or required to be open for business in Luxembourg.

8.2 Other agreements

All references in this Guarantee Agreement to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or other document as the same may be amended, supplemented, restated, extended, replaced or novated from time to time.

9. LAW AND JURISDICTION

9.1 Governing law

This Guarantee Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with European Union law, supplemented if necessary by the Luxembourgish law.

9.2 Exclusive Jurisdiction

The Court of Justice of the European Union, in accordance with Article 272 of the Treaty on the Functioning of the European Union, shall have exclusive jurisdiction to settle any dispute (a "**Dispute**"), arising out of or in connection with this Guarantee Agreement (including a dispute relating to the existence, validity or termination of this Guarantee Agreement or any non-contractual obligation arising out of or in connection with this Guarantee Agreement) or the consequences of its nullity.

All Clauses and terms stipulated herein have been duly noted and approved by [•][in line with •¹] and the Commission. This Guarantee Agreement shall enter into force upon the date of signature by the last Party.

Done in two originals, one for the Guarantor and for the Commission.

EXECUTED as a guarantee

¹ Reference to national legal base for signature if necessary for the Guarantor Member State.

by THE REPUBLIC OF MALTA

Represented by:

[NAME]

[POSITION]

[DATE OF SIGNATURE]

EXECUTED as a guarantee

by the European Commission

Represented by:

[NAME]

[POSITION]

[DATE OF SIGNATURE]

SCHEDULE 1
GUARANTEED CONTRIBUTION

Member State	Amount (EUR)
Kingdom of Belgium	838 224 250
Republic of Bulgaria	107 466 500
Czech Republic	374 538 500
Kingdom of Denmark	563 837 750
Federal Republic of Germany	6 383 820 000
Republic of Estonia	48 716 500
Ireland	483 401 250
Hellenic Republic	342 618 750
Kingdom of Spain	2 252 890 750
French Republic	4 406 976 250
Republic of Croatia	95 693 500
Italian Republic	3 183 786 000
Republic of Cyprus	38 114 750
Republic of Latvia	57 070 750
Republic of Lithuania	83 953 500
Grand Duchy of Luxembourg	76 856 750
Hungary	249 596 000
Republic of Malta	23 044 250
Kingdom of the Netherlands	1 441 199 500
Republic of Austria	717 215 750
Republic of Poland	930 103 250
Portuguese Republic	365 571 000
Romania	393 384 250
Republic of Slovenia	88 126 500
Slovak Republic	173 516 250
Republic of Finland	431 740 250
Kingdom of Sweden	<u>848 537 250</u>
Total	25 000 000 000

SCHEDULE 2
GUARANTEE CONTRIBUTION KEY

(the relative shares of Member States in the total Gross National Income of the Union, as resulting from the column (1) of Table 3 of Part A “Introduction and financing of the general budget of the Union”, of the revenue part of the budget for 2020 set out in the general budget of the European Union for the financial year 2020, as adopted on 27 November 2019)

Member State	Guarantor's Contribution Key Percentage
Kingdom of Belgium	3.352 897%
Republic of Bulgaria	0.429 866%
Czech Republic	1.498 154%
Kingdom of Denmark	2.255 351%
Federal Republic of Germany	25.535 280%
Republic of Estonia	0.194 866%
Ireland	1.933 605%
Hellenic Republic	1.370 475%
Kingdom of Spain	9.011 563%
French Republic	17.627 905%
Republic of Croatia	0.382 774%
Italian Republic	12.735 144%
Republic of Cyprus	0.152 459%
Republic of Latvia	0.228 283%
Republic of Lithuania	0.335 814%
Grand Duchy of Luxembourg	0.307 427%
Hungary	0.998 384%
Republic of Malta	0.092 177%
Kingdom of the Netherlands	5.764 798%
Republic of Austria	2.868 863%
Republic of Poland	3.720 413%
Portuguese Republic	1.462 284%
Romania	1.573 537%
Republic of Slovenia	0.352 506%
Slovak Republic	0.694 065%
Republic of Finland	1.726 961%
Kingdom of Sweden	<u>3.394 149%</u>
Total	100.000 000%