

Extraordinary financing mechanism for paying suppliers of Spain's Autonomous Communities

On 14 April 2012, the Official State Gazette published the Decision dated 13 April 2012 of the General Secretariat for Regional and Local Coordination, which in turn published Decision 6/2012, dated 6 March, of the Fiscal and Financial Policy Council, which establishes the general conditions of an extraordinary financing mechanism for the payment of suppliers to the Autonomous Communities (the "**Stability Pact**").

1. Scope of application: agreements for works, public service management, services and supplies to Autonomous Communities

The approved mechanism is only applicable to the Autonomous Communities and certain bodies and entities dependent upon them.

In order to qualify for the mechanisms established in the Stability Pact, the Autonomous Communities' outstanding payment obligations must meet the following requirements:

- a) They must be liquid, due and enforceable.
- b) The corresponding invoice, corrective invoice, if applicable, or equivalent request for payment must have been received by the administrative registry of the Autonomous Community prior to 1 January 2012.
- c) They must concern agreements for works, public service management, services or supplies included within the scope of the Revised Text of the Public Sector Procurement Act approved by Royal Legislative Decree 3/2011, of 14 November. Pacts on healthcare, education and social services, by virtue of which an individual or legal entity renders services or provides goods, or arranges for these to be rendered or provided to third parties are also included.

Therefore, public works concession contracts, public-private sector collaboration agreements and other agreements not included in the above categories are excluded.

2. Time limits and deadlines

The Stability Pact establishes the following time limits and deadlines:

- a) Prior to 1 April 2012, those Autonomous Communities wishing to benefit from this extraordinary liquidity mechanism must have previously requested to be included in it, i.e. they must have sent the adherence agreement to the mechanism adopted by the relevant regional government body, to the Ministry of Finance and Public Administrations.
- b) Prior to 15 April 2012, the Autonomous Communities must have sent to the Ministry of Finance and Public Administrations a certified list of all pending payment obligations which fulfil the indicated requirements.
Those contractors and concessionaires who have been informed of their collection right may consult said certified list to confirm their inclusion. If they do not appear in the certified list, they may request that the debtor Autonomous Community issue an individual certificate. Unless this request is expressly rejected within 15 calendar days, it will be considered accepted (the right of collection will be considered recognised in the terms envisaged in the request). Therefore, the request for an individual certificate must identify exactly what invoices and payment obligations are outstanding.
- c) In addition, prior to 30 April 2012, the Autonomous Communities must send an adjustment plan to the Ministry of Finance and Public Administrations, which will issue its report within 15 business days. This favourable report is necessary, since access to this extraordinary financing mechanism is subject to the fulfilment of certain tax conditions.

3. Implementation of the financing mechanism

This financing mechanism may be implemented in successive stages throughout only 2012.

The following priority of payment criteria, among others, may be established in this mechanism:

- a) Discount offered over the amount of the principal of the outstanding payment obligation.
- b) If an application has been made to the Courts for the enforcement of the outstanding payment obligation prior to 1 January 2012.
- c) How long the payment obligation has been outstanding.

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In each stage, a minimum discount to be offered by the contractor over the principal of the outstanding payment obligation may be established, so that the contractor may be paid. Likewise, an overall maximum amount of financing may be set for each stage.

Additionally, those Autonomous Communities wishing to benefit from this mechanism must send the Ministry of Finance and Public Administrations a debt request for the total amount of the credit conveyed by its suppliers to the credit entities. The Ministry of Finance and Public Administrations will propose to the Council of Ministers an additional debt authorisation deriving from this mechanism, in the terms set forth in the Decisions on indebtedness of the Fiscal and Financial Policy Council.

4. Effects of the financing mechanism: collection by suppliers by presentation for collection at credit entities, at a discount and without interest, costs or expenses

The contractors appearing on the list sent to the Ministry of the Treasury and Public Administration and those who are entitled to receive payment due to the issue of an individual certificate or because their request for an individual certificate was not expressly rejected, may voluntarily enforce said right by presentation for collection in the credit institutions participating in the financing mechanism.

Payment to the contractor will entail the cancellation of the debt incurred by the Autonomous Community with the contractor, covering principal, interest, court costs and any other ancillary expenses.

Payment will also mean the termination of court proceedings, if there are any, due to out-of-court settlement.

5. Financing mechanism: system of guarantees for financial entities, including possible State guarantees

The resources of the financing system for standard regime Autonomous Communities will honour the obligations assumed vis-à-vis the credit entities to which their suppliers have assigned their collection rights, and this will not affect the fulfilment of any other obligations derived from the financial debt operations contemplated in the adjustment plan.

As an additional guarantee for credit entities participating in the financing mechanism, the State may exceptionally guarantee certain debts assumed by the Autonomous Communities, following the entry into force of the Organic Law on amendment of the Additional Provision of Organic Law 3/2006, dated 26 May, reforming Organic Law 5/2001, dated 13 December, which supplements the General Law on Budget Stability.

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This publication does not necessarily deal with all important issues, nor does it cover all aspects of the issues analysed, and it is not designed to provide legal or other kinds of advice.

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