

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

First Name:* Luis

Surname:* Garicano

Address line 1:* Rue Wiertz 60

Address line 2:

Town/City:* Brussels

County/State/Province:

Postcode:* 1047

Country:* Belgium

Telephone:

Mobile Telephone:

E-mail address:* luis.garicano@europarl.europa.eu

Fax:

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* No*

If yes, please also provide the following information

Name of the person/firm you represent*:

Registration nr. of the entity:

Address line 1:*

Address line 2:

Town/City:*

County/State/Province:

Postcode:*

Country:*

Telephone 1:

Telephone 2:

E-mail address:*

Fax:

Please attach proof that the representative is authorized to act on behalf of this person/firm.*

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries
- b) Trade association representing the interests of competitors
- c) Non-governmental organisation
- d) Trade union
- e) EU citizen
- f) Other, please specify

Member of the European Parliament. Vice-President of Renew Europe.

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

As a Member of the European Parliament and Vice-President of Renew Europe, I represent the interests of all of my constituents, in particular those European citizens and companies who have an interest in the correct implementation by Member States of authorised state aid decisions. This includes final consumers, workers and direct competitors that can be affected by the potential distortions of competition that this measure might bring about.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: Spain

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government: Council of Ministers of the Kingdom of Spain

Region (please specify):

Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

An equity loan and an ordinary loan

b) For what purpose was the alleged aid given (if known)?

According to article 2.2 of Royal Decree-law 25/2020, the aim of the aid is to provide temporary public support to strengthen the solvency of viable companies experiencing difficulties due to the impact of the COVID-19 pandemic and that are considered strategic for the national or regional productive fabric.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

53 million euro (34 million through the equity loan and 19 million through the ordinary loan)
Justifying evidence: [La Moncloa. 09/03/2021. Aprobadas dos operaciones con cargo al Fondo de Apoyo a la Solvencia Empresarial \[Consejo de Ministros\]](#)

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

Plus Ultra Líneas Áreas S.A. It is an airline operating long distance flights between Spain and 4 destinations in South America. It owns 4 planes and employs 345 people.

According to public information, Julio Martínez Sola and Fernando González Enfedaque founded it in 2011. Since 2017, a Venezuelan company called Snip Aviation owns 47.23% of Plus Ultra. The president of Snip Aviation is Rodolfo José Reyes Rojas. ([Plus Ultra: la banca rechazó concederle un crédito ICO antes del rescate \(vozpopuli.com\)](#))

e) To your knowledge, when was the alleged aid granted?

The Council of Ministers took its final decision on 4 March 2021

f) Please select one of the following options:

- According to my knowledge, the State aid was not notified to the Commission.
- According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

The scheme was approved on 31 July 2020 under case number SA.57659(2020/N) (Spain COVID 19 - Recapitalisation fund). The individual aid to Plus Ultra Líneas Aéreas S.A. was not notified because it did not reach the 250 million euro threshold established under the Temporary state aid framework.

- According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

The Solvency Support Fund that finances the aid is managed by a public law entity attached to the Ministry of Finance (Sociedad Estatal de Participaciones Industriales, SEPI) and to a Governing Council. Nevertheless, the specific aid to Plus Ultra Líneas Aéreas S.A. was approved by the Council of Ministers of the Kingdom of Spain.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

The whole scheme is selective in nature, as mainly large undertakings are likely to meet its applicable conditions. Moreover, among the undertakings active in all sectors of the economy, only those having a systemic or strategic importance are eligible under the scheme.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

The aid confers an advantage to the beneficiary because it would not have obtained such loans under normal market conditions, especially since it has been accumulating losses since its start of operations in 2015. This fact reinforces the idea that such aid was granted in breach of the 31 July 2020 Commission decision deeming the scheme compatible with the Temporary state aid framework.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

The aid strengthens the competitive position of Plus Ultra Líneas Aéreas S.A. by providing funding which otherwise it could not have obtained at all or not at the same conditions.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

The aid might disadvantage other EU companies operating long-distance flights to those 4 destinations in South America.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

This is a case of **misuse (or abusive use) of an authorised state aid scheme**. When the Commission authorised the creation of the Spanish Solvency Support Fund for Strategic Enterprises in July 2020, it found that this measure was in line with the conditions set out in the Temporary Framework (point 49(d)) because its eligibility was restricted to entities that were not already suffering financial difficulties before 31 December 2019.

According to public information, the company has been accumulating losses since its start of operations, in 2015. These losses amounted to close to 1 million € in 2016, 680.000 € in 2017, 6.7 million € and in 2018 and 2.1 million € in 2019 ([Plus Ultra: la banca rechazó concederle un crédito ICO antes del rescate \(vozpopuli.com\)](#) and [El rescate a Plus Ultra de 53 millones: esto es lo que sabemos \(newtral.es\)](#)). There is no information on the company's operating costs but given these numbers, the aid might be used to cover them. In any case, it seems that the aid granted to Plus Ultra Líneas Aéreas S.A. did not meet the requirement of being financially sound before 31 December 2019.

In addition, point 71 of the decision approving the scheme (in accordance with point 54 of the Temporary Framework) requires the aid to be proportional, not exceeding the minimum needed to ensure the viability of the company and not going beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak. An aid of 53 million € to a company that in 2019 obtained 63.5 million € in revenues does not seem to meet such proportionality requirement. Even more so if the ratio of aid per employee is taken into account, as the aid represents more than 150.000 € per employee.

Finally, the approved scheme was circumscribed to companies that have a systemic or strategic importance. In light of the facts, it seems manifestly wrong to describe Plus Ultra as strategic. Having merely 4 planes and flying to 4 destinations, it represents a market share of below 0.1% in Spain. The airline only operated in 2019 the 0.03% of all flights in the country. In fact, the Government of Spain does not include it in its ranking of the biggest 30 airlines in the country and, in the press release issued when approving the measure, it admits that it operates in a niche market.

To conclude, it seems that the Spanish Government has made an abusive use of an authorised aid, granting a disproportionate loan to a company that was manifestly not strategic and that was not financially sound before the outbreak of the pandemic.

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes No

If yes, please attach copies of correspondence.

c) Have you already approached national authorities or national courts concerning the same issue? *

Yes No

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

The President of the Spanish national competition authority (Ms. Cani Fernández Vicién) through a letter. She replied on 24 March 2021, stating that the Spanish national competition authority is not competent to investigate the issue.

d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

- Commission's decision C(2020) 5414 final of 31 July 2020 authorizing the Spanish Solvency Support Fund.

- Royal Decree-law 25/2020 on urgent measures to support economic recovery and employment

- Agreement of the Council of Ministers of 21 July 2020, establishing the operation of the Solvency Support Fund for Strategic Enterprises

- Press release from La Moncloa (9 March 2021)

- Written parliamentary question addressed to the Commission (18 March 2021)

- Letter addressed to Ms. Cani Fernández Vicién (President of the Spanish national competition authority) (19 March 2021)

- Reply from Ms. Cani Fernández Vicién (President of the Spanish national competition authority) (24

March 2021)

- Media information:

- [Plus Ultra: El Gobierno rescata una aerolínea 'venezolana' conectada con el chavismo \(vozpopuli.com\)](#) ["Vozpopuli 1"]
- [Plus Ultra: diez evidencias que apuntan a prevaricación del Gobierno \(vozpopuli.com\)](#) ["Vozpopuli 2"]
- [Plus Ultra: la banca rechazó concederle un crédito ICO antes del rescate \(vozpopuli.com\)](#) ["Vozpopuli 3"]
- [La SEPI justifica el rescate de Plus Ultra con tres informes independientes - Vozpópuli \(vozpopuli.com\)](#) ["Vozpopuli 4"]
- [El rescate a Plus Ultra de 53 millones: esto es lo que sabemos \(newtral.es\)](#) ["Newtral"]

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant"



Brussels

6 April 2021

Luis Garicano