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**Subject: State aid No N 459/2008 – Spain**  
**Aid scheme to R&D&I – La Rioja**

Sir,

## **1. PROCEDURE**

- (1) By letter of 10 September 2008, registered at the Commission on the same day, the Spanish authorities notified, according to Article 88(3) of the EC Treaty, the above mentioned aid scheme. The measure was notified on the basis of the Community Framework for State aid for research and development and innovation (hereinafter: R&D&I Framework)<sup>1</sup> and of the Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty<sup>2</sup> (hereinafter: Commission Regulation (EC) No 800/2008) for the part of the scheme concerning investment State aid to small and medium-sized enterprises.
- (2) As the information received was not sufficient to assess the aid scheme's compatibility with the common market, the Commission considered the notification to be incomplete. Therefore, by letters of 3 October 2008 and of 28 November 2008 the Commission asked for supplementary information to the Spanish authorities, who replied by letter of 21 October 2008, registered at the Commission on the same

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<sup>1</sup> OJ C 323, 30.12.2006, p. 1.

<sup>2</sup> OJ L 214, 09.08.2008, p. 3.

Excmo. Sr. Don Miguel Ángel MORATINOS  
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day and by letter of 26 December 2008, registered at the Commission on 27 December 2008.

## **2. DESCRIPTION OF THE AID SCHEME**

### **2.1. Objective**

- (3) The objective of the measure is to support research, development and innovation activities undertaken within companies. In particular, the scheme addresses the need to strengthen the scientific and technological enterprises' features favouring the production of innovative products and the exploitation of the research organisations' results in order to increase the competitiveness of the enterprises.
- (4) Furthermore, the scheme aims to boost the creation of innovative clusters and/or of technological centres and to increase the participation of the enterprises in international research consortiums.
- (5) The aid will be given for R&D projects, technical feasibility studies, industrial property rights costs for SMEs, young innovative enterprises, process and organisational innovation in services, innovation advisory services and innovation support services, loans for highly qualified personnel and innovation clusters. With regard to SMEs, investment aid will be granted as well.
- (6) The aid is granted to SMEs and to large enterprises. However, when the aid is granted to large enterprises for industrial property rights costs, process and organisational innovation in services, innovation advisory and support services, recruitment of technicians and researchers linked to a specific R&D project and the material assets' acquisition linked to a R&D project and to infrastructures, it is granted on the basis of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid<sup>3</sup> or of Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector<sup>4</sup>. Therefore these measures of the scheme fall outside the scope of this notification and are not covered by this decision.

### **2.2. Legal basis**

- (7) The legal basis of the measure is the "Orden n° 19/2008 de 5 de junio de 2008, de la Consejería de Industria, Innovación y Empleo de la Rioja, por la que se aprueban las bases reguladoras de la concesión de subvenciones por la Agencia de Desarrollo económico de la Rioja destinadas al fomento de la investigación, desarrollo e innovación, en régimen de concurrencia competitiva"<sup>5</sup>.

### **2.3. Budget and duration**

- (8) The budget amounts to EUR 72 millions with an annual forecast of EUR 12 millions.

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<sup>3</sup> OJ L 379, 28.12.2006, p. 5.

<sup>4</sup> OJ L 193, 25.07.2007, p. 6.

<sup>5</sup> B.O.R. n° 79, 14.06.2008

- (9) The duration of the aid scheme is until 31 December 2013 and will start from the approval by the Commission. The measure can be funded using Rural Development Funds (FEADER) and European Funds for Regional Development (ERDF). Under the scheme, the respect of the principles of the EU Structural Funds' system administration is required. In particular, if the scheme is co-financed with ERDF funding, the provisions of the following regulations have to be respected: Council Regulation (EC) No 1083/2006<sup>6</sup>, the Regulation (EC) No 1080/2006 of the European Parliament and of the Council<sup>7</sup> and Commission Regulation (EC) No 1828/2006<sup>8</sup>. If the scheme is co-financed with the FEADER funding, the provisions of the following regulations have to be respected: Council Regulation (EC) No 1698/2005<sup>9</sup> and Commission Regulation (EC) 1974/2006<sup>10</sup>.

#### **2.4. Beneficiaries**

- (10) The beneficiaries of the aid granted under the notified aid scheme are enterprises of all sizes without any condition linked to their sector of activity. As far as SMEs are concerned, the Commission Recommendation of 6 May 2003 concerning the definition of SME<sup>11</sup> will be applied. The Spanish authorities expect that between 101 to 500 enterprises will benefit from the notified aid scheme.
- (11) The beneficiaries of the scheme can be as well research organisations which may carry out both economic and non-economic activities. In order to avoid cross-subsidisation of the economic activities, they must separate the two kinds of activities and also their costs and funding. As far as aid is granted to research organisations for their economic activities, these activities fall under the State aid rules. Research organisations may act as intermediaries where the totality of the State aid that they received to provide certain services has to be passed on to the final recipients.
- (12) The Spanish authorities confirmed that no aid can be granted to enterprises in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>12</sup>.
- (13) Aid shall not be granted under the scheme in favour of beneficiaries which are subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market.

#### **2.5. Aid instrument**

- (14) State aid is granted in the form of non – repayable direct grant.
- (15) There will be competitive tenders to select the financed projects.

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<sup>6</sup> OJ L 210, 31.07.2006, p. 25.

<sup>7</sup> OJ L 210, 31.07.2008, p. 1.

<sup>8</sup> OJ L 371, 27.12.2006, p. 1.

<sup>9</sup> OJ L 277, 21.10.2005, p. 1.

<sup>10</sup> OJ L 368, 23.12.2006, p. 15.

<sup>11</sup> OJ L 124, 20.05.2003, p. 36.

<sup>12</sup> OJ C 244, 01.10.2004, p. 2.

## **2.6. Granting authority**

- (16) Aid is granted by the Development Agency of La Rioja (Agencia de desarrollo económico).

## **2.7. Incentive effect**

- (17) The Spanish authorities confirmed that State aid for R&D&I activities must have an incentive effect, resulting in the recipient changing its behaviour so that it increases its level of R&D&I activity.
- (18) The measures to be financed may only start after an application for aid has been made to the implementing authority. Under the aid scheme, if the works (actuación) had already started before the aid application by the beneficiary to the concerned authorities, the totality of the project will not be eligible for aid.
- (19) The Spanish authorities confirm that they will demonstrate an incentive effect for: project aid and feasibility studies where the aid beneficiary is a large undertaking or an SME with the aid amount exceeding € 7,5 million; aid for process and organisational innovation in services; aid for innovation clusters. In these cases the implementing authority will ex-ante examine the incentive effect of the aid in order to ensure that the aid will serve as an incentive to undertake the R&D&I activities in addition to the enterprises' normal day-to-day activities. In the other cases, the incentive effect will be considered as automatically met.
- (20) The Spanish authorities will demonstrate the incentive effect of the aid in the annual reports. In particular, the enterprises have to demonstrate the incentive effect by reference to at least one of the following criteria: increase in project size, increase in scope, increase in speed, increase in total amount spent on R&D&I.

## **2.8. Individual notification commitment**

- (21) The Spanish authorities will notify individually to the Commission those measures where the aid amount exceeds:
- a) for R&D projects and feasibility studies : (i) if the project is predominantly fundamental research, € 20 million per undertaking per project/feasibility study;(ii) if the project is predominantly industrial research, € 10 million per undertaking per project/feasibility study; (iii) for all other projects, € 7,5 million per undertaking per project/feasibility study;
  - b) for process and organisational innovation in services activities: €5 million per project per undertaking;
  - c) for innovation clusters (per cluster): €5 million.
- (22) Furthermore, for investment aid to SME, the Spanish authorities confirmed that any aid granted under these measures will be individually notified to the Commission if it reached the thresholds laid down in Article 6(1)(a) of Commission Regulation (EC) No 800/2008.

## **2.9. Cumulation**

- (23) The cumulation of aid granted under the notified scheme with aid received from other sources to cover the same costs is possible. In no case the cumulated aid will exceed the maximum aid intensities foreseen under the most favourable applicable Community rules. This limitation does not apply to aid granted in accordance with the Community guidelines on State aid to promote risk capital investments in SME<sup>13</sup>.
- (24) Aid under the scheme will not be cumulated with de-minimis support in respect of the same purpose.

## **2.10. Further commitments**

- (25) The Spanish authorities undertook to submit annual reports on the implementation of the notified aid scheme which will also include the information necessary to demonstrate the incentive effect of the aid granted to large companies. In case of clusters the report will also give a brief description of the activity of the cluster and its effectiveness in attracting R&D&I activity.
- (26) The Spanish authorities will publish the full text of the aid scheme on the following websites: [www.ader.es](http://www.ader.es), [www.laroja.org](http://www.laroja.org).
- (27) In case that an individual aid granted under the scheme exceeds EUR 3 million, the Spanish authorities will provide the Commission with the information requested in the standard form laid down in the Annex to the R&D&I Framework.
- (28) The Spanish authorities undertook to maintain detailed records regarding the granting of aid under the scheme for 10 years.

## **3. DESCRIPTION OF THE AID SCHEME: THE DIFFERENT AID MEASURES**

- (29) The activities will be articulated through eleven independent aid lines (actuaciones) as described in detail here below:

### **3.1. Aid for R&D projects**

- (30) The R&D projects aided under Line 1 (actuación 1) of the proposed aid scheme fall under the R&D stages of fundamental research, industrial research and experimental development.
- (31) Fundamental research is defined as experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view.
- (32) Industrial research is defined as planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components of

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<sup>13</sup> OJ C 194, 18.8.2006, p. 2.

complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of commercially usable prototypes.

- (33) Experimental development is defined as the acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services. These may also include, for example, other activities aiming at the conceptual definition, planning and documentation of new products, processes and services. The activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use. Experimental development does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.
- (34) The projects can be carried out by one enterprise only or via collaboration between several enterprises or between enterprises and research organisations. In case of collaborative projects, the collaboration between the beneficiaries will be formalised by a contract or by an agreement in which the rights and obligations of the different subjects taking part in the project will be exactly defined.
- (35) In case of collaborative projects, one of the following conditions must be fulfilled:
- (a) The participating enterprises bear the full cost of the project.
  - (b) The results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which result from the activity of the research organisation are fully allocated to the research organisation.
  - (c) The research organisation receives from the participating enterprises compensation equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating enterprises or, if there is no market price, at a price which reflects its full costs plus a reasonable margin. Any contribution of the participating enterprises to the costs of the research organisation shall be deducted from such compensation.
- (36) Under this measure, the eligible costs are the following ones:
- personnel costs of researchers, technicians, and other auxiliary staff only to the degree of their activities performed in the project supported;
  - costs of instruments and equipment to the extent and for the period used for the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered eligible;
  - costs for building and land, to the extent and for the duration used for the project. With regard to the buildings, only depreciation costs corresponding to the life of the research project are considered as eligible, while in case of land costs of commercial transfer or actually incurred capital costs are eligible;

- costs of contractual research, technical knowledge and patents purchased from third parties at market price, provided that such transaction is effected under market conditions; in the event of financing by lease, only the portion of the lease fee to redeem the capital amount may be accounted for;
  - additional overheads incurred directly as a result of the research project;
  - other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.
- (37) The basic aid intensities are 100% for fundamental research, 50% for industrial research and 25% for experimental development. If a project involves fundamental research, industrial research and experimental development at the same time, the eligible costs will be separately allocated to the categories.
- (38) In case of industrial research and experimental development where the aid is to be given to SMEs, the above intensities can be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.
- (39) Furthermore up to a maximum aid intensity of 80%, a bonus of 15 percentage points may be added:
- in case of industrial research and experimental development, if the project is a collaboration between at least two independent undertakings and no single undertaking bears more than 70% of the eligible costs of the collaboration project, and at least one SME is involved or the project is cross-border,
  - in case of industrial research and experimental development, if the project is a collaboration between an undertaking and a research organisation and this latter bears at least 10% of the eligible project costs and has the right to publish the results of the research projects that was implemented by the organisation,
  - only in case of industrial research, if the results of the project are widely disseminated through technical and scientific conferences or published in scientific or technical journals or in open access repositories, or through free or open source software.
- (40) In case of collaboration between an undertaking and a research organisation, the maximum aid intensities and bonuses specified above do not apply to the research organisation.

**3.2. Technical feasibility studies**

- (41) Under Line 2, aid will be granted for technical feasibility studies, preparatory to industrial research or experimental development activities. The maximum aid intensities, calculated on the basis of the study costs, are as follows:

	SME	Large enterprise
Preparatory to Industrial Research	75%	65%
Preparatory to Experimental Development	50%	40%

### **3.3. Industrial property rights costs for SMEs**

- (42) Under Line 3 the aid is granted for assisting SME in protecting their industrial property rights linked to their R&D activities. The aid is provided in relation to the costs associated with obtaining and validating patents and other industrial property rights.
- (43) The aid intensity may not exceed the same level of basic aid intensities as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.
- (44) Eligible costs are: i) all costs preceding the grant of the right in the first legal jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted; ii) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions; iii) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

### **3.4. Aid for young innovative enterprises**

- (45) Under Line 4 aid can be granted to young innovative enterprises if the following conditions are met:
  - (a) the beneficiary is a small enterprise that has been of existence for less than five years at the time when the aid is granted;
  - (b) the beneficiary can be regarded to be an innovative enterprise, if: i) it is justifiable, by means of an evaluation carried out by an external expert – who is selected in an open procedure – on the basis of a business plan, that the beneficiary will in the future develop products, services or processes which are technologically new or substantially improved compared to the state of the art in its industry in the Community and which carry out a risk of technological or industrial failure, or ii) the R&D expenses of the beneficiary represent at least 15 % of its total operating expenses in at least one of the three years preceding the granting of the aid or in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.
  - (c) the aid is not higher than EUR 1 million. The aid will not exceed EUR 1.25 million for enterprises located within the assisted areas for the derogation in Article 87(3)(c) of the EC Treaty of the Region La Rioja<sup>14</sup>.
- (46) The beneficiary may receive the aid only once during the period in which it qualifies as a young innovative enterprise.
- (47) This aid may be cumulated with other aid of the R&D&I Framework, with aid for research and development and innovation exempted by Regulation (EC) No 364/2004<sup>15</sup> or any successor regulation (i.e. Commission Regulation (EC) No

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<sup>14</sup> OJ C 35, 17.02.2007, p. 4. Guidelines on National Regional aid for 2007-2013 – National regional State aid map: Spain

<sup>15</sup> OJ L 63, 28.2.2004, p. 22.



800/2008) and with aid approved by the Commission under the Community guidelines on state aid to promote risk capital investments in small and medium-sized enterprises.

- (48) The beneficiary may receive State aid other than R&D&I aid and risk capital aid only 3 years after the granting of the young innovative enterprise aid.

### **3.5. Aid for process and organisational innovation in services**

- (49) Under Line 5 the aid will be granted to provide support to enterprises carrying out certain new activities in the field of innovation in order to improve their ways and processes of organisation.

- (50) The projects of process innovation aim at the setting up of a new, or significantly improved, production system. Routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements, do not qualify for State aid.

- (51) The projects of organisation innovation aim at favouring the creation of new commercial and marketing networks of the enterprise, or the establishment of new work's organisation of an enterprise.

- (52) Under the scheme, the following conditions must be fulfilled:

- (a) Organisational innovation must always be related to the use and exploitation of Information and Communication Technologies (ICT) to change the organisation.
- (b) The innovation must be formulated as a project with an identified and qualified project manager, as well as identified project costs.
- (c) The result of the aided project must be the development of a standard, of a business model, methodology or concept, which can be systematically reproduced, possibly certified, and possibly patented.
- (d) The process or organisational innovation must be new or substantially improved compared to the state of the art in its industry in the Community.
- (e) The process or organisational innovation project must entail a clear degree of risk.

- (53) The eligible costs are the same as for aid to R&D projects as recalled at recital 36) above. However, costs of instruments and equipment cover exclusively costs of ICT instruments and equipment.

- (54) The aid intensity does not exceed 15% for large undertakings, 25% for medium enterprises and 35% for small enterprises. Large enterprises are only eligible for such aid if they collaborate with SMEs in the aided activity, whereby the collaborating SMEs must incur at least 30% of the total eligible costs.

### **3.6. Aid for innovation advisory and support services**

- (55) Under Line 6 the aid is granted for encouraging SME to utilise the specialised services provided by qualified innovation intermediaries in order to improve their competitiveness. The SME must use the State aid to buy the services at a realistic market price, or if the service provider is a not-for-profit entity, the price must reflect its full costs plus a reasonable margin. The latter condition will be verified by the managing authority.
- (56) If the service provider benefits from a national or European certification the aid might cover 100% of the eligible costs, if not, the aid might cover 75% of the eligible costs, but in no case can the aid amount be more than EUR 200,000 per enterprise within any three year period.
- (57) The following are the eligible costs:
  - (a) Innovation advisory services: management consulting, technological assistance; technology transfer services; training; consultancy for acquisition, protection and trade in Intellectual Property Rights and for licensing agreements; consultancy on the use of standards;
  - (b) Innovation support services: office space; data banks; technical libraries; market research; use of laboratory; quality labelling, testing and certification.

### **3.7. Aid for the loan for highly qualified personnel**

- (58) Under Line 7 the aid is granted to enable SMEs to receive highly qualified personnel seconded from a research organisation or a large company in order to improve their R&D&I capabilities via significant knowledge transfer and better innovation capacities. The seconded personnel must have been employed for at least two years in the research organisation or the large enterprise, which is sending the personnel on secondment.
- (59) The seconded personnel must not be replacing other personnel, but must be employed in a newly created function and work on R&D&I activities within the beneficiary enterprise.
- (60) The eligible costs are all costs related to borrowing and employing the seconded person, including the cost of the recruiting agency and a mobility allowance for the seconded person. Costs for any external consultancy service from persons not employed by the SME are explicitly excluded. The maximum aid intensity is 50% of the eligible costs, for a maximum of 3 years per undertaking per person borrowed.

### **3.8. Aid for innovation clusters**

- (61) Under Line 8 the aid is granted for the creation and development of innovation clusters in order to support the setting up of clusters and to increase the possibilities for enterprises to make contacts and by this way to establish knowledge flows.
- (62) The access to the clusters is free and the fees charged for using the cluster's facilities and participating in its activities will reflect the costs.

- (63) Beneficiary of the aid shall be the legal entity which is in charge of managing the access to the cluster's premises and facilities and the participation in its activities. Access to the cluster's facilities and activities will not be restricted.
- (64) Eligible investment projects are the setting up, expansion and animation of the following facilities:
  - (a) Facilities for training and research centres;
  - (b) Open-access infrastructures: laboratories and testing facilities;
  - (c) Broadband network infrastructures.
- (65) The eligible costs for these projects relate to investment in land, buildings, machinery and equipment.
- (66) The maximum intensities for aid to these investment projects are at 15% for large enterprises, 25% for medium sized enterprises and at 35% for small enterprises.
- (67) Operating aid for cluster animation can be granted over a maximum of five years for personnel and administrative costs relating to the following activities:
  - (a) Marketing of the cluster to recruit new companies to take part in the cluster;
  - (b) Management of the cluster's open-access facilities;
  - (c) Organisation of training programmes, workshops and conferences to support knowledge sharing and networking between the members of the cluster.
- (68) The intensity of the operating aid can either be at up to 50% of the eligible costs during five years or decline in a linear way from up to 100% in the first year to zero by the end of the fifth year.

**3.9. Aid to SMEs for the acquisition of material assets linked to R&D projects and for infrastructures for the research activities or for the setting up of research centres**

- (69) Under Lines 10 and 11, investment aid to SME is granted on the basis of the Commission Regulation (EC) No 800/2008.
- (70) The aid is granted for the acquisition of new fixed material assets linked to R&D projects and/or with the purpose of the setting up of a research and/or technological centre. Furthermore, the aid is granted for the setting up of any physical infrastructures necessary to the development of the research activities.
- (71) The eligible costs are the costs of equipments, machineries and installations to be used for the setting-up of a new establishment, for the diversification of the output of an establishment into new additional product or for a fundamental change in the overall production process of an existing establishment.
- (72) The maximum aid intensities are at 10% for the medium enterprises and 20% for the small enterprises.
- (73) The Spanish authorities confirmed the respect of the provisions laid down in Article 12 of the Commission Regulation (EC) No 800/08 concerning the specific conditions applicable to investment aid.

### **3.10. Aid for agriculture and fishery**

(74) Under Line 9 of the scheme, special rules for the agriculture and fishery sectors, in case of products listed in Annex I of the EC Treaty, may apply, and an aid intensity up to 100% of the eligible costs for all types of research is allowed, provided that all the following conditions are met:

- the programme is of general interest to the particular sector or sub-sector concerned;
- information that research will be carried out, and with which goal, is published on the internet, prior to the commencement of the research. An approximate date of expected results and their place of publication on the internet, as well as a mention that the result will be available at no cost, must be included;
- the results of the research are made available on internet, for a period of at least 5 years. This information on the internet shall be published no later than any which may be given to members of any particular organization;
- aid shall be granted directly to the researching institution or body and must not involve the direct granting of non-research related aid to a company producing, processing or marketing agricultural products, nor provide price support to producers of such products.

(75) State aid for cooperation pursuant to Article 29 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development is possible if such cooperation has been approved for Community co-financing under that Article and/or the State aid is granted as additional financing pursuant to Article 89 of Regulation (EC) No 1698/2005 under the same conditions and at the same intensity as the co-financing.

(76) Cases of R&D aid for products listed in Annex I to the EC Treaty not fulfilling the conditions in this section are to be examined under the normal rules of the R&D&I Framework.

## **4. ASSESSMENT**

### **4.1. Existence of aid within the meaning of Article 87 (1) of the EC Treaty**

#### *4.1.1. Direct State aid to enterprises*

- (77) The notified scheme allows a limited number of enterprises to be relieved, by means of State resources, of a part of the R&D&I costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens the position of these enterprises in relation to their competitors in the Community and therefore has potentially distorting effects on competition. Products of benefiting enterprises are or might be subject to intra-Community trade and therefore the aid is likely to affect trade between Member States.
- (78) The Commission comes therefore to the conclusion that the notified scheme constitutes State aid within the meaning of Article 87 (1) of the EC Treaty.

4.1.2. *Indirect State aid to enterprises through research in collaboration with publicly funded research organisations*

- (79) According to point 3.2.2 of the R&D&I Framework, in case of collaboration projects carried out jointly by enterprises and publicly funded research organisations, the Commission considers that no indirect State aid is granted to the enterprises through the research organisation due to the favourable conditions of the collaboration if one of the following conditions is fulfilled:
- (a) The participating enterprises bear the full cost of the project.
  - (b) The results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which result from the activity of the research organisation are fully allocated to the research organisation.
  - (c) The research organisation receives from the participating enterprises compensation equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating enterprises. Any contribution of the participating enterprises to the costs of the research organisation shall be deducted from such compensation.
- (80) As indicated under paragraph 35), aid under the scheme will only be granted if one of these options is complied with. The scheme is hence in line with the provisions of point 3.2.2 of the R&D&I Framework.
- (81) The Commission can therefore conclude that the enterprises directly benefiting from the scheme do not receive any additional indirect State aid through the participation in collaboration projects with publicly funded research organisations.

4.1.3. *Indirect State aid to enterprises through contract research or other services related to research carried out by publicly funded research organisations*

- (82) Such services can be part of the eligible costs of an R&D project promoted under the scheme, as mentioned in section 3.1 above. If they are rendered by publicly funded research organisations, the scheme provides that the enterprises must pay for them a realistic market price or, if there is no market price, at a price which reflects its full costs plus a reasonable margin.
- (83) This provision is in line with point 3.2.1. of the R&D&I Framework and the Commission can conclude that the enterprises directly benefiting from the scheme do not receive any additional indirect State aid.

4.1.4. *State aid to research organisations*

- (84) If a research organisation carries out its primary non-economic research activities, notably the conduct of independent R&D for more knowledge and better understanding, including collaborative R&D, the financial support of such activities does not constitute State aid if a cross-subsidisation of the economic activities of the research organisation can be avoided. As mentioned at paragraph 11), the Spanish authorities assured that the research organisations, in

order to avoid such cross-subsidisation, clearly separate these two kinds of activities and their costs and funding.

- (85) As the scheme thus complies with point 3.1.1. of the R&D&I Framework, the Commission concludes that any financial support granted to research organisations in order to promote their primary non-economic activities does not constitute State aid within the meaning of Article 87 (1) of the EC Treaty.

#### **4.2. Lawfulness of the aid**

- (86) By notifying the aid scheme before its implementation, the Spanish authorities complied with their obligation under Article 88 (3) of the EC Treaty.

#### **4.3. Compatibility of the aid**

- (87) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the scheme can be found to be compatible with the common market.

- (88) The Commission has assessed the compatibility of the measures under the notified aid scheme with the common market in the light of the R&D&I Framework which specifies the general provision of Article 87 (3) (c) of the EC Treaty in the field of R&D&I.

- (89) Furthermore, the Commission has examined the proposed aid measures described in section 3.9 above in the light of Article 87(3)(c) of the EC Treaty and of Commission Regulation (EC) No 800/2008 for the part referring to investment State aid to small and medium-sized enterprises.

- (90) The assessment has led to the following observations:

- (91) Pursuant to section 2.1 of the R&D&I Framework and to Article 1.6.c) of the Commission Regulation (EC) No 800/2008, the scheme does not apply to aid for undertakings in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring undertakings in difficulty. As was explained further above in paragraph 12), such undertakings will be excluded from the scope of the notified measure.

- (92) Furthermore, assistance to beneficiaries which are subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market is excluded from the scheme.

##### *4.3.1. Aid for R&D projects*

- (93) The R&D activities supported under the scheme, as indicated in paragraph 30) to 33), are in line with the definitions specified under point 2.2 e) to g) of the R&D&I Framework and hence comply with the R&D&I Framework.

- (94) The eligible costs, as described in paragraph 36), are in conformity with the eligible costs specified in point 5.1.4 of the R&D&I Framework and hence comply with the R&D&I Framework.

(95) The basic aid intensities described in paragraph 37) are in line with point 5.1.2 of the R&D&I Framework. The increases in the intensities foreseen by the Spanish authorities, as described in paragraphs 38) to 40), respect point 5.1.3 of the R&D&I Framework.

#### 4.3.2. *Aid for technical feasibility studies*

(96) The eligible costs and the aid intensities for technical feasibility studies, as described in paragraph 41), are in conformity with the provisions specified in section 5.2 of the R&D&I Framework.

#### 4.3.3. *Aid for industrial property rights costs for SME*

(97) The aid granted for industrial property rights costs for SMEs, as described in paragraph 42), respects the conditions defined in section 5.3 of the R&D&I Framework.

(98) The eligible costs and the aid intensities described in paragraphs 43) and 44) are in conformity with the provisions of section 5.3 of the R&D&I Framework.

#### 4.3.4. *Aid for young innovative enterprises*

(99) The aid for young innovative enterprises as described in paragraphs 45) to 48) are in conformity with the provisions of section 5.4 of the R&D&I Framework.

#### 4.3.5. *Aid for process and organisational innovation in services*

(100) The definitions of process and organisational innovation described in paragraphs 49) to 52) are in line with the definitions foreseen in section 5.5 of the R&D&I Framework.

(101) The eligible costs and the aid intensities as described in paragraphs 53) and 54) are in line with the provisions laid down in section 5.5 of the R&D&I Framework.

#### 4.3.6. *Aid for innovation advisory services and for innovation support services*

(102) The aid granted for innovation advisory services and for innovation support services, described in paragraph 55) respects the conditions defined in section 5.6 of the R&D&I Framework.

(103) The eligible costs and the aid intensities as described in paragraphs 56) and 57) correspond to the provisions of section 5.6 of the R&D&I framework.

#### 4.3.7. *Aid for the loan for highly qualified personnel*

(104) The aid granted for the loan of highly qualified personnel, as described in paragraphs 58) and 59) respects the conditions defined in section 5.7 of the R&D&I Framework.

(105) The eligible costs and the aid intensities as described in paragraph 60) correspond to the provisions of section 5.7 of the R&D&I framework.

#### 4.3.8. *Aid for innovation clusters*

(106) The aid to innovation clusters, as described in paragraphs 61) to 68) is in compliance with section 5.8 of the R&D&I framework. The scheme's objectives for the grant of investment and operating aid, the eligible activities and costs, and the aid intensities comply with section 5.8 of the R&D&I Framework.

#### 4.3.9. *Investment aid to SMEs*

(107) The investment aid to SME, as described in paragraphs 69) to 71), is in compliance with Article 12 and Article 15 of Commission Regulation (EC), No 800/2008.

(108) The aid intensities as described in paragraph 72) are in line with article 15.2.2 of Commission Regulation (EC) n° 800/2008.

(109) As mentioned in paragraph 73), the Spanish authorities committed to respect the specific conditions applicable to investment aid laid down in Article 12 of Commission Regulation (EC) No 800/2008.

#### 4.3.10. *Aid for agricultural and fisheries*

(110) In compliance with chapter 9 of the R&D&I Framework, R&D&I aid concerning products listed in Annex I to the EC Treaty, shall fulfil special criteria in order to get an aid intensity up to 100%.

(111) As described in paragraph 74), R&D&I aid concerning products listed in Annex I to the EC Treaty, shall fulfil special criteria in order to get an aid intensity up to 100%, in compliance with chapter 9 of the R&D&I Framework.

(112) As described in paragraph 75) above, the Spanish authorities confirmed, in accordance with chapter 9 of the R&D&I Framework, that State aid for cooperation pursuant to Article 29 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development is possible if such cooperation has been approved for Community co-financing under that Article and/or the State aid is granted as additional financing pursuant to Article 89 of Council Regulation (EC) No 1698/2005 under the same conditions and at the same intensity as the co-financing.

#### 4.3.11. *Incentive effect*

(113) In line with chapter 6 of the R&D&I Framework, as mentioned in paragraph 18), aid under the scheme can only be granted to projects that have not started before an application for aid has been submitted to the implementing authority.

(114) In addition, according to chapter 6 of the R&D&I Framework and as confirmed in paragraph 19), for aid project for large undertakings and for SME that is at least EUR 7.5 million, aid to process and organisational innovation in services, and aid for innovation clusters, the presence of an incentive effect will be verified at the moment of the aid application.



#### *4.3.12. Reporting and monitoring*

- (115) As mentioned in section 2.10 above, the Spanish authorities undertook to submit annual reports on the implementation of the scheme including also the information necessary to demonstrate the incentive effect of aid granted to large enterprises. In case of clusters, the report will also give a brief description of the activity of the cluster and its effectiveness in attracting R&D&I activity.
- (116) Point 10.1.2 of the R&D&I Framework requires the full text of all final aid schemes to be published on the internet and the internet address of the publication to be communicated to the Commission. The scheme must not be applied before the information is published on the internet. In accordance with point 10.1.3 of the R&D&I Framework, detailed records regarding the granting of aid for all R&D&I measures must be maintained for 10 years. In case that an individual aid granted under the scheme exceeds EUR 3 million, the information requested in the standard form laid down in the Annex to the R&D&I Framework must be provided to the Commission, in accordance with point 10.1.3 of the R&D&I Framework. The reporting and monitoring provisions, as indicated in section 2.10 above, are in line with the provisions of section 10.1 of the R&D&I Framework.

#### *4.3.13. Individual notification*

- (117) As described in paragraphs 21) and 22), under the scheme the individual notification requirements are in accordance with section 7.1 of the R&D&I Framework and of Article 6(1)(a) of Commission Regulation (EC) No 800/2008.

#### *4.3.14. Cumulation*

- (118) As described in paragraphs 23) to 24), the scheme cumulation rules reflect the requirements set out in chapter 8 of the R&D&I Framework and of Article 7 of Commission Regulation (EC) No 800/2008.

#### *4.3.15. Conclusion*

- (119) The Commission therefore concludes that the aid granted under the scheme meets all the provisions of the R&D&I Framework and the relevant provisions of Commission Regulation (EC) No 800/2008.

## **5. CONCLUSION**

- (120) The Commission finds that the aid granted on the basis of the aid scheme in question is compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty and has accordingly decided not to raise objections to the notified scheme.
- (121) The Commission reminds the Spanish authorities to submit annual reports on the implementation of the aid scheme which will comprise the information demonstrating the incentive effects of aid granted to large enterprises.

(122) The Commission further reminds the Spanish authorities that, in accordance with Article 88 (3) of the EC Treaty, all plans to refinance, alter or change the aid scheme have to be notified to the Commission.

The Spanish authorities have indicated that the notification does not contain confidential information, which should not be disclosed to third parties. In consequence, there is agreement to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

[http://ec.europa.eu/community\\_law/state\\_aids/index.htm](http://ec.europa.eu/community_law/state_aids/index.htm).

Yours faithfully,  
For the Commission

*Neelie KROES*  
Member of the Commission