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Subject: State aid N 140/2009 – Spain

Competitiveness plan of the automotive sector – Realisation of investments aimed at the manufacturing of more environmental friendly products

Sir,

1. PROCEDURE

- (1) By electronic notification of 6 March 2009, Spain notified the above mentioned aid measure.

2. DESCRIPTION

2.1. Objective of the aid scheme

- (2) Spain considers that the financial crisis is affecting its whole economy at local regional and country level. Among others, the automotive sector, in Spain as well as in the other Member States, has been particularly and significantly hit by the financial downturn, as recognised in the Commission Communication of 25 February 2009¹. In fact, on one hand, the automotive sector has been concerned by a sharp and uniform drop in demand for passenger and commercial vehicles at both European and world-wide level. In particular, according to the data submitted by the Spanish authorities to the Commission, the number of vehicles registered in

¹ Commission Communication of 25 February 2009, "Responding to the crisis in the European automotive industry", COM (2009)104.

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Spain in 2008 decreased by almost 30% compared to the previous year and fell by almost 50% in the last month of 2008.

- (3) On the other hand, a significant number of companies of the automotive industry are reporting problems with access to credit financing. Some companies, in particular, are unable to get loans on reasonable terms, with credit ratings downgraded in light of market outlook.
- (4) As acknowledged in the mentioned Commission Communication, the automotive industry is one of the key sectors for the economy of many Member States and of the European Union as a whole. As regards more specifically Spain, according to the data provided by the Spanish authorities, the automotive sector (including car manufacturers and car components manufactures) accounts for around 10% of the overall industrial production and for around 20% of the totality of products exported. It employs directly more than 300 000 people and indirectly a large number of retailers and providers of aftermarket services.
- (5) On the basis of the foregoing, the Spanish authorities have decided to adopt the present scheme in order to remedy a serious disturbance in the Spanish economy. More specifically, the Spanish authorities submitted that the present measure is aimed at enabling the automotive industry to (i) face the general situation of economic downturn and (ii) favour its strategic position, once the economic situation has been improved. The Spanish authorities, in particular, intend to focus their intervention on those products segment which will be more competitive in the future such as low emissions vehicles (e.g. electric, hybrid) and whose development may be significantly hindered by the present financial downturn.
- (6) The scheme is explicitly based on Article 87(3)(b) EC Treaty, and relies on the Commission communication 'Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis' (hereinafter 'the Temporary Framework')², in particular on its Section 4.5 concerning aid for the production of green products.

2.2. Legal basis

- (7) The legal basis for the notified measure is the "*Orden ITC/21/23009, de 16 de enero, por la que se establecen las bases reguladoras, y se efectúa la convocatoria de las ayudas para la realización de actuaciones en le marco del Plan de Competitividad del Sector Automoción*" (hereinafter "Orden").
- (8) The Orden contains, apart from the measure notified, a number of other State interventions, described in Paragraph 6(1) indent (1) to (6), and Paragraph 6(1) indent 8. These measures are the following: (i) aid for investments for the realisation of more sustainable or new products; (ii) aid for the improvement of the production processes; (iii) aid for the adoption of very advanced production system, which require the adoption of information and communication technology; (iv) the realisation of studies and trainings related to the above mentioned measures. The Spanish authorities clarified that they consider such measures to fall under the scope of application of the General Block Exemption Regulation³

² OJ C 16, 22.1. 2009, p. 1, as amended on 25 February 2009 (not yet published).

³ OJ L 214, 9.8. 2008, p. 3. Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation).

(GBER) and have, therefore, not included these measures in the present notification. As a result, these measures are not covered by the present decision.

2.3. Administration of the scheme

- (9) The notified measure is a national-wide scheme. The aid will be granted by the Spanish Ministry for Industry, Tourism and Commerce.

2.4. Beneficiaries

- (10) The scheme applies to companies of all sizes: both SMEs and large firms. Its geographic scope covers the whole territory of Spain.
- (11) The Spanish authorities confirmed that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulties in the meaning of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty⁴, nor to SMEs which were on that date firms in difficulties in the meaning of Art. 1 (7) of the GBER. The aid may be granted to firms that were not in difficulty at that date, but entered into difficulty thereafter as a result of the global financial and economic crisis.
- (12) As regards the beneficiaries, according to the wording of the Orden, the beneficiaries of this measure will be car and car components manufacturers. As regards the latter, the text of the decree clarifies that only the undertakings which derive 40% or more of their turnover from the manufacturing of car components can benefit of the measures contained in the present scheme. Furthermore the Spanish authorities have also clarified that aid under the present scheme can only be granted for the production of components, the integration of which into the final products contributes to an early adaptation to or going beyond future Community standards of the final product.
- (13) However the Spanish authorities informed the Commission that, on the basis of the applications received at the closure of the application period (13 February 2009), only car manufacturers would most likely meet the requirements to receive aid under the present scheme.

2.5. The nature and form of the aid

- (14) The aid will be granted in the form of interest rate subsidy for investment loans for production of green products.
- (15) The subsidised interest rates relate to investment loans for financing projects which consist of the production of green cars and car components which contribute to the realisation of green cars and thereby significantly improve environmental protection. The aid is granted only for projects consisting of production of products involving early adaptation to or going beyond future Community product standards which increase the level of environmental protection and are not yet in force⁵.

⁴ OJ C 244, 1.10. 2004, p. 2.

⁵ Future Community product standard means a mandatory Community standard setting environmental levels to be attained for products sold in the Community which has been adopted but is not yet in force.

(16) The measure may be applied also to components integrated into the final product. In these cases the aid will only be granted for such components where their integration into the final products contributes to an early adaptation to or going beyond future Community standards of the final product.

(17) As an example, the Spanish authorities reckon that the measure could be applied to the following standard, which concerns the car industry:

The Euro 6 emission limits laid down in Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and 6) and on access to vehicle repair and maintenance information.

(18) The aid is granted for launching a new project, existing projects may only receive aid if it becomes necessary due to current economic downturn which threatens the existing financing. The investments should begin on 31 December 2010 at the latest with the aim of putting the products on the market at least 2 years before the standard enters into force.

(19) The subsidised interest rate applies during a maximum period of 2 years following granting of loan.

(20) The Spanish authorities explained that the loans cover the costs of investment in tangible and intangible assets with the exception of costs related to the investments for the increase production capacities.

(21) The reduction in the interest rate may be applied to loans provided by the State mainly through the Ministry of Tourism, Industry and Commerce. The loans are granted on 31 December 2009 at the latest.

(22) Moreover Spain confirmed that the aid will not be directly or indirectly transferred to financial entities.

2.6. Aid amount calculation

(23) The minimum interest rates will be determined as follows:

- For large enterprises: $0.75 \times [\text{Central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1.1.2007 to 30.6.2008, plus the credit risk premium based on the rating of the beneficiary and collateral offered, as stipulated by the Commission communication on the revision of the method for setting the reference and discount rate}^6, \text{taking into account the situation of the beneficiary at the moment when the loan is granted}]$;
- For SMEs: $0.5 \times [\text{Central bank overnight rate plus a premium equal to the difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1.1.2007 to 30.6.2008, plus the credit risk premium based on the rating of the beneficiary and collateral offered, as stipulated by the Commission communication on the revision of the method for setting the reference and discount rate taking into account the situation of the beneficiary at the moment when the loan is granted}]$.

⁶ OJ C 14, 19.1.2008, p. 6.

- (24) The Spanish authorities apply the EONIA rate published two⁷ days before the granting of the rate as the central bank overnight rate.
- (25) The Spanish authorities confirmed that no collateralisation or warranty will be asked under the present scheme.
- (26) The Spanish authorities provided a theoretical calculation example in order to illustrate the above described method. For instance, if a subsidised loan would have been granted on 11 February 2009 to a large company whose credit rating is BB and offering a low level of collateralisation, the resulting loan rate would be
 - 1.24 % (central bank overnight rate);
 - plus 0.64 % (difference between the average one year interbank rate and the average of the central bank overnight rate over the period 1.1.2007 to 30.6.2008);
 - plus 4% margin loan (based on the rating of the beneficiary and low collateralisation).
 - Multiplied by 0.75% (given that the beneficiary is a large enterprise)

This leads to an interest rate of 4.41375 %.

2.7. Budget and duration of the measure

- (27) According to the text of the Orden, the overall budget to finance the measures contained therein is Euro 690 million. However, the Spanish authorities identified the common budgetary ceiling of Euro 300 million for the implementation of this specific notified measure (N 140/2009). They further specified in a further correspondence to the Commission annexed to the notification, that, on the basis of the application received by 13 February 2009, they do not estimate the budget for this measure to exceed Euro 100 million.

2.8. Cumulation

- (28) The aid granted under the notified measure cannot be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs.
- (29) As regards *de minimis* aid, the Spanish authorities confirm that the rules laid down in Section 4.7 of the Temporary Framework⁸ will be respected.

2.9. Monitoring and reporting, business secrets

- (30) The Spanish authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected.

⁷ The two days difference is due to administrative procedures internal at the Spanish administration.

⁸ Section 4.7 of the Temporary Framework: 'The temporary aid measures foreseen by this Communication may not be cumulated with aid falling within the scope of the *de minimis* Regulation for the same eligible costs [...]. The amount of *de minimis* aid received from 1 January 2008 must be deducted from the amount of compatible aid granted for the same purpose under points 4.3, 4.4, 4.5 or 4.6.' The temporary aid measures may be cumulated with other compatible aid or with other forms of Community financing provided that the maximum aid intensities indicated in the relevant guidelines or block exemptions Regulations are respected.

- (31) In addition the Spanish authorities undertake to provide information on the relevant future Community standards and on the related environmental benefits when providing detailed information.
- (32) Furthermore, Spain confirms that it will provide the following information:
 - a breakdown by sector or category of undertakings of the loans awarded in both absolute terms and percentage;
 - a breakdown of the loans awarded distinguishing between (i) financing of new products and (ii) completion of already initiated projects;
 - impact of the restrictions contained in point 4.5.2 e) of the Temporary framework (e.g. number of applications rejected due to the non-compliance with this clause).
- (33) The Spanish authorities confirm that the notification does not contain business secrets.

3. ASSESSMENT

3.1. Legality of the measure

- (34) By notifying the aid measure before putting into effect, the Spanish authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Existence of state aid

- (35) According to Article 87 (1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.
- (36) State resources are involved in the notified scheme since the aid is granted from State resources, via the respective aid granting authorities at national level.
- (37) The measure is selective since it will be granted only to certain firms.
- (38) The measure conveys an advantage to beneficiaries by granting them investment loans with subsidised interest rates which would not be probably available on the market in the absence of the notified measure. Consequently, the aid will strengthen the financial position of beneficiaries in relation to its competitors in the Community and therefore will have potentially distorting effects on competition.
- (39) The measure affects trade between Member States since the scheme is not limited to beneficiaries which are active in sectors where no intra-community trade exists.
- (40) In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 87 (1) of the EC Treaty.

3.3. Compatibility of the measure

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

- (42) The measure aims at remedying disturbances in the Spanish economy. In particular the measure aims at facilitating the access of firms to finance in a period of time where the normal functioning of credit markets is severely disturbed through the financial crisis, and where the financial crisis ("credit crunch") is affecting the wider economy and is leading to severe disturbances of the real economy of Member States. The credit crunch has significantly affected the automotive industry in Spain as well as in other Member States, as recognised by the Commission in its mentioned communication.
- (43) The difficulty in accessing financing may negatively and significantly impact the development and/or the adoption of green products. The costly character of projects aimed at increasing environmental protection may, in fact, discourage or delay companies' investments in these segments.
- (44) By adopting the Temporary Framework on 17 December 2008, the Commission indeed acknowledged (section 4.1) the 'seriousness of the current financial crisis and its impact on the overall economy of the Member States'. The Commission concluded 'that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b).'
- (45) In view of the arguments put forward by the Spanish authorities, the Commission considers that the notified measure, including its focus on the automotive industry (which, according to the data provided by the Spanish authorities and detailed in point 2 to 6 of the present decision, is a sector of material importance for the Spanish economy and has been significantly and negatively hit by the present financial crisis), is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, and meets all the conditions of the Temporary Framework: In particular,
- the aid relates to investment loans for financing projects consisting of production of new products which significantly improve environmental protection.(point 4.5.2 a);
 - the aid is necessary for launching a new project; in the case of existing projects, aid may be granted if it becomes necessary, due to the new economic situation, in order to pursue the project (point 4.5.2 b);
 - the aid is granted only for projects consisting of production of products involving early adaptation to or going beyond future Community product standards, namely as described in point 13, the compliance in particular with Euro 6 emission limits , which increase the level of environmental protection and are not yet in force (point 4.5.2 c)⁹.
 - for products involving early adaptation to or going beyond future Community environmental standards, the investment starts on 31 December 2010 at the latest with the objective of putting the product on

⁹ In particular compliance must be ensured by obtaining EC type approval for Euro 6 vehicles which does not only cover emission limits but also other technical requirements. This is the more important, since for petrol cars, the emission limits do not change from Euro 5 to Euro 6 and the "significant environmental improvement" of the vehicle can thus only lie in fulfilling those additional requirements.

- the market at least two years before the standard enters into force (point 4.5.2 d)¹⁰;
- as described in point 16, the Spanish authorities comply with the requirement that the loans cover the costs of investment in tangible and intangible assets with the exception of loans for the realisation of investments which would result in the increase of the production capacity of the beneficiary (point 4.5.2 e);
 - as described in point 17, loans are granted on 31 December 2009 at the latest (point 4.5.2 f);
 - as described in points 21-22, the aid is calculated on the basis of the methodology laid down in Section 4.4.2 and complies with the maximum reduction limits laid down in point 4.5.2 g), i.e. 25 % for large companies and 50 % for SMEs (point 4.5.2 g). In particular, the Commission agrees to the calculation submitted by the Spanish authorities for the subsidised loan rate and the sources chosen for the central bank overnight and one year interbank rates.;
 - as described in point 15, the subsidised interest rate applies during a maximum period of 2 years following the granting of loan (point 4.5.2 h);
 - as described in point 17, the reduction in the interest rate applies to loans granted by the State directly through the Ministry for Industry, Tourism and Trade, without the involvement of any other private or financial institutions¹¹;
 - the aid is granted to firms which were not in difficulty on 1 July 2008; it may be granted to firms that were not in difficulty at that date but entered in difficulty thereafter as a result of the global financial and economic crisis (point 4.5.2 j);
 - as described in point 18, Spain ensures that the aid is not directly or indirectly transferred to financial entities (point 4.5.2 k);
 - as described in point 27, the present scheme complies with the rules on cumulation of different aid measures set out by the temporary framework(section 4.7.);
 - as described in point 28, the Spanish authorities will respect the monitoring and reporting obligations as laid down in Section 6 of the Temporary Framework. The Commission notes in this context that the Spanish authorities undertook to provide additional information concerning the applicable Community standards and related

¹⁰ In particular, with regard to EC type approval legislation on motor vehicles (Cf. the separate legal acts listed in Annex IV of Directive 2007/46/EC of 5 September 2007, OJ L 263 of 9.10.2007, p.1); the relevant date of entry into force of the standard is the date as of which national authorities shall consider certificates of conformity to be no longer valid and shall prohibit the registration, sale or entry into service of new vehicles not complying with the relevant standard. For the Euro 6 limit values, the relevant date for vehicles falling under the scope of this regulation is thus 1 September 2015 for vehicles of category M1, M2 and N1 class I and 1 September 2016 for category N1 class II and III and category N2 vehicles (Cf. Article 10 of Regulation 715/2007). The Spanish authorities have confirmed that all projects aiming at the early introduction of Euro6 emission values have the realistic objective of putting the complying vehicles on the market at least by 1 September 2013 or 1 September 2014 respectively.

¹¹ Given that no private or public institutions is involved in the procedure for the award of the loan, the provision contained in point 4.5.(i) of the temporary framework is not relevant for this case.

environmental benefits and further details on implementation of the notified measure as described in points 28 and 29 above.

3.4. Conclusion

- (46) For these reasons, the Commission considers that the notified measure is in conformity with the Temporary Framework and considers it to be compatible with the EC Treaty on the basis of Article 87(3)(b). The Commission notes that the notification does not contain business secrets.

4. DECISION

- (47) The Commission has accordingly decided to consider the notified aid scheme 'Temporary aid for the production of green products' as compatible with the EC Treaty under Article 87(3)(b).

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission