EUROPEAN COMMISSION

Brussels, 18.12.2013
C(2013) 8454 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: State aid SA.36387 (2013/C) (ex 2013/NN) – Spain
Alleged aid in favour of three Valencia football clubs

Sir,

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the alleged aid referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (thereafter TFEU).

1. Procedure

(1) In April 2011, the Commission closed a preliminary investigation[1] regarding a possible guarantee in favour of Valencia CF on a bank loan of EUR 75 million. The Spanish authorities had assured the Commission that no such loan guarantee of the Regional government of Valencia had been granted.

(2) On 1 October 2012, the Commission wrote a letter to all Member States to get an overview of the financing of professional football in the EU and the possible impact of the application of the State aid rules of the TFEU on this financing. In its letter, the Commission underlined that professional football clubs should receive no exceptional treatment compared to other undertakings as regards the financial relations with the State. Spain replied to this letter on 5 December 2012. Spain assured the Commission that it has no knowledge about any State aid measure in favour of professional football in Spain.

---

[1] SA.29494 (CP 288/09) – Valencia Football Club.

Excmo. Sr. D. José Manuel García-Margallo y Marfil
Ministro de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

(3) However, the attention of the Commission was drawn by press reports and information sent by citizens in 2012-2013 to allegations that State aid in the form of loan guarantees was granted by the regional government of Valencia ("Generalitat Valenciana") in favour of three football clubs in Valencia: *Valencia Club de Fútbol Sociedad Anónima Deportiva* ("Valencia CF"), *Hércules Club de Fútbol Sociedad Anónima Deportiva* ("Hercules CF") and *Elche Club de Fútbol Sociedad Anónima Deportiva* ("Elche CF"). According to these reports, the State guarantee in favour of Valencia CF was subsequently increased at least twice, in order to cover overdue capital, interest and costs. Spain was asked to comment on these reports on 8 April 2013. Spain sent information to the Commission on 27 May and 3 June 2013.

2. The beneficiaries

(4) Valencia CF is a professional Spanish football club based in Valencia, founded in 1919. It participates in the Spanish first league ("La Liga") and is one of the biggest football clubs in Spanish and European football. Valencia has won six La Liga titles and seven Copa del Rey trophies. In the all-time La Liga table, Valencia is in third position behind Real Madrid and FC Barcelona. It has also reached seven major European finals, winning four of them. Valencia has also been a member of the G-14 group of leading European football clubs. It is the third most supported by fans football club in Spain. It is also one of the biggest clubs in the world in terms of number of associates (registered paying supporters), with more than 50 000 season ticket holders and more than 20 000 season ticket holders on the waiting list, playing its home games at the Mestalla stadium, which seats 55 000 spectators.[2]

(5) Table 1 below includes the data on the financial performance of Valencia CF and shows that it has deteriorated significantly in the period 2008-2012.

Table 1: Key financial data of Valencia CF 2007 – June 2012 (EUR million)

	2007	2008	2009	2010	2011	June 2012
Turnover	107.6	99.4	82.4	101.3	116.8	119.6
EBT	-26.1	12.4	-59.2	17.9	0.1	8.3
EBT margin (ratio)	-0.24	0.12	-0.72	0.18	0.00	0.07
Registered capital	9.2	9.2	9.2	101.7	101.7	101.7
Own equity	-26.3	5.9	-33.3	57.3	55.4	57.6
Debt/Equity (ratio)	-11.1	73.5	-16.5	8.0	6.9	6.6

** EBT*

(6) Hercules CF is a professional Spanish football club based in Alicante, in the region of Valencia. Founded in 1922, it currently plays in the Spanish second division, and holds home games at the José Rico Pérez stadium, which seats 30 000 spectators.[3] According to the available 2011 financial data of Hercules CF, in 2011 it had negative EBT (EUR -17.6 million) and negative equity (EUR -29.4 million).

---

[2] Wikipedia, http://en.wikipedia.org/wiki/Valencia_CF.

[3] Wikipedia, http://en.wikipedia.org/wiki/H%C3%A9rcules_CF.

(7) Elche CF is a professional Spanish football club based in Elche, Province of Alicante, in the region of Valencia. Founded in 1923, it currently plays in La Liga, holding home matches at the Manuel Martínez Valero stadium, which seats 38 750 spectators.[4] The Commission is not in a possession of reliable financial data of this club at this stage.

(8) All three clubs are incorporated as sport limited companies. Their majority owners appear to be the respective Fundacions. At the moment the Commission has reasons to believe that the majority owners of the three clubs are the respective Fundacions.

3. Description of the measures

3.1. Measure 1: the 2009 State guarantee in favour of Valencia CF

(9) In 2009, the *Instituto Valenciano de Finanzas* ("IVF") provided a guarantee for a bank loan of EUR 75 million from Bancaja (now Bankia) to *Fundación Valencia Club de Fútbol* ("Fundacion Valencia"). IVF is a public financing institution under the control of the Generalitat Valenciana, and the latter's representatives also participate in IVF's General Council and Investment Committee. Fundacion Valencia is a non-profit organisation in the Valencia region, which was established in 1996 with the mission of developing sports projects and which is not involved in economic activities. Purpose of the loan was to finance the acquisition of shares of Valencia CF by the Fundacion Valencia, in the context of the capital increase decided by Valencia CF. The guarantee covered 100% of the loan's principal + interest + costs of the guaranteed transaction. There was an annual guarantee premium of 0.5% for the State, to be paid by the Fundacion Valencia. As a counter guarantee, IVF received a pledge on shares of Valencia CF, owned by Fundacion Valencia. The duration of the underlying loan was 6 years, with a grace period of 4 years. The interest rate of the underlying loan was equal to Euribor 1 year + 3.5% margin + 1% commitment fee.

3.2. Measure 2: the 2010 State guarantee in favour of Hercules CF

(10) In 2010, IVF provided a guarantee for a bank loan of EUR 18 million from *Caja de Ahorros del Mediterraneo* ("CAM") to *Fundación Hercules de Alicante* ("Fundacion Hercules"), an organisation with the mission of promoting social welfare and matters related to Hercules CF, not involved in economic activities. Purpose of the loan was to finance the acquisition of shares of Hercules CF by the Fundacion Hercules, in the context of the capital increase decided by Hercules CF, through a capital injection. The guarantee covered 100% of the loan's principal + interest + costs of the guaranteed transaction. There was an annual guarantee premium of 1% for the State, to be paid by the Fundacion Hercules. As a counter guarantee, IVF received a pledge on shares of Hercules CF, owned by Fundacion Hercules. The duration of the underlying loan was 5 years, with a grace period of 5 years. The interest rate of the underlying loan was equal to Euribor 1 year + 1% margin + 0.5% commitment fee.

3.3. Measure 3: the 2013 State guarantee in favour of Elche CF

(11) In 2013, IVF provided a guarantee for two bank loans of totally EUR 14 million, from CAM (EUR 9 million) and from Banco de Valencia (EUR 5 million), to *Fundación*

---

[4] Wikipedia, http://en.wikipedia.org/wiki/Elche_CF".

Elche Club de Fútbol ("Fundacion Elche"), a non-profit organisation in the Valencia region, with the mission of promoting and developing sports-related activities, not involved in economic activities. Purpose of both loans was to finance the acquisition of shares of Elche CF by the Fundacion Elche, in the context of the capital increase decided by Elche CF through a capital injection. The guarantee covered 100% of the loan's principal + interest + costs of the guaranteed transaction. There was an annual guarantee premium of 1% for the State, to be paid by the Fundacion Elche. As a counter guarantee, IVF received a pledge on shares of Elche CF, owned by Fundacion Elche. The duration of the underlying loan was 5 years, with a grace period of 5 years. The interest rate of the underlying loan was equal to Euribor 1 year + 3.5% margin + 0.5% commitment fee.

3.4. Measure 4: the 2010 and 2013 increases of the 2009 State guarantee in favour of Valencia CF

(12) In November 2010 and in February 2013, IVF increased its guarantee to the Fundacion Valencia by EUR 6 million and EUR 5 million, respectively. Purpose of the guarantee increases was to cover overdue capital, interest and costs, stemming from defaulted payments of the guaranteed loan.

4. Comments by the Spanish authorities

(13) The Spanish authorities have submitted the information presented in recitals (9)-(12) above. They have not presented any comments regarding the qualification of the measures in question as State aid and any possible compatibility with TFEU.

5. Assessment of the aid

5.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

(14) According to Article 107(1) TFEU, "*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, in so far as it affects trade between Member States, be incompatible with the internal market*".

(15) In order to be classified as a state aid, the notified project must thus fulfil the following cumulative conditions: 1) the measure must be granted through State resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and distort or threaten to distort competition; and 4) the measure must affect intra-Community trade.

5.1.1. Support for an economic activity

(16) Firstly, it should be noted that all of the football clubs in question are active in professional football, which must be qualified as an economic activity in line with the jurisprudence of the Court of Justice[5] in this regard. Regardless of their legal forms,

[5] Case C-415/93 *Bosman*, paragraph 73, Case C-519/04 P *Meca-Medina and Majcen* v *Commission*, paragraph 22 and C-325/08 *Olympique Lyonnais*, paragraph 23.

those football clubs must be deemed to constitute undertakings in the meaning of Article 107(1) TFEU.

5.1.2. Difficulties of Valencia CF, Hercules CF and Elche CF

(17) The Commission observes that, as set out in detail in table 1 below, the financial performance of Valencia CF has deteriorated significantly in the period 2008-2012.

(18) Point 10(a) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ("R&R Guidelines")[6] stipulates that a company is in difficulty when "*more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months*". This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term (as stipulated in point 9 of the R&R Guidelines).

(19) In the case of Valencia CF, as it appears in its financial statements, in the period 2007-2009 (which in the case at hand is the critical one because the first State aid measure under scrutiny was granted in 2009), the registered capital was not lost, but it remained stable. However, the Commission notes that over the same period the company's equity was mostly negative. In earlier cases,[7] the Commission concluded that, where a company has negative equity, there is an *a priori* assumption that the criteria of point 10(a) are met. The General Court also concluded in a recent judgment[8] that a company with negative equity can be considered as a company in difficulty in the sense of the R&R Guidelines.

(20) The Commission finally notes that Valencia CF has incurred significant losses since 2007, passing from losses of EUR 26.1 million in 2007 to losses of EUR 59.2 million in 2009. The turnover was also decreased from 2008 until 2009. In addition, Valencia CF had significant levels of debt, as can be seen by its Debt-to-Equity ratio (which reached, for example, 73.5 in 2008).

(21) Furthermore, in 2011 and until June 2012 Valencia CF had increased turnover and presented earnings. However, those were not sufficient to allow the company's financial recovery: indeed, during the same period, the company's level of profits remained very low, as can be seen from its profit margins, and its debt remained at significant levels.

(22) The elements above suggest that Valencia CF could also be deemed to be in difficulty in the sense of point 11 of the R&R Guidelines, which states that a firm may be considered to be in difficulty "*where the usual signs […] are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value*".

(23) Accordingly, the Commission is of the view that Valencia CF could be considered as a firm in difficulty at the time when the measures identified were provided.

---

6 OJ C 244, 1.10.2004, p. 2.

7 Commission Decision in case C 38/2007 *Arbel Fauvet Rail*, OJ L 238, 5.9.2008, p. 27.

8 Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, [2010] ECR II-585.

(24) According to the available 2011 financial data of Hercules CF (see recital 7 above), in 2011 it had negative EBT (EUR -17.6 million) and negative equity (EUR -29.4 million). These elements suggest that Hercules CF could be deemed to be in difficulty in the sense of points 10(a) and 11 of the R&R Guidelines, under the same analysis as for Valencia CF in recitals (19)-(23) above, at the time of the 2011 measure in its favour.

(25) As regards Elche CF, the Commission is not in possession of its financial data, however the information from press reports available to the Commission indicate that Elche CF is facing financial difficulties, since it appears that there are doubts of the Generalitat Valenciana with regards to the viability of Elche CF, and also that the latter is in the process of discussing a payment schedule for the loan which was guaranteed by IVF. Accordingly, the Commission cannot exclude at this stage that also Elche CF could be considered as a firm in difficulty.

5.1.3. Existence of an advantage in measures 1, 2, 3 and 4

(26) As all measures involve State guarantees, the Commission takes account of the *Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees* ("Guarantee Notice"),[9] sections 2.2 and 3.2. The Guarantee Notice stipulates that the fulfilment of certain conditions could be sufficient for the Commission to rule out the presence of State aid, such as that the borrower is not in financial difficulty and that the guarantee does not cover more than 80% of the outstanding loan or other financial obligation. However, when the borrower does not pay a risk-carrying price for the guarantee, it obtains an advantage. Moreover, where the borrower is a firm in financial difficulty, it would not find a financial institution prepared to lend on any terms, without a State guarantee.

(27) In the case at hand, the Commission has no indication of the corresponding guarantee premium benchmark that could be found in the financial market for similar guarantees as those granted by IVF. However, the annual guarantee premiums of 0.5% for buying the shares in Valencia FC and 1% for buying the shares in Hercules CF and Elche CF do not *prima facie* appear to reflect the risk of default for the guaranteed loans, given the fact that Valencia CF, Hercules CF and Elche CF seem to have been in difficulties at the time of the granting of the guarantees in question. Indeed, apart from the negative financial results of Valencia CF, based on the information from the Spanish authorities and from press reports available to the Commission, it appears that also the capital injections to Hercules CF and Elche CF took place in order to restore the beneficiaries' lack of liquidity and resources, in view of the failure to service their debts, due to negative economic results.

(28) In addition to being granted to firms seemingly in difficulty, the Commission further notes that the guarantees cover 100% of the guaranteed amounts. This suggests that market operators are not willing to bear the risk of insolvency of the beneficiaries Thus, the Commission doubts whether the beneficiaries would be able to obtain the guarantees in question for that price and conditions on the market. Furthermore, in the absence of the State guarantee, the Commission doubts as to whether any financial institution would be prepared to lend to the beneficiaries on any terms.

---

9 *OJ C 155, 20.6.2008, p. 10.*

(29) Thus, in view of the above, the Commission considers at this stage that the guarantees provided by the State in 2008, 2010 and 2011 conferred an advantage to the entities which benefitted from the loans. At this stage, the Commission considers that the entities that ultimately benefitted from the State guaranteed loans economically were the football clubs Valencia CF, Hercules CF and Elche CF as the loans and the guarantees were granted in order to buy the shares which were newly issued by the clubs in order to increase their own capital. As the Fundacions do not seem to have any economic activity and are the majority shareholder of the clubs, the decision to invest in these shares does not seem as a classical investment decision in order to generate revenue but rather as a vehicle to finance the increase of their own capital. However, given the limited information that the Commission received so far, it cannot be excluded at this stage that Fundacion Valencia, Fundacion Hercules and Fundacion Elche did also benefit from the identified measures rather than being pure intermediaries, between the State and the beneficiaries, for the granting of the aid.

5.1.4. Remaining conditions of Article 107(1) TFEU

(30) In order to be considered aid in the sense of Article 107(1) of the TFEU, a measure must be granted directly or indirectly from state resources and it must be imputable to the State. According to case law, resources of an undertaking are to be considered state resources if the State is capable, by exercising its dominant influence over such undertakings, to direct the use of their resources.[10]

(31) The Commission first notes that all measures under scrutiny were subscribed in their entirety by IVF. According to the institutional information provided in IVF's website[11], IVF was created by Law 7/1990 (28 December 1990), as a public law entity subject to the Government, and is intended to act as the main instrument of public credit policy and contribute to the exercise of the powers of the Spanish government on the financial system. IVF is a public financing institution under the control of the Generalitat Valenciana, and the latter's representatives also participate in IVF's General Council and Investment Committee. At present, IVF is attached to the Ministry of Finance and Public Administration.[12]

(32) On the basis of the above, the Commission observes that the very objective of this entity is closely linked to the public administration and to the implementation of public authority decisions. The public nature of the undertaking's activities is an essential indicator of the imputability of an undertaking's conduct to the State,[13] in particular in so far as the undertaking is used by the State as a vehicle for the implementation of a policy[14] rather than for the pursuit of a purely commercial purpose.[15] Spain has not presented any arguments with regard to this indicator. Moreover, it is noted that representatives of the Generalitat Valenciana participate in

---

[10] Case C-482/99 French Republic/Commission (Stardust Marine) [2002] ECR I-4397.

[11] http://www.ivf.gva.es/

[12] http://www.ivf.gva.es/p.aspx?pag=InformacionInstitucional.

[13] *Stardust Marine*, § 56; *Air France*, § 58.

[14] *Steinlike & Weinlig v. Germany*, 78/76, judgment of 22 March 1977, §§ 17-18.

[15] *Pearle BV et al. v. Hoofdbedrijfschap Ambachten,* C-345/02, judgment of 15 July 2004, § 37.

IVF's General Council (see recital 9 above). Therefore, on the basis of the above, the Commission at this stage considers that the Spanish State had a clear and direct influence on IVF.

(33) On the basis of the above considerations, the Commission considers at this stage that the Spanish State had a clear and direct influence on IVF. In addition to the fact that the Spanish State is the sole shareholder of IVF, it also appears that representatives of the Generalitat Valenciana also participate in IVF's General Council and Investment Committee.

(34) In addition to the above, also the information from press reports available to the Commission indicate that the operation in favour of Valencia CF and the other two clubs has the support of Generalitat Valenciana through IVF, in order to offload Valencia CF, Hercules CF and Elche CF of their problems and to ensure that they remain under local ownership.

(35) In the light of the above, the Commission is of the view that the measures granted by IVF consist of State resources and are imputable to Spain.

(36) Furthermore, the State measures are selective as they are for the benefit of single undertakings of one sector. Indeed, the State measures in question allowed Fundacion Valencia, Fundacion Hercules and Fundacion Elche to receive loans and thus finance the acquisition of Valencia CF, Hercules CF and Elche CF, through capital injections.

(37) Finally, the advantage for a club playing in the national first league may furthermore have an effect on competition and trade between Member States. These clubs compete for presence in European competitions and are active on the markets for merchandising and TV rights. Broadcasting rights, merchandising and sponsoring are sources of revenue for which first league clubs compete with other clubs within and outside their home country. The more money clubs have available for top players the more success they may have in sport competitions, which promises more revenue from the activities mentioned. Furthermore, the ownership structure of the clubs is international.

(38) Therefore, the Commission considers at this stage that financial State support ultimately providing an advantage to the professional sport clubs Valencia CF, Hercules CF and Elche CF constitutes State aid in the meaning of Article 107(1) TFEU.

5.2. Legality

(39) The identified measures were granted in breach of the notification and stand-still obligations established in Article 108(3) TFEU. Thus, the Commission considers at this stage that the measures ultimately benefitting Valencia CF, Hercules CF and Elche CF qualify as unlawful State aid.

5.3. Compatibility of the aid

(40) The Commission must assess whether the aid measures identified above can be considered to be compatible with the internal market. According to the jurisprudence

of the Court, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met.[16]

(41) The Commission will assess whether the aid measures can be found compatible under Article 107(3)(c) TFEU allowing aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(42) In its assessment of the notion of "development of economic activities" in the sports sector, the Commission takes due account of Article 165 (1) and the last indent of Article 165 (2) TFEU which provide that the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

For its assessment of aid measures under article 107(3)(c) TFEU the Commission has issued a number of Regulations, Frameworks, Guidelines and Communications concerning aid forms and horizontal or sector purposes for which aid is awarded. In view of the nature of the measures at issue and that the football clubs in question seemed to face financial difficulties and the aid was awarded with the aim to address those difficulties, the Commission believes that it is appropriate to assess whether the criteria laid down in the R&R Guidelines might apply. At this stage, the Commission does not see any other objective justifying the aid under Article 107(3)(c) TFEU.

(43) At this stage the Commission however doubts that the identified aid measures could be declared compatible with the R&R Guidelines, because it seems that several of the conditions and principles of the latter would not be met.

(44) The Commission first notes that the conditions for rescue and restructuring aid laid down in sections 3.1 and 3.2 of the R&R Guidelines do not seem to be met. In particular, section 3.1.1 of the Rescue and restructuring guidelines lays out the conditions for the provision of rescue aid, among which that *"in the case of non-notified aid the Member State must communicate, no later than six months after the first implementation of a rescue aid measure, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and /or that the guarantee has been terminated."*. However, the Spanish authorities have not provided any information as to whether any of the measures have been terminated. Also, no restructuring or liquidation plan has been communicated to the Commission, nor have the conditions for authorising restructuring aid under section 3.2.2 of the R&R Guidelines apparently been fulfilled, relating in particular to the restoration of long-term viability (paragraph 34 and seq.), avoidance of undue distortions of competition (paragraph 38 and seq.) and aid limited to the minimum: real contribution, free of aid (paragraph 43 and seq.). In addition, the Commission notes that the State appears to have provided repeated measures in favour of Valencia CF (in 2009 and 2013), while the latter was in difficulty. Thus the condition under section 3.3 of the R&R guidelines ("one time, last time") does not seem to be met, at least in case of Valencia CF, either.

(45) Finally, the Commission highlights the fact that the Spanish authorities have not provided arguments as to the possible compatibility of the measures under scrutiny as restructuring aid or under any other derogation of Article 107(2) and (3) TFEU.

[16] C-364/90, Italy v Commission, point 20.

(46) On the basis of the above, at this stage the Commission has doubts on the compatibility of the different measures identified with the internal market.

6. Statement of the Commission's doubts

(47) Accordingly, the Commission cannot exclude that the 2009 and 2013 State guarantees granted to cover loans to Fundacion Valencia, Fundacion Hercules and Fundacion Elche in order to acquire shares in the context of the capital increase of Valencia FC, Hercules FC and Elche FC through capital injections, as well as the 2010 and 2013 increases of the 2009 State guarantee covering loan to Fundacion Valencia, comprise an element of State aid which is not compatible with Article 107(3)(c) TFEU. This is based on the following doubts on which the Commission invites Spain to provide relevant and concise information.

(48) The Commission doubts that Valencia FC, Hercules FC and Elche FC were not firms in difficulty at the time of the granting of the measures under scrutiny. Based on the information available to the Commission, it appears that the capital injections in question took place in order to restore the beneficiaries' lack of liquidity and resources, in view of negative economic results.

(49) The Commission doubts that the annual guarantee premiums of 0.5% for Valencia FC and 1% for Hercules CF and Elche CF reflect the risk of default for the guaranteed loans, given the fact that the beneficiaries seem to have been in difficulties at the time of the granting of the guarantees in question.

(50) The Commission doubts that IVF granted the guarantees in question under market criteria, in particular after examining the financial situation and viability prospects of the entities which ultimately benefitted from the loans. Those entities were Valencia CF, Hercules CF and Elche CF, because the guaranteed loans were issued, and indeed used, in order to finance the capital injections into Valencia CF, Hercules CF and Elche CF.

(51) The Commission doubts that IVF's decisions to grant the guarantees in question was not decisively influenced by the Spanish authorities, since IVF appears to be an integral part of the Spanish State and also representatives of the Generalitat Valenciana participate in IVF's General Council.

(52) The Commission doubts that Fundacion Valencia, Fundacion Hercules and Fundacion Elche may have also benefitted from the identified measures rather than being pure intermediaries, between the State and the beneficiaries, for the granting of the aid.

(53) The Commission doubts that the aid measures under scrutiny could be declared compatible with the R&R Guidelines, because it seems that several of the conditions and principles of the latter would not be met (see recital 45 above).

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Spain to submit its comments and to provide all such information as may help to assess the aid within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately.

The Commission wishes to remind Spain that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Spain that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid registry
1049 Brussels
Belgium

Fax No: +32 2 2961242

Yours faithfully

For the Commission

Joaquín ALMUNIA
Vice-president of the Commission