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Subject: Aid measure N 756/2007 – Spain – Risk capital measure INVERTEC 2009-2011

Dear Sir,

1. PROCEDURE

- (1) By letter dated 17 December 2007, registered by the Commission on the same day, the Spanish authorities notified to the Commission, according to Article 88 (3) of the EC Treaty, the above mentioned measure on the basis of the Community guidelines on State aid to promote risk capital investments in small and medium sized enterprises¹ (hereinafter: "risk capital guidelines" or "guidelines").
- (2) As the information received did not allow the Commission to fully assess the measure, the Commission asked the Spanish authorities for additional information on 15 February, 7 May, 23 July and 8 October 2008. The Spanish authorities responded by letters dated 6 March, 5 June, 7 August, 4 November and 29 December 2008, 26 January and 5 February 2009 registered by the Commission on the same days.

¹ OJ C 194, 18.08.2006, p.2.

Excmo. Sr. Don Miguel Ángel MORATINOS
Ministro de Asuntos Exteriores
Plaza de la Provincia 1
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2. DESCRIPTION OF THE MEASURE

2.1. Objectives of the measure

- (3) The overall purpose of the risk capital scheme is to address the lack of equity funding in the initial phase of development of undertakings. The region of Cataluña intends to provide risk capital to small and micro undertakings with a high growth potential and to give an impulse to the local development of both risk capital in initial phase and investment activities of business angels. According to the Spanish authorities the investment in risk capital in the initial phase was only of 0.012% of the GDP in Cataluña in 2006, compared to 0.023% in the EU. The objectives mentioned above will be pursued through investments until 2011 in small and microenterprises having an activity in the field of technology under two types of risk capital instruments: "Capital Concept" and "Capital Semilla de Coinversión".

2.2. Legal basis

- (4) The measure's legal basis is the "Ley Organica 6/2006 de 19 de Julio 2006 de reforma del Estatuto de Autonomía de Cataluña", and the "Ley 12/2005 de 17 de noviembre 2005 de Nueva Regulación del Centre d'Innovació i Desenvolupament Empresarial" (hereinafter referred to as CIDEM). The CIDEM is the Catalanian Investment and Innovation Agency of the Ministry of Innovation, Universities and Enterprise of the Government of Catalonia in charge of boosting the innovation of companies as a way to increase their competitiveness.
- (5) In addition the Spanish authorities sent to the Commission the "Real Decreto-Ley 7/1996, de 7 de Junio 1996", on urgent measures of fiscal nature and of promotion and liberalisation of the economic activity², the additional provision of the "Ley 10/1996 de 18 de diciembre 1996" on urgent fiscal measures on the correction of the double internal taxation and on incentives for the internationalisation of undertakings³ and the statutes of INVERTEC, "Societat Catalana d'Inversió en empreses de base tecnològica S.A".

2.3. Duration and budget of the measure

- (6) The annual budget of the measure will amount to EUR 8.300.000 coming from the budget of the Generalitat de Cataluña and the CIDEM. The aid scheme will start from the date of its approval by the Commission and will last until 31 December 2011. The global budget of the measure will therefore amount to EUR 25.000.000. Administrative costs will amount to a maximum of 2% of that amount.

2.4. Structure and management of the Fund

- (7) The amount dedicated to the aid measure will be brought in the form of an increase of the capital of INVERTEC or other forms of financing granted to INVERTEC such as participative loans or debt, by the Generalitat de Cataluña and the CIDEM. Invertec will thereafter provide financing under the form of equity and quasi equity to small and micro enterprises within the meaning of the Community definition⁴.

² BOE núm 139, 8.06.1996, p.18977.

³ BOE núm 305, 19.12.1996, p.37659.

⁴ OJ L 124, 20.05.2003, p.36.

- (8) INVERTEC is the "Societat Catalu nia d'Inversio en empreses de base tecnol gica S.A." with a capital of EUR 5.858.000 whose shareholders are at present the CIDEM (93.68%), the "Generalitat de Catalunya" (3.4140%), the "Universitat de Girona", the "Universitat de Barcelona", the "Universitat Polit cnica de Catalunya", the "Universitat aut noma de Barcelona", the "Fundaci  privada parc d'innovaci  tecnol gica I Empresarial La Salle", the "Finaves Sociedad capital de Riesgo SA" and the "Universitat Rovira I Virgili", each having 0.4268% of the shares of INVERTEC.
- (9) The main purpose of INVERTEC is the promotion of projects of innovative undertakings and of projects of technologically based undertakings of Catalunya.
- (10) INVERTEC acts both as an investment vehicle to implement the measure and as manager of the funds. INVERTEC has been designated for this purpose because the Spanish authorities estimated it was in the best position to implement the measure. According to the Spanish authorities, there is no professional fund manager or management undertaking in Catalunya acting in the same field as "Capital Concept". As regards "Capital Semilla Coinversi n", the four companies managing funds which could act in the field are not able to realise new investments because they have a very low activity. In addition, the focus of the measure in terms of stages of growth and sector of undertakings do not match the activity of the other fund managers present on the market of provision of risk capital of the size targeted by the Fund in Catalunya.
- (11) The Spanish authorities committed however to maintain the aid scheme open to any other undertaking having an interest in the management of risk capital instruments such as "Capital Concept" and "Capital Semilla Coinversion" through the creation of a fund of funds depending on the budgetary means, technical quality, and capacity of implementation of the interested parties.
- (12) INVERTEC receives management fees of a maximum of 2% of the capital contribution from the CIDEM. The management fees will not cover the expenditure necessary for the existence and normal functioning of the undertaking such as administrative, legal and auditing expenditure, nor the additional expenditure incurred through the realisation of investments and disinvestments for services rendered to third parties and not passed on them. From the finalisation of the investment period the basis on which the 2% will apply will include the amount of the contribution from the CIDEM minus the costs of disinvestment or bankruptcies. The minimum amount of management fees is EUR150 000.
- (13) The Spanish authorities declared that an agreement was being established between the fund manager and the participants in the fund, providing that the management's remuneration is linked to performance and setting out the objectives of the fund and the proposed timing of investments. This agreement will foresee that the returns on the investments made by INVERTEC will be shared on an equal basis between INVERTEC and the CIDEM.

2.5. Target enterprises, invested in by the Fund

- (14) Aid will be granted to small and microenterprises having a technological or innovative based activity in Catalunya. The Spanish authorities expect that aid will be granted to 101 to 500 small and microenterprises. An undertaking is considered to be of technological or innovative basis if it fulfils the majority of the following characteristics:

- (1) High growth and profitability potential;
 - (2) Entrepreneurship team able to execute the business plan and fully committed in the project;
 - (3) Capacity to obtain additional private financial resources to finance the growth;
 - (4) Focused on the global market;
 - (5) Own technology and intellectual property or innovative negotiation model, product, or process;
 - (6) Creation of workplaces having a high value added;
 - (7) High operating leverage;
 - (8) Strategy to render sustainable the competitive advantages.
- (15) The scheme is not sector specific in the meaning of the NACE codification⁵. However the scheme targets innovative undertakings and/or technologically based undertakings in Cataluña.
- (16) Aid under the measure is excluded to the following enterprises, sectors and activities :
- (1) aid to firms in difficulty, as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁶ ;
 - (2) aid to firms from the shipbuilding, coal and steel industries;
 - (3) aid for export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods.
 - (4) aid to enterprises which had received aid that has been declared illegal and incompatible by a Commission decision, that is Alava I, Alava II y Alava III (casos CR 48/99, CR 49/99 y CR 58/00), Guipuzcoa I, Guipuzcoa II y Guipuzcoa III (casos CR 50/99, CR 53/99 y CR 59/00), y Vizcaya I, Vizcaya II y Vizcaya III (casos CR 52/99, CR 54/99 y CR 60/00), Rio Tinto (caso CR 39/2001), and Refractorios especiales (caso CR 3/2002) and did not reimburse or pay into a blocked account the aid with the recovery interest due.

2.6. Investment instruments

- (17) The aid will be granted by means of participative loans for two types of instruments: "Capital Concept" and "Capital Semilla de coinversión".

⁵ Regulation (EC) n° 1893/2006, 30 December 2006

⁶ OJ C 244, 01.10.2004, p.2.

2.6.1. Description of the participative loans

- (18) Participative loans will be remunerated with a fixed interest and a variable interest rate as laid down in the Real Decreto-Ley 7/1996, de 7 de Junio 1996", on urgent measures of fiscal nature and of promotion and liberalisation of the economic activity.
- (19) The fixed interest rate will be the same in the framework of "Capital Concept" and "Capital Semilla Coinversión", i.e. Euribor less 200 basis points. However, if other investors of private origin take part in the operation through participative loans, the conditions stipulated by such private investors will be applied also by INVERTEC.
- (20) The variable percentage rate of the participative loans granted under "Capital Concept" as well as under "Capital Semilla coinversión" will be calculated by applying the following formula: (Result of the exercise before taxes - provision for the payment of the fixed interest of the loan)/ ((initial own funds + final own funds) /2). To the result of this calculation the applicable fixed interest rate shall be deducted to obtain the variable interest rate. It will amount to a maximum percentage of 10 %. In case the result of the calculation would be negative, variable interests would not be earned. Each 31 October the period that goes from 1 January to 31 December of the financial year prior to that of the payment will be taken as a reference for the calculation of the variable interests.
- (21) The beneficiary enterprises can repay in advance the participative loan only if that repayment is compensated by an increase of its own funds. At the same time, they cannot distribute dividends or reintegrate capital or reserves without being agreement from INVERTEC. An undertaking is allowed to advance reimbursement only if it has paid all its financial charges.
- (22) In case of bankruptcy of the undertaking invested in, INVERTEC would have a preference of collection with reference to investors in capital. The loan is not guaranteed in case of default of the undertaking.
- (23) The participative loans have the status of own funds in Spanish commercial law and are considered to be "Patrimonio contable" for the purpose of reduction in capital and winding up of societies. The interest of the loan will be fiscally deductible.
- (24) According to the Spanish authorities the participation of INVERTEC in the gains and losses of the undertakings invested in qualifies the participative loan as quasi equity investment under the definition of point (c) of Section 2.2 of the risk capital guidelines. Under that definition quasi equity instruments means instruments whose return for the holder (investor/lender) is predominantly based on the profits or losses of the underlying target company, and are unsecured in case of default. INVERTEC will participate in the losses of the undertakings invested in through the non remuneration of the variable part of the interest rate in case the undertaking undergoes losses and through subordination regarding other creditors, except the shareholders, in the case of bankruptcy of the undertaking invested in.

2.6.2. "Capital Concept"

- (25) Under "Capital Concept", aid will be granted in the form of participative loans to innovative small and micro enterprises in seed phase. The Spanish authorities committed to respect the definition of seed capital, as laid down in point (e) of Section 2.2 of the guidelines.

- (26) The eligible companies shall not be older than two years, except during the first five months of implementation of the scheme during which the grant of participative loans to companies older than two years old will be allowed. In addition, the companies shall have a business plan, an entrepreneurial team economically committed in the project and at minimum one of its members full time dedicated to the company.
- (27) The participative loan under "Capital Concept" will amount to a maximum of EUR 100 000 paid in two or three tranches. Before disbursement, the business team or the private investors shall have already invested a minimum of 50 % of its amount.
- (28) There is no systematic conversion of participative loans into capital under "Capital Concept". In case the participative loan is not converted, it has a timetable of repayment previously established in the contract and not exceeding eight years.

2.6.3. "Capital Semilla de coinversión"

- (29) Under "Capital Semilla de coinversión", aid will be granted through convertible participative loans to small and micro enterprises in seed and start up phase, together with private investors, including other risk capital funds or business angels. The Spanish authorities committed to respect the definition of seed and start up capital, as laid down in points (e) and (f) of Section 2.2 of the guidelines.
- (30) The amount of the convertible participative loan will be at most EUR 300 000 by undertaking with a maximum reimbursement period of seven years. The convertibility of the loan in capital will be decided within the timeframe decided ab initio between INVERTEC and the undertaking invested in or with discount on the future valuation determined by the entry of new investors, the acquisition of a significant percentage of the shares or participation of the undertaking or the sale of the participation of the managing team. In the two last cases, the sale of the participation would immediately follow the conversion. In the case of conversion by entry of a new investor, the liquidity will be obtained through the sale of INVERTEC's shareholder participation to a third party, either a risk capital fund or an undertaking. As explained below in point 2.7.4 (exit strategy), having made the conversion, INVERTEC would equal the preferences of disinvestment of investors that were in the same round of financing.
- (31) The conversion of the loan and its interests will not be systematic. It will depend on the analysis of the risk of the investment and on the terms of the other private investors. In case the loan is not converted, the participative loan has a timetable of repayment previously established in the contract and not exceeding seven years.

2.6.4. Maximum amounts of investments by Invertec

- (32) The maximum amount that one individual undertaking may get under "Capital Concept" and "Capital Semilla de Coinversión" is EUR 400 000. The maximum investment amount that will be granted under "Capital Concept" will be EUR 100 000 per beneficiary undertaking over an 18 months period. The maximum amount that will be granted under "Capital Semilla de Coinversión" is EUR 300 000 over a three years period

2.7. Investment decisions – business plans and exit strategies

2.7.1. Business plan

- (33) According to the Spanish authorities, each investment will be based on a business plan. The business plan shall contain details on the undertaking, its field of activity, value chain, technology, management team, promoters, business strategy, sale details, financing, related companies, economic and financial data.

2.7.2. Investment decision

- (34) The investment decision in "Capital Semilla" will be based on the analysis of the business plan and management team of the company, on the analysis of the commercial, financial and technological aspects of the projects and of their profitability perspectives compared to the level of risk of the project.
- (35) The Fund's investment decisions will follow two steps.
- (36) During the first step a professional technical team experimented in the management of risk capital and in technological and innovative undertakings will select the projects on the basis of the business plans presented, the technological analysis made and the suitability and economic commitment of the management team in the undertaking.
- (37) During the second step an investment committee will evaluate and preselect projects on the basis of criteria mentioned above in Sections 2.5 and 2.6. The investment committee will be composed of experts and professionals coming from the private sector. They are designated by the board of directors on the basis of their extensive sectoral and functional experience. They are independent from the shareholders of INVERTEC and from the Government of Catalonia. However the committee has an advisory function since the board of directors will take the final decision on the financial intervention of INVERTEC in the targeted undertakings.
- (38) INVERTEC, jointly with the other financial investors, would have the right of veto in different type of decisions concerning the undertakings invested in. It will thus be able to protect the investments made and to influence them in the development of the business strategy.

2.7.3. Coinvestment with private investors

- (39) The Spanish authorities confirmed that the contribution from INVERTEC in the framework of both instruments will never exceed the contributions coming from investors of private origin, thus respecting a limit of 50% of the total amount of risk capital invested in each individual undertaking.
- (40) The Spanish authorities moreover confirmed that investments will be done *pari passu* between public and private investors which share the same risks and income, and that INVERTEC will have at least the same level of subordination than the private investors once the participative loan is converted in capital.
- (41) It is excluded that the private investors will participate on terms more favourable than those available to INVERTEC. However nothing ensures that private investors are independent from the company invested in.

- (42) The investment in "Capital Semilla de coinversión" of private investors or risk capital funds with which INVERTEC coinvests will have to be in capital.
- (43) In "Capital Concept", the payment of the loan by INVERTEC is subject to the prior economic commitment by the management team of the company invested in and/or of private investors in the form of capital or participative loans, representing at least 50% of the investment to be made by INVERTEC. In "Capital Semilla Coinversión" the investment by INVERTEC will also be realised after the private investment.

2.7.4. Exit strategy

- (44) As regards the investments in the form of loans, each loan has a schedule for liquidation and amortisation.
- (45) As regards the exit strategy in case of conversion of the loan into equity, exit clauses will be introduced in the partner pact between the investors at the time of conversion of the loan in capital. The first type of exit clause is a drag along type which allows the financial investors to force the sale of the majority or totality of the actions of the undertaking invested in even if they are minority investors. The second type of exit clause is a tag-along type, meaning that no shareholder may sell its actions without before proposing them to the other investors in proportion of their participation or without authorisation of the investors. The disinvestment will depend on the existence of parties wanting to acquire the participation, the price and the conditions of payment and guarantees offered. In cases where an undertaking in which INVERTEC has invested suffers difficulties that put at risk its viability, INVERTEC will endeavour to sell its participation and in case the sale of participation is not possible, to move on to the winding down of the society according to the commercial legislation.
- (46) The funds coming from the reimbursement of the participative loans and their interests, and the funds coming from the sale of the shares taken in an undertaking will be reinvested by INVERTEC for new investments until 31 December 2013.

2.8. Best practice and regulatory supervision

- (47) The Spanish authorities ensured that INVERTEC will apply the best practices from the European private equity and venture capital association (EVCA) as well as the recommendations from the "Comisión nacional del Mercado de valores" (CNMV, Spanish regulator of the organizations of risk capital) although they do not have a legal obligation to do so. In addition, the activity of INVERTEC is controlled by the Directorate-General of the Heritage of the Autonomous Government of Catalonia and is submitted to annual audit.

2.9. Cumulation

- (48) As concerns cumulation with other aid, cumulation for the same eligible costs will be allowed. The Spanish authorities committed to ensure the respect of the cumulation ceilings. In cases where capital provided to a target enterprise under a measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20% for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received.

- (49) The aforementioned reduction will however not be applied to aid intensities provided for in the Community Framework for State aid for Research and Development and Innovation⁷ or any block exemption regulation in this field.

2.10. Monitoring and reporting

- (50) The Spanish authorities committed to provide an annual report on the implementation of the scheme, in conformity with the provisions of Chapter 7 of the guidelines.

3. ASSESSMENT

3.1. Existence of State aid within the meaning of Article 87 (1) of the EC Treaty and applicable Community rules

- (51) In order for a measure to fall within the scope of Article 87(1) of the EC Treaty, four cumulative criteria must be met:

- the measure must involve the use of State resources;
- the measure must distort competition by conferring an advantage on certain undertakings;
- the advantage must be selective in that it is limited to certain undertakings;
- the measure must be likely to affect trade between Member States.

- (52) The measure under scrutiny will provide for risk capital investments in small and micro enterprises. As stated under point 2.5 above, all exclusionary conditions set out in Section 2.1 of the risk capital guidelines are met. Beyond that, the Commission notes that the measure in question is designed as a scheme, is not targeted at any specific sector within the meaning of the NACE codification and does not comprise any element of *ad-hoc* aid intended to provide aid to an individual enterprise. Consequently the Commission based its assessment on the said guidelines.

- (53) Pursuant to Section 3.2 of the guidelines, the assessment of the presence of State aid within the meaning of the Treaty will consider the possibility that the measure may confer aid on at least three different levels:

- aid to investors;
- aid to an investment fund, investment vehicle and/or its manager;
- aid to the enterprises in which investment is made.

3.1.1. State aid to investors

- (54) In accordance with Section 3.2 of the guidelines, where private investors make investments on terms more favourable than public investors, or than if they had undertaken such investments in the absence of the measure, then those private investors will be considered to receive an advantage.

⁷ OJ C 323, 30.12.2006, p.1.

(55) As described in paragraph (40) it is excluded that the private investors will participate on terms more favourable than those available to INVERTEC. However nothing ensures that private investors are independent from the companies invested in. The investment decision of non independent private investors might be motivated by the sunk cost of an already realised investment or might partially be based on non economic considerations. On the other hand, the investment of the independent investors will only be motivated by a forward looking cost-benefit analysis purely based on economic reasoning. This implies that, aid to the investors can be excluded when the investment decisions of the public authorities is realised in the same terms as that of independent investors but not necessarily of investors already involved in the company. Therefore, the Commission cannot exclude that the participative loans provide an advantage to non-independent investors even if the investment is realised *pari passu* and the private investor share is 50%.

3.1.2. State aid to the manager of the fund

(56) According to Section 3.2 of the guidelines, the Commission generally considers that an investment fund or an investment vehicle is an intermediary vehicle for the transfer of aid to investors and/or enterprises in which investment is made, rather than being a beneficiary of aid itself.

(57) INVERTEC is indeed an investment vehicle dedicated to the implementation of the scheme which is reflected in the "plan de actuaciones de Invertec". It will transfer the whole budget dedicated to the scheme (EUR 25 000 000) to the beneficiary undertakings⁸.

(58) However, aid to the fund's managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. Conversely, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantage granted by the State.

(59) On the one hand, as regards the remuneration of the manager of the fund, as described in paragraph (12), INVERTEC receives management fees of a maximum of 2% of the contribution from the CIDEM, which seems to be below market remuneration in comparable situations. To ensure that the fund managers are not over-compensated, the management fees will not cover the expenditure necessary for the existence and normal functioning of the undertaking such as administrative, legal and auditing expenditure, nor the additional expenditure incurred through the realisation of investments and disinvestments for services rendered to third parties and not passed on them. From the finalisation of the investment period the basis on which the 2 % will apply will include the amount of the contribution from the CIDEM minus the costs of disinvestment or bankruptcies.

(60) However, as described in paragraph (13), the equal share, between the CIDEM and INVERTEC, of the returns from the investments under the scheme, gives to

⁸ For the time being, 41 transactions for a total amount of investment of EUR 23.700.000 has been scheduled by INVERTEC for 2009, 2010 and 2011.

INVERTEC very high market remuneration, higher than the percentage usually granted to funds managers in comparable situations⁹.

- (61) As regards the selection of the manager, INVERTEC is an undertaking operating on a market of risk capital where other undertakings are present and has not been chosen through an open and transparent public tender procedure as described in paragraph (10).
- (62) Therefore, the scheme may entail State aid to INVERTEC within the meaning of Article 87(1) EC Treaty in its quality of manager of the risk capital measures at issue.

3.1.3. State aid to undertakings invested in by the Fund

- (63) The Fund and its investments are directly financed by State resources, namely from the budget of the Generalitat de Catalunya and of the CIDEM.
- (64) Since aid may be present at the level of the investors and at the level of the manager of the funds, the Commission considers, in accordance with Section 3.2 of the risk capital guidelines, that it is partly passed on to the target enterprises and thus is also present at their level. Indeed, the Commission considers that the reasoning of point 3.2 of the Guidelines can apply *mutatis mutandis* in cases where there is State aid at the level of the Fund Manager¹⁰.
- (65) The purpose of the measure in question is to provide capital to a limited number of small and micro innovative and/or technologically based undertakings in Catalunya that are to be selected during the scheme's investment phase. Hence, the measure is selective. In addition, the financing under the programme is likely to improve the overall financial conditions and enhance the market position of the undertakings invested in. Furthermore, the measure under scrutiny does not rule out the award of aid to firms engaged in economic sectors where intra-Community trade takes place. Thus, the Commission considers that the measure constitutes aid within the meaning of Article 87(1) EC at the level of the enterprises invested in.

3.2. Lawfulness of the aid

- (66) Spain has notified the measure in accordance with Article 88(3) of the EC Treaty. Spain committed to implement the notified measure only after the Commission has approved it.

3.3. Assessment of the aid measure's compatibility with the common market

- (67) Section 4.3 of the guidelines provides for specific compatibility conditions. If these conditions are fulfilled, the incentive effect, the necessity and the proportionality of the aid can be considered as present, and the overall balance of the potential negative and positive effects of the aid can be considered positive.

⁹ As an element of comparison in Case N 395/2007 *Start up fund Vera*, the Commission estimated that a performance fee of 10-20% was in conformity with normal market practices in Finland.

¹⁰ Decision of 12 December 2008, Case N 201/2008 – Slovenia National risk capital scheme, point 48.

3.3.1. Maximum level of investment tranches

- (68) Point 4.3.1 of the guidelines stipulates that tranches of finance, whether wholly or partially financed through State aid, must not exceed EUR 1.5 million per target-SME over each period of 12 months.
- (69) Financing under both "Capital Concept" and "Capital Semilla Coinversión", as described in paragraph (25) to (31) will be provided within said limits since the maximum amount that one individual undertaking may get under the two measures is EUR 400 000. Hence, investment tranches are in compliance with the provisions of point 4.3.1 of the guidelines.

3.3.2. Restriction to seed, start-up and expansion financing

- (70) According to point 4.3.2 of the guidelines, the measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. Medium-sized enterprises located in non assisted areas may be financed up to their start up stage only.
- (71) As was indicated above in paragraphs (3) and (14), financing will only be provided for small and micro enterprises and only up to their start up stage. Hence, the measure is in compliance with the provisions of point 4.3.2 of the guidelines.

3.3.3. Prevalence of equity and quasi-equity investment instruments

- (72) Point 4.3.3 of the guidelines requires that at least 70% of the measure's budget is provided in the form of equity and quasi-equity investment instruments.
- (73) The Spanish authorities certified that 98% of the budget will be allocated to equity and quasi-equity investments and, as mentioned in paragraphs (25) and (29), committed to respect the definitions given by points (e), (f) and (g) of Section 2.2 of the guidelines of early stage capital, seed capital and start up capital.
- (74) As described in point 2.6.1 above, the participative loan has a high variable remuneration rate compared to a relatively low fixed rate. In case of bankruptcy of the undertaking the loans are not guaranteed, they are reimbursed after all other creditors and just before the shareholders and their treatment under Spanish commercial law is that of own funds. Therefore in the light of point 4.3.3 of the risk capital guidelines the Commission considers that the participative loans classify as quasi equity investment instrument.
- (75) The scheme is therefore in compliance with the provisions of point 4.3.3 of the guidelines.

3.3.4. Participation by private investors

- (76) As laid down in point 4.3.4 of the guidelines, at least 50% of the funding of the investments made under the scheme must be provided by private investors.
- (77) As mentioned in point 2.7.3 above the scheme will fulfil this condition and therefore be compliant with the provisions of point 4.3.4 of the guidelines.

3.3.5. Profit-driven character of investment decisions

- (78) Point 4.3.5 of the guidelines provides for cumulative criteria to assess the measure's profit-driven character.
- (79) Firstly, a significant involvement of private investors, providing investments on a commercial basis, directly or indirectly, into the equity of the target enterprises, must be present (point 4.3.5 (a) of the guidelines).
- (80) The measure in question involves private investors who provide investments directly in the target undertaking. These investors' involvement is significant in the meaning of point 4.3.4 of the guidelines, as they will provide at least 50% of the measure's funding as indicated in paragraph (38). Consequently, the scheme is in compliance with the provisions of point 4.3.5 (a) of the guidelines.
- (81) Secondly, and in conformity with point 4.3.5 (b) of the guidelines, a detailed business plan for each investment, establishing the *ex-ante* viability of the project is the basis for the investments, as described under points 2.7.1 and 2.7.2 above.
- (82) Lastly, as set out in point 4.3.5 (c) of the guidelines, a clear and realistic exit strategy must exist for each investment.
- (83) The scheme in question provides for a clear and realistic exit strategy for each investment made, as described in point 2.7.4 above both for loans and equities. Hence, the scheme is in compliance with the provisions of point 4.3.5 (c) of the guidelines.
- (84) As all the conditions of point 4.3.5 of the guidelines are fulfilled, the investment-decisions to be taken under the measure are deemed to be profit-driven.

3.3.6. Commercial management

- (85) Point 4.3.6 of the guidelines contains three conditions, the fulfilment of all of which allows assuming that the Fund's management is effected on a commercial basis.
- (86) Firstly, point 4.3.6 (a) of the guidelines requires an agreement between the fund manager and the participants in the fund, providing that the management's remuneration is linked to performance. The said agreement must further set out the objectives of the fund and the proposed timing of investments.
- (87) As was described further above in Section 2.4, the Spanish authorities took a commitment according to which an agreement between the Fund management and the fund's participants fulfilling the aforesaid conditions will be set out. The provisions of the scheme are therefore compliant with those of point 4.3.6 (a) of the guidelines.
- (88) Secondly, as described in Section 2.8, the Spanish authorities committed to apply the best practices from the European private equity and venture capital association (EVCA) as well as the recommendations from the "Comisión nacional del Mercado de valores" (CNMV, Spanish regulator of the Spanish stock markets and of those intervening on that market) in conformity with the provisions of point 4.3.6 (c) of the guidelines.
- (89) Lastly, as set out in point 4.3.6 (b) of the guidelines, private investors must be represented in the decision making of the fund.

- (90) The private investors are de facto involved in the decision making process described in paragraphs (33) to (37) since the state aid is always granted only after the private investment has been realised. As a result the private investor has a veto right on investment decisions of Invertec. The Commission finds that this element ensures sufficient private involvement so as to ensure the commercial management of the scheme. Thus being, the scheme complies with the provisions of point 4.3.6 of the guidelines and does not require a more detailed assessment¹¹.

3.3.7. Sectoral focus

- (91) Point 4.3.7 of the guidelines provides that, to the extent that many private sector funds focus on specific innovative technologies or even sectors, the Commission may accept a sectoral focus for risk capital measures, provided the measure falls within the scope of the guidelines as set out in its section 2.1.
- (92) The Commission notes that the scheme in question targets innovative and technology based undertakings and it is therefore in line with point 4.3.7 of the guidelines.

3.4. Cumulation with other aid

- (93) Chapter 6 of the guidelines stipulates that, where capital provided to a target enterprise under a risk capital measure is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50% in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development or any successor Framework.
- (94) Based on information provided by the Spanish authorities above, in Section 2.9, the Commission concluded that the scheme is compliant with the rules set out in Chapter 6 of the guidelines.

3.5. Monitoring and reporting

- (95) The Spanish authorities committed to provide annual reports on the risk capital measure's implementation containing all elements required under Section 7.1 of the guidelines.
- (96) In addition, the scheme must not be applied before the relevant information is published on the internet, and the Spanish authorities will maintain detailed records regarding the granting of aid for 10 years from the date on which the aid is granted.
- (97) The scheme is therefore in conformity with Section 7.1 of the guidelines.

3.6. Conclusion

- (98) Taking into consideration that the aid scheme covers investments into small and micro enterprises of a cumulated maximum of EUR 400 000, that there will be a private participation at the level of each investment of a minimum of 50% and that the Spanish

¹¹ Case N 201/2008 National risk capital scheme - Slovenia point 76, Case N 395/07 Start up fund Vera, point 77, Case N 226/08, Modification of the Western investment fund, point 70.

authorities committed, depending on the budgetary means, technical quality, and capacity of implementation of the interested parties, to maintain the aid scheme open to any other undertaking having an interest in the management of risk capital having the features of "Capital Concept" and "Capital Semilla Coinversion" through the creation of a fund of funds and that the scheme respects the conditions laid down in the risk capital guidelines, the Commission concludes that the aid granted under the risk capital scheme INVERTEC 2009-2011 can be considered as compatible with the common market.

4. DECISION

(99) On the basis of the foregoing assessment and conclusions, the Commission has decided not to raise objections against the notified scheme, as aid under that scheme granted in the form of equity and quasi equity investments is compatible with the common market pursuant to Article 87(3) (c) of the EC Treaty.

(100) The Commission reminds Spain that all plans to modify this aid scheme have to be notified to the Commission.

(101) The Commission further reminds Spain to provide an annual report on the measure's implementation. This report shall contain:

- a summary table with a breakdown of the investments effected under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures;
- details of potential deals scrutinised and of the transactions actually undertaken;
- performance of the investment vehicles, with aggregate information about the amount of raised capital.

(102) Said report will be published on the internet site of 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.

Yours faithfully,

For the Commission

Neelie KROES

Member of the Commission