Subject: State aid N 307/2009 – Spain
Temporary aid scheme for granting limited amounts of compatible aid

Sir,

1. Procedure


2. Description

2.1. Objective of the aid scheme

(2) The Spanish authorities consider that the financial crisis is affecting its whole economy. According to the Spring Economic Forecast 2009 of the European Commission, Spain entered into recession in the second quarter of 2008. Both worsening consumer and business confidence and the tighter credit conditions associated with the financial market turmoil were behind this fall. Spain's GDP growth fell by -1.2% in 2008 and is projected to further decrease sharply by 3.25% in 2009 and by around 1% in 2010. Export growth is forecast to decrease in 2009 by around 10.25%, mainly reflecting the anticipated worsening of external demand. In line with economic activity, job losses are set to increase significantly in 2009 and in 2010. Employment is expected to fall by more than 5% in 2009 and 2.75% in 2010. The unemployment rate is expected to increase to 20% in 2010.
The aim of the notified scheme is to grant temporary aid to undertakings that have been affected by a sudden shortage or unavailability of credit as a result of the global financial and economic crisis. The scheme provides for the provision of limited amounts of compatible aid to undertakings until the end of 2010. It is part of a wider package of measures that the Spanish authorities are putting in place in order to remedy the serious disturbance in the Spanish economy resulting from the financial crisis.

The scheme is explicitly based on Article 87(3)(b) EC Treaty, and relies on section 4.2.2 of the Commission communication "Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis" (hereinafter referred to as “Temporary Framework”).

2.2. The nature and form of the aid

The aid will be provided in the form of transparent forms of aid, as defined by the General Block Exemption Regulation, and in particular, in the form of direct grants.

2.3. Legal basis

The Spanish authorities indicate three legal bases for this aid scheme: the Spanish Constitution, articles 137 to 158; the Law 38/2003, of 17 November 2003 regarding Direct Grants, and the Agreement of the Government's Delegated Commission for Economic Affairs on the national temporary framework to grant limited aid amounts to companies due to the current economic and financial crisis (hereinafter "the Agreement").

2.4. Administration of the scheme

The notified scheme, i.e. "the Agreement", which is in line with the Temporary Framework, is an umbrella scheme under which the competent aid granting authorities, identified as the General authorities of the State, the Autonomic authorities, the entities integrating the Local Administration, and organisations and other public entities linked to or depending on any of the previous authorities, may grant aid.

The Spanish authorities confirm that the entities integrating the Local Administration, organisations and other public entities mentioned in the previous paragraph, competent of granting aid according to the scheme, will only act as intermediaries between the State authorities and the beneficiaries of the aid, and will not retain any benefit of it.

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1 Measure already adopted by the Commission: N 140/2009: Plan de competitividad del Sector automoción. Actuaciones para la inversión destinada a la producción de productos más respetuosos con el medio ambiente.


2.5. **Budget and duration of the measure**

(9) The aid volume available under this scheme is estimated by the Spanish authorities to be EUR 1400 million.

(10) Aid under this scheme can be granted in 2009 and 2010.

(11) The Spanish authorities confirm that no aid will be granted prior to Commission approval of the scheme.

2.6. **Beneficiaries**

(12) The scheme applies to small and medium-sized enterprises ("SMEs") and large firms. Its geographic scope is not limited.

(13) The Spanish authorities confirmed that no aid under this scheme will be granted to firms which were, on 1 July 2008, firms in difficulties in the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty, nor to SMEs which were on that date firms in difficulties in the meaning of Article 1(7) of the General Block Exemption Regulation. SMEs are defined in line with Annex I to the General Block Exemption Regulation.

(14) The scheme may be applied to firms that were not in difficulty on 1 July 2008, but entered into difficulty thereafter as a result of the global financial and economic crisis.

(15) The Spanish authorities estimate that the number of beneficiaries will be higher than 1000 firms.

2.7. **Sectoral scope, exclusion of export aid and aid favouring domestic over imported products**

(16) The scheme applies to all sectors, with the exception of the sectoral exclusions laid down in sections 4.2.2 (d) ("fisheries") and (h) ("primary production of agricultural products"); it shall apply to undertakings active in the processing and marketing of agricultural products unless the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is conditional on being partly or entirely passed on to primary producers.

(17) Export aid and aid favouring domestic over imported goods and services are excluded (section 4.2.2 (c) of the Temporary framework).

2.8. **Basic elements of the scheme**

(18) The Spanish authorities confirm that the conditions laid down in section 4.2.2 for granting limited amounts of compatible aid will be fully met. In particular:

- the aid shall not exceed EUR 500 000 per undertaking, as laid down in section 4.2.2(a) of the Temporary framework. All figures used shall be gross, that is, before any deduction of tax or other charges;

4 OJ C 244, 1.10.2004, p. 2.
• before granting the aid, the aid granting authorities shall obtain from the undertakings concerned a declaration about any de minimis aid (as defined in the Commission Regulation on de minimis aid⁵) or aid granted under this measure received during the current fiscal year (section 4.2.2 (g), first sentence);

• the Spanish authorities confirm that aid may not be cumulated with de minimis support in respect of the same eligible costs. The total amount of de minimis aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed EUR 500 000 (section 4.2.2 (g), second sentence);

• where the aid granted under this measure is to be combined with other compatible aid, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected (section 4.7, last paragraph);

• where this measure applies to undertakings active in the processing and marketing of agricultural products (as defined in Article 2.3 and 2.4 of Regulation (EC) 1857/2006), the amount of the aid is not fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is not conditional on being partly or entirely passed on to primary producers (section 4.2.2 (h), second sentence).

2.9. Monitoring, reporting and business secrets

(19) The Spanish authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected (e.g., by 31 July 2009, a list of schemes put in place on the basis of the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years; by 31 October 2009 a report on the measures put in place should be provided). In particular, information will be obtained demonstrating that the beneficiary was not a company in difficulty on 1 July 2008.

(20) The Commission notes that the Spanish authorities confirm that the notification does not contain confidential business secrets.

3. ASSESSMENT

3.1. Legality of the measure

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

3.2. Existence of state aid

(22) State resources are involved in the notified scheme since the aid is granted from state resources, via the respective aid granting authority establishing a new legal basis in accordance with the notified scheme. The Spanish authorities confirm that they will check that any legal basis implementing "the Agreement" will be in line

with the notified scheme. The measure is selective since it will be granted only to certain firms.

(23) The measure conveys an advantage by making available limited amounts of aid which would not be available to the beneficiaries without the measure.

(24) 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.

(25) The measure distorts or threatens to distort competition.

(26) 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. The Spanish authorities do not contest that conclusion.

3.3. **Compatibility of the measure**

(27) 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.

(28) As described above, the recent developments in the Spanish economy point to an overall economic slowdown when compared to previous periods. According to the Spring Economic Forecast 2009 of the European Commission, Spain entered into recession in the second quarter of 2008. Both worsening consumer and business confidence and the tighter credit conditions associated with the financial market turmoil were behind this fall. Spain's GDP growth was -1.2% in 2008 and is projected to further decrease sharply by 3.25% in 2009 and by around 1% in 2010. Export growth is forecast to decrease in 2009 by around 10.25%, mainly reflecting the anticipated worsening of external demand. In line with economic activity, job losses are set to increase significantly in 2009 and in 2010. Employment is expected to fall by more than 5% in 2009 and 2.75% in 2010. The unemployment rate is expected to increase to 20% in 2010.

(29) Therefore, by granting limited compatible amounts of aid the Spanish authorities aim at supporting those undertakings that have been affected by a sudden shortage or unavailability of credit as a result of the credit crunch and therefore, anticipate producing effects across its entire economy that is relatively dependant on external demand. Thus, the measure aims at remedying a severe disturbance in the economy of Spain.

(30) By adopting the Temporary Framework, 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 the may be declared compatible with the common market on the basis of Article 87(3)(b)."

(31) The Commission accordingly considers that the notified measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the additional category of aid ("Compatible limited amount of aid") described in section 4.2.2 of the Temporary Framework, in particular:
• The maximum aid amount will not exceed the cash equivalent of EUR 500 000 in line with point 4.2.2 (a).

• The measure is granted through an aid scheme in line with point 4.2.2 (b).

• The cumulation rules with *de minimis* aid and aid for other purposes are respected (in particular point 4.2.2 (g) and point 4.7).

• Firms in difficulty (situation of 1 July 2008) are excluded from eligibility under the scheme in compliance with point 4.2.2 (c).

• Firms active in the fisheries sector are excluded from the scope of this measure (in line with point 4.2.2 (d)).

• Undertakings active in the primary production of agricultural products are excluded from the scope of this measure. Aid to the processing and marketing of agricultural products is subject to the relevant conditions (in line with point 4.2.2 (h)).

• Export aid and aid favouring domestic over imported goods and services are excluded (in line with point 4.2.2 (e)).

• In line with point 4.2.2 (f), aid may be granted until 31.12.2010.

• The monitoring and reporting rules laid down in point 6 of the Temporary Framework will be respected.

• The Spanish authorities confirm that they will check that any legal basis implementing "the Agreement" will meet all the criteria mentioned above.

### 3.4. Conclusion

(32) 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**

(33) The Commission has accordingly decided
   – to consider the notified aid scheme as compatible with the EC Treaty under Article 87(3)(b).

Yours faithfully
For the Commission

*Neelie Kroes*
Member of the Commission