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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid NN 54/A/2008– Spain
Modification to the Fund for the Acquisition of Financial Assets

Sir,

I. PROCEDURE

1. On 10 October 2008 Spain notified a scheme for the creation of a Fund for the Acquisition of Financial Assets (hereinafter "Fund"), which was approved on 4 November 2008[1]. On 2 February 2009 Spain notified changes to the measure.

II. DESCRIPTION

1. The objective of the original measure

2. In response to the exceptional turbulence in world financial markets, Spain brought forward a measure designed to restore stability to the financial system and to remedy a serious

[1] Fund for the Acquisition of Financial Assets

Excmo. Sr. Don Miguel Ángel Moratinos
Ministro de Asuntos Exteriores
Plaza de la Provincia 1
E-28012 MADRID

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Teléfono: 00-32-(0)2-299.11.11.

disturbance to the economy in Spain. The objective of the measure was to provide credit institutions with liquidity and to encourage them to grant more credit to businesses and households.

3. With this measure, the Spanish authorities put in place a Fund for the Acquisition of Financial Assets financed by the Treasury with 30 billion € (expandable to 50 billion €) to purchase high quality assets from credit institutions in order to supply the institutions with additional means of liquidity resources.

2. The beneficiaries

4. The institutions eligible for the Fund are all credit institutions domiciled in Spain, including subsidiaries and branches of foreign credit institutions. The assets to be acquired by the Fund are not necessarily Spanish and can be issued by a foreign bank, under the condition that it increases the offer of new credit to businesses and households resident in Spain. Participation in the scheme is on a voluntary basis.

5. The potential beneficiaries need to manifest their interest to participate in the auction beforehand, have the technical means available (in particular access to *Target 2 Banco de España* and *Iberclear*) and follow the procedures established by the Bank of Spain.

3. Description of the changes to the measure

6. Spain has proposed the following change to the scheme.

7. In the original scheme under point 34, the Spanish authorities committed they would monitor and review the expansion of the activities of beneficiary financial institutions in total in order to ensure that their aggregate growth in balance sheet volume does not exceed:

- the annual rate of growth of Spanish nominal GDP in the preceding year, or
- the average historical growth of the balance sheets in the Spanish banking sector during the period 1987-2007, or
- the average growth rate of the balance sheet volumes in the banking sector in the EU in the preceding six months, whichever is higher.

This condition will be not applicable in the amended measure.

8. All the other conditions of the original scheme remain unchanged.

III. Position of Spain

9. In line with the original decision, the Spanish authorities do not accept that the amended scheme contains aid elements.

10. Spain notes that it is necessary to introduce the above-mentioned amendments to the original scheme for the following reasons.

11. The Spanish authorities consider that the point 34 of the original decision could lead to conflicting interpretations and distort the purpose of the Fund which is to support access to credit by non-financial entities and families. Spain based its proposal in the Communication on "The recapitalization of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition"[2].

IV. ASSESSMENT

1. State aid character of the schemes

12. As set out in 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 is, insofar as it affects trade among Member States, incompatible with the common market.

13. The Commission considers that the amended scheme for eligible institutions constitutes aid to the institutions concerned pursuant to Article 87 (1) EC.

2. Compatibility with the common market

Application of Article 87(3)(b) EC Treaty

14. The Commission found the original scheme to be compatible with the common market under Article 87(3)(b) EC Treaty. Given that this amended scheme is practically identical to the original scheme, and the situation on the financial markets has not improved, it is only necessary to assess whether this is still the case in view of the aforementioned amendment.

Assessment of the Amendment to the Fund for the Acquisition of Financial Assets

15. The amended scheme no longer includes behavioural constraints in the form of a limitation of the expansion of the balance sheet of the participating banks. The Commission considers that this is in line with the revised guidance of the Commission, which was set out in footnote 18 of the recent Communication on "The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition". There are no indications that the absence of such limitations would lead to undue distortions of flows of funds between Member States.

16. On the basis of the above, the amended Fund for the Acquisition of Financial Assets of Spain can be considered compatible with the Common market.

[2] Official Journal C 10, 15.01.2009, pages 2-10.

V. DECISION

The Commission concludes that the notified amended scheme is compatible with the Common market and has accordingly decided not to raise objections against the notified scheme, since it fulfils the conditions to be considered compatible with the EC Treaty.

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European Commission
Directorate-General for Competition
State Aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32-2-296 12 42.

Yours faithfully,

For the Commission

Neelie Kroes
Member of the Commission