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State aid - Spain Fund for the Acquisition of Financial Assets

European Union: European Commission

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Subject: State aid NN 54/A/2008 (ex-CP 277/2008) – Spain
Fund for the Acquisition of Financial Assets

Sir,

I. PROCEDURE

1. On 7 October 2008, the Spanish Prime Minister, José Luis Rodriguez Zapatero, announced the creation of a Fund to assist credit institutions in Spain. By letter dated 8 October 2008, the Spanish authorities first informed the Commissioner accordingly without yet providing a formal notification of the measure.

2. On 10 October 2008, the Commission sent via electronic messaging a list of questions concerning the precise features of the measure.

3. By letter dated 10 October 2008, the Spanish authorities notified a scheme for the creation of a Fund for the Acquisition of Financial Assets (hereinafter "Fund") in Spain.

4. On 23 October 2008, the Spanish authorities sent the draft implementing Ministerial Order and draft agreement of the Executive Council. The Commission requested further information by electronic messaging on 23, 24, 26, 29, 30 and 31 October 2008. The Spanish authorities responded on 24, 26, 29, 30, 31 October and 1st November 2008.

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5. On 31 October 2008, the Spanish authorities forwarded a reasoned letter of the Governor of the Central Bank of Spain confirming the existence of an exceptional disturbance in the financial sector and the economy as a whole.

6. By letter dated 31 October, registered on 3 November 2008, the Spanish authorities submitted a list of commitments, thus completing the notification.

II. DESCRIPTION

1. The objective of the measure

7. In response to the ongoing exceptional turbulence in world financial markets, Spain intends to bring forward a measure designed to restore stability to the financial system and to remedy a serious disturbance to the economy in Spain. The objective of the measure is to provide credit institutions with liquidity and to encourage them to grant more credit to businesses and households.

8. 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.

9. In addition, the Spanish authorities announced their intention to strengthen the Spanish Retail Deposit Guarantee Scheme by raising the guarantee limit up to 100.000 €. This measure will not be analysed in the present decision.

2. The beneficiaries

10. The institutions eligible for the Fund are all credit institutions permanently established in Spain that figure on the official register of the Bank of Spain, including subsidiaries and branches of credit institutions from the EU. 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.

11. 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 measure

12. The scheme provides for a Fund, which is devoid of any legal personality, attached to the Ministry of Economy and Finance via the Secretary of State for the Economy, to buy high quality assets from credit institutions in order to inject liquidity into the institutions and, thus, into businesses and households.

13. The Fund will be endowed with an amount of 10 billion € (expandable to 30 billion €) for the remaining exercise of 2008, 20 billion € (expandable to 40 billion €) for the exercise of 2009. Thus, the total budget for the measure will be of 30 billion €, which may be increased up to a maximum of 50 billion €. The maximum amount the Fund will be able to purchase will be of 5 billion € for each of the two auctions scheduled for November and December 2008.

14. The Fund will be managed by the Ministry of Economy and Finance via its Executive Council and Committee. The Executive Committee will be assisted by a technical committee and advised by the Bank of Spain and the National Securities Market Commission among others. The Executive Council will be presided by the Ministry of Economy and Finance and composed of the Secretary of State for the Economy, Secretary of State for Finance and Budget, the President of the public finance institution *Instituto de Crédito Oficial*, the Advocate General, Controller General of the State and the Director General of the Treasury and Policy Finance, as Secretary. The Bank of Spain will implement the financial operations of the Fund and act as agent and depository bank.

15. The assets to be purchased by the Fund will be selected via a reverse auction. In the auction, the State will act as the only buyer while credit institutions offer pre-specified asset classes, which have identical ratings and were issued in the same time period. As a result, the Fund will acquire groups of largely homogeneous assets at the lowest price as determined by the auction process. The rating of the assets are determined on the basis of an expertise by independent rating agencies on the basis of the underlying collateral and the risk profile of the bank in the case of covered bonds and structured covered bonds. In contrast, the rating agencies assess only the default probability of the assets in the case of asset backed securities. In order to guarantee a certain diversification of the Fund and avoid that neither large nor small financial institutions are benefitting disproportionately, each participating entity cannot sell more than 10% of the total amount sold at each auction or 2,5 times the entity's credit market share as regards loans to "other resident sectors", whichever is the lowest. The Spanish authorities committed that the minimum interest rate accepted in the auction, which the Fund will receive as annual remuneration, should at least be higher than the government bond yield. Most likely, though, the authorities state that the price will be significantly higher than that. If the amount specified in the convocation could not be awarded during the auction, the process could be repeated as many times as necessary. The transactions will be handled via the Bank of Spain using Target 2 Banco de España and Iberclear, as done in current monetary policy interventions.

Convocation

16. Prior to the convocation of each auction, the Executive Council will determine the maximum volume the Fund is able to purchase, the assets, their maturity and further details regarding the transactions. The convocation will be made by resolution of the Directorate General of the Treasury and Financial Policy and published in the Official State Gazette. Its content will be determined by the Executive Committee specifying the maximum volume the Fund shall acquire, requirements and characteristics of the assets, place and deadline for the presentation of offers, the criteria for their rating, deadline for payments and eventually the maximum number amount of bids. Credit institutions will be informed via screens, fax and

electronic messaging about the convocations and the procedure put in place for participating in the auction.

Competitive versus non-competitive bids

17. Credit institutions have two different ways of participating in the auction: via competitive or non-competitive bids. In competitive bids, the volume and the interest rate are indicated by the financial institutions according to the specifications made in each convocation. As the objective of the reverse auction is to obtain the best yield[1] from the assets purchased, the Fund will buy at the lowest price possible, if the indicated interest rate is higher than the minimum accepted.

18. A maximum volume of 25% of each auction is reserved to non-competitive bids. The interest rate as the Fund's remuneration corresponds to the lowest interest rate attributed during the competitive auction. The beneficiaries' assets are bought in proportion to their contribution to credit awarded to other resident sectors. The statistical data for determining those assessments are provided by the Bank of Spain. This provision has the effect that the Fund will buy most assets from those institutions which have granted most loans previously[2].

19. The minimum value of the competitive and non-competitive bids will be of 3 million €. Superior bids are placed on units of 1 million €. Each entity is able to present a maximum of three bids.

Assets

20. The assets eligible for purchase by the Fund are limited to covered bonds (*cédulas hipotecarias*), asset backed securities (*bonos de titulación de activos*) including mortgage backed securities (*bonos de titulación hipotecaria*). A subset of the asset backed securities which are eligible for purchase can be backed by covered bonds, thus forming the so-called structured covered bond (*cédulas estructuradas*). In this asset class, typically smaller banks pool together a set of covered bonds in an entity (such as a Special Purpose Vehicle, SPV) which then issues notes. The other asset backed securities are backed by loans granted to businesses and households. Covered bonds are issued directly by a credit institution which remains liable for any shortfall due to a default. In the case of structured covered bonds, individual banks remain liable towards the SPV. The value of the simple bonds pooled in the SPV is enhanced via over-collaterisation (structured covered bonds are backed by a larger amount of underlying covered bonds and a liquidity reserve may be deposited in a secure account).

21. The divestments made by the Fund will obey the same principles and criteria. It will be possible for the Fund to sell assets before their maturity expires. The Fund will be able to realize as many auctions as necessary for carrying out its functions.

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[1] The 'yield' will be a function of the purchase price paid for the asset and the interest rate earned on that asset e.g. an asset with a nominal value of 100 with a 5% interest rate will yield more than 5%, if that asset is purchased for less than the nominal value of 100.

[2] As a reference, the last *available data from Banco de España* before the convocation and the respective of three months earlier will be taken into account.

Outright purchase versus repurchase operation

22. The Fund will maintain two portfolios: assets bought as outright purchase (*compra en firme*) or via re-purchase operations (*compraventa doble*, *compraventa simultánea* or *repo*). Each auction will either be organised for outright purchases or repos. The first auction scheduled for November 2008 will deal with repos and the following in December 2008 with outright purchases.

23. The Fund will purchase via a two years repo, covered bonds, asset backed securities and mortgage backed securities backed by loans issued as from 1 August 2007 with a double A rating or similar as assessed by a recognised rating agency[3]. Haircuts will be applied to the repos for covering the risk involved in the transactions. The credit institutions commit to re-purchase those assets at a pre-fixed price later on.

24. The Fund will acquire outright covered bonds and structured covered bonds (as described in point 20), that must be issued from 15 October 2008 onwards and need to be admitted to a regulated market (or the issuer has to apply for its inclusion in three working days after the auction). Their rating will be of triple A or similar and their maturity limited to three years.

4. Legal basis of the scheme

25. The scheme is based on *Real Decreto-Ley* 6/2008 adopted on 10 October 2008, its implementing provisions: the Order EHA/3118/2008, 31 October 2008 and the basic agreement of the Executive Council adopted on 27 October 2008, as well as the guidelines to be adopted by the Executive Council. Furthermore, the General Budget Law[4] and the Law of the Legal System applicable to State Administration[5] apply.

5. Duration of the schemes, monitoring and reports

26. The legislation governing the Fund took effect the day after publication of the *Real Decreto-Ley 6/2008* in the *Boletín Oficial del Estado* (14 October 2008). . The Spanish authorities undertake to review the scheme after six months and to notify its extension six months after its entry into force, i.e. the first notification is expected for April 2009. The Commission can authorise its prolongation, if the crisis persists.

27. The reports on the review of the scheme should contain the information specified in the relevant rules on standardised reports[6]. The reports will also include a list of all beneficiary companies, including the necessary data to understand the full scope of the support measures.

28. The Bank of Spain will provide the Committee on Economic Affairs of the Congress each two months with a report regarding the instrumentation of the Fund in line with Article 4(5)

[3] Usually Standard & Poor's, Moodys and Fitch Ratings are providing its services in Spain.

[4] *Ley General Presupuestaria*, Ley 47/2003, 26 November 2003.

[5] *Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*, Ley 4/1999, 13 January 1999.

[6] Annex III A and B (standardised reporting format for existing State aid) to Commission Regulation (EC) No 749/2004 of 21 April 2004 adopting provisions for the implementation of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p.1).

of the aforementioned *Real Decreto-Ley* and each four months with an analysis regarding the general financial conditions, the credits issued by banks to the other resident sectors and the management of the Fund. The General Intervention of State Administration will inspect the Fund via a public audit in line with *Ley* 47/2003 dated 26 November 2003.

6. Restructuring of defaulting credit institutions

29. The Spanish authorities undertake that if a financial institution benefitting from the auction does not comply with its obligations to the State (laid out in paragraph 55 below), a restructuring plan of the entity in question will be established and notified to the Commission within six months of this default.

III. POSITION OF SPAIN

30. The Spanish authorities note that the emergency situation has been introduced in circumstances of unique and unprecedented financial threat to the stability of the Spanish financial sector and consequently to the entire Spanish economy. The uncertainty regarding the credit risk and counterparts has disrupted interbank lending and caused severe liquidity restrictions affecting the economy as a whole.

31. The Spanish authorities stress that the Spanish credit institutions are solid thanks to their high solvency, extensive resources and the supervision of the Bank of Spain. The measure was elaborated in the framework of the aligned action agreed at the Economic and Financial Affairs Council of the European Union.

32. Thus the Spanish authorities developed a timely and temporary measure that safeguards the taxpayer's interests. The Fund will be financed with public debt and will invest exclusively in high quality assets that can be sold with a profit margin after the crisis.

33. Regarding the measure to select the assets, they opted for a competitive mechanism, an auction ensuring the principles of objectivity, efficiency, profitability and diversification and subject to strict controls. The Spanish authorities claim that under the given circumstances, the yield to be achieved for the assets is expected to be significantly higher than for government bonds with the same maturity (i.e. the cost of resources for the Spanish Government). In fact, the authorities think the realised remuneration will be sufficiently high for covering as well an insurance element to compensate for credit risk as demanded by a prudent investor. Therefore, Spain is of view that the scheme does not contain any State aid elements.

34. The Spanish authorities commit they will 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.

35. The Spanish authorities commit themselves to monitor that the beneficiary financial institutions do not pursue an aggressive commercial conduct, in particular making public the fact that they benefitted from the auction or having an aggressive pricing policy. Furthermore, the benefitting entities may not expand their activities more than they would have done in the absence of them having benefitted from the auction. The fulfilment of these conditions is going to be supervised and controlled by the Ministry of Economy and Finance.

36. A letter sent by the Spanish Central bank on 31 October 2008 confirms that the notified measures are urgently required to prevent harmful spill-over effects on the Spanish financial system and the economy as a whole.

IV. ASSESSMENT

1. State aid character of the schemes

37. 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.

38. The scheme fulfils the requirements of Article 87(1) EC Treaty, as the Fund is financed through the general budget of Spain. It favours credit institutions benefitting from the measure, since for the reasons given below, they would not otherwise receive longer term liquidity under the current market situation. Therefore, the measure threatens to distort competition and to affect trade between Member States.

39. The Spanish authorities consider that the measure does not constitute State aid. They argue that the auction is open to every credit institution permanently established in Spain that the price for the assets is fixed market conform according to the rules of supply and demand. The State would therefore act as a market economy investor.

40. The Commission finds that the measure is State aid. The reduced liquidity in the markets and the limited activity in covered bonds, structured covered bonds and asset backed securities has necessitated the State's intervention with a budget of 30 billion to 50 billion € and the organisation of an auction, where it is effectively assuming the role of a buyer of last resort, thus providing aid to the sellers. By benefiting from the auction, the credit institutions receive the much-needed liquidity from the State, which then can be used for further lending activities and enables them to make profits.

41. Such an action by the State does not only benefit the specific banks having sold their assets, but the banking sector overall, as all banks may be able to record in their books a higher than otherwise mark-to-market valuation for asset classes accepted in the auction using the latter as a valuation benchmark.

42. The measure therefore constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

2. Compatibility with the common market

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

43. The Spanish authorities intend to provide liquidity under a scheme granted to assist credit institutions that have problems accessing liquidity. As the scheme is neither targeting firms in difficulty, which would be assessed under the rescue and restructuring guidelines[7], nor is it limited to small and medium sized enterprises, it can only be examined directly under the Treaty rules and, in particular, under Article 87(3)(b) EC.

44. Article 87(3)(b) EC enables the Commission to declare aid compatible with the common market, if it has the effect "to remedy a serious disturbance in the economy of a Member State". The Commission recalls that the Court of First Instance has stressed that Article 87(3)(b) EC needs to be applied restrictively and must tackle a disturbance in the entire economy of a Member State[8].

45. The Spanish authorities submitted a letter from the Central Bank of Spain confirming that credit institutions in Spain encounter serious difficulties in the current exceptional market situation and that the measures to assist the credit institutions are urgently required to prevent harmful spill-over effects on the financial system or the economy as a whole.

46. The Commission considers that the present scheme concerns the entire credit sector which operates in Spain. The Commission does not dispute Spain's arguments that there is a clear international market-failure, where even healthy credit institutions are having trouble getting access to liquidity, that the scheme shall help to overcome. The Commission is also of view that this shortage of liquidity will not only create difficulties for the credit sector, but will affect also other sectors depending on liquidity for their investments and, thus, the whole Spanish economy.

Conditions for compatibility under Article 87(3)(b)

47. In line with the Commission Communication on the application of State aid rules to measures taken in relation to credit institutions, in the context of the current global financial crisis, in order for any aid or scheme to be compatible under Article 87(3)(b) EC, it must comply with general criteria for compatibility under Article 87(3) EC, viewed in the light of

[7] Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ 2004 C 244, page 2.

[8] Cf. Principle in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG Commission* [1999] ECR II-3663, paragraph 167; confimed in Commission Decision in case C 47/1996, *Crédit Lyonnais*, OJ 1998 L 221/28, point 10.1; Commission Decision in Case C 28/2002 *Bankgesellschaft Berlin*, OJ 2005 L 116, page 1, points 153 and Commission Decision in Case C 50/2006 *BAWAG*, not yet published, points 166. See Commission Decision of 5 December 2007 in Case NN 70/2007, *Northern Rock*, OJ C 43 of 16.2.2008, p. 1; Commission Decision of 30 April 2008 in case NN 25/2008, *Rescue aid to WestLB*, OJ C 189 of 26.7.2008, p.3; Commission Decision of 4 June 2008 in Case C9/2008 *SachsenLB*, not yet published.

the general objectives of the Treaty and in particular Articles 3(1)(g) and Article 4(2), which imply compliance with the following conditions[9]:

a) Appropriateness: The aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the entire economy. This would not be the case if the disturbance would also disappear in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

b) Necessity: The aid measure must in its amount and form be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance. In other words, if a lesser amount of aid or a measure in a less distortive form (e.g. a temporary and limited guarantee instead of a capital injection) were sufficient to remedy a serious disturbance in the entire economy, the measures in question would not be necessary. This is confirmed by settled case law of the Court of Justice[10].

c) Proportionality: The positive effect of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. This follows from Article 3(1)(g) EC and Article 4(1) and (2) EC, which provide that the Community shall ensure the proper functioning of an internal market with free competition. Therefore, Article 87(1) EC prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 87(3)(b) EC, which authorises State aid, must ensure that the aid must be limited to the amount necessary to achieve its stated objective.

Assessment of the conditions for compatibility under Article 87(3)(b)

48. First, as regards *appropriateness* and as stated above, the objective of the scheme is to provide additional liquidity to the credit sector and promote lending to businesses and households. The measure is a response to the international market failure, where even healthy credit institutions are having difficulties to get access to liquidity due to the loss of confidence in lending money to each other. The scheme provides a temporary complement to the interbank lending in Spain. As regards coherence, the scheme avoids any kind of discrimination, as it covers all credit institutions in Spain, including branches and subsidiaries of credit institutions from the EU, if they grant credit to businesses and individuals in Spain.

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9 Cf. Commission Decision of 10 October 2008 in case NN 51/2008, *Guarantee scheme for banks in Denmark*, point 41.

10 Cf. Case 730/79, *Philip Morris* [1980] ECR 2671. This line of authority has recently been reaffirmed by the Court of Justice in. Case C-390/06, *Nuova Agricast v Ministero delle Attività Produttive* of 15 April 2008, where the Court held that, "As is clear from Case 730/79 […], aid which improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 87(3) EC cannot be considered compatible with the common market […]."

49. Thus, the Commission considers that the Fund is an appropriate measure to remedy a serious disturbance of the Spanish economy.

50. Second, as regards *necessity*, the Commission must examine, if the measure is limited to the minimum necessary in scope and time, having regard to the current exceptional circumstances.

51. As regards the scope, the Commission noted previously[11], that several measures might be possible to restore confidence in the credit sector. This is in line with the Commission Communication on the financial crisis which explicitly foresees the possibility for Member States to adopt a variety of measures to address the crisis.

52. The Commission welcomes that the Spanish authorities put in place an auction, where the assets to be bought by the Fund are selected by a competitive procedure. It believes, based on the information provided by the Spanish authorities that such an auction results in a high likelihood of the resulting remuneration being substantially above the government bond yield[12], notwithstanding the fact that a part of the assets are presented in a non-competitive auction. Indeed, first of all, the nominal interest rate is calculated on the basis of the nominal value of the covered bond or security. In case the Fund acquires the assets at a lower purchase price, this translates directly into a higher interest rate, i.e. a higher remuneration for the Fund. In addition, the expected large number of bidders (100 credit institutions or more) together with the current liquidity squeeze (high needs compared to the amount to be auctioned) will most likely contribute to push the Fund's remuneration well above the minimum. This implies a higher interest rate for the Fund. In this respect, the Commission considers that the Fund, which acquires financial assets, and of which the appropriate ratings are constantly reviewed, might be an appropriate measure.

53. The Commission acknowledges that, in the context of the current crisis, it may be necessary to provide liquidity, as interbank lending decreased sharply due to an erosion of confidence between the financial institutions. The proposed measure creates a Fund to purchase assets to provide credit institutions with the necessary liquidity during the crisis. The Commission notes positively, that the Fund will limit its purchase to high quality assets, which narrows down the credit risk for the Fund.

54. The Fund will purchase triple A rated covered bonds and structured covered bonds issued after 15 October 2008 outright. So far, the Commission has refused to allow Member States to buy financial assets from banks outright[13], as the credit crisis makes it difficult to value assets properly. However, the present measure is different, as the Fund can only purchase covered bonds or securities backed by covered bonds or structured covered bonds outright. The covered bonds have very special characteristics which significantly limit the credit risk for the Fund. A covered bond is covered by both the issuer (usually a bank or a savings bank) and the pool of assets in the issuer's balance sheet. As a result, the credit risk of a covered

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[11] Commission Decision of 13 October 2008 in case N 507/2008, *Financial Support Measures to the Banking Industry in the UK*, point 49.

[12] A higher interest rate goes along with a lower price.

[13] Commission Decision of 22 October 2008 in case N 512/2008, *Rescue Package fort he Financial Institutions in Germany*, not yet published.

bond is much reduced when compared to other financial assets. As regards the structured covered bonds[14], investors have recourse to both, the pool of assets and the issuing credit institutions (all of them having put their loans together) in case of defaults. Once the markets stabilize, the Fund might resell the bonds with a reasonable profit margin, according to market conditions, so that the amount of the aid is kept to a minimum necessary.

55. The covered bonds or asset backed securities purchased via a two year repo have a slightly inferior rating (double A), but they are both over-collaterized and the haircuts on asset backed securities will even be increased as of February 2009. In any case, the Fund will resell the assets back to the respective credit institution having profited from an interest payment in the meantime. In case of a default in outright or repo transactions, a restructuring plan will be elaborated and presented to the Commission.

56. The Spanish authorities claim that the measure will be temporary in nature. The Spanish authorities undertook to notify the prolongation of the scheme after six months of its entry into force. The Commission can authorize a prolongation of the scheme, if the crisis persists.

57. Thus, the Fund is also limited to the minimum necessary in scope and time.

58. As regards *proportionality*, the distortions of competition seem minimised by various safeguards. Above all, the mechanism of the reverse auction enables the Fund to purchase highly rated assets at the highest possible remuneration (interest rate). Furthermore, the auction is designed as being open and non-discriminatory, where prices of a (to a certain extent) homogeneous assets are compared. As regards the non-competitive bids, they function as a reward mechanism for increased lending to businesses and households. The Commission is of the view that although the prices attributed may not be market conform (best price or lowest interest rate granted in the auction), the measure is limited to 25% of the auction and will contribute to enhanced lending. Moreover, the Commission notes that a large number of credit institutions are likely to benefit from this kind of auctions as the lending category "the other resident sectors" include most of the economy as explained in footnote 1 above.

59. The minimum interest rate asked in the auction should be the cost for the liquidity provided by the State. According to the Spanish authorities indicated in Article 5 (2) of the Ministerial Order that the minimum interest rate accepted may not be inferior to the government bond yield, i.e. the cost of resources for the Spanish Government. Moreover, they claim that under the given circumstances of the crisis where interbank lending is disrupted and banks have severe difficulties in satisfying their liquidity needs, the price to be achieved for the assets is expected to be high, also likely to cover an insurance element to compensate for credit risk as demanded by a prudent investor. The Commission shares the view of the Spanish authorities that there is a substantial likelihood that the resulting price of the auctioning will be above the aforementioned threshold, possibly by a substantial amount as already described in point 51 before. Furthermore, the Commission takes also into account the factors mitigating the credit risk for the Fund in relation to the purchased assets. In that respect, it notes the high ratings of the provided assets (double or triple A) and the special features of the covered

[14] See point 20 above.

bonds and the notes linked to the structured covered bonds provide for additional protection. Also, it notes the inherent features of the repo transactions, which foresee that additional collateral has to be provided, once the value of the initially provided collateral were to decline. In addition, the Spanish Ministry of Economy and Finance committed in the framework of the revision of the scheme to assess, if the resulting price is as high as envisaged.

60. The Spanish authorities committed to monitor that the benefitting credit institutions do not expand their activities under the scheme and thus do not receive more liquidity than necessary for re-establishing their lending activities. This concerns a limitation of the expansion of activities of an aggregate level of all benefitting credit institutions against clear benchmarks (see point 34) and individual behavioural commitments (see point 35).

61. Finally, the Spanish authorities committed to revise the scheme and to present every six months reports on the operation of the scheme to the Commission.

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

63. This decision replaces the decision NN54/A/2008 adopted on 4 November 2008.

V. DECISION

The Commission concludes that the notified measures 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.

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 registered letter or fax to:

European Commission
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Yours faithfully,

For the Commission
Neelie Kroes
Member of the Commission