



EUROPEAN COMMISSION

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PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid N 363/2008 – Spain
State aids for environment and sustainable energy development**

Dear Sir,

1. Procedure

By letter of 18 July 2008, Spain notified the Commission of an aid scheme constituting a comprehensive framework for the financing of different environmental projects in the region of Andalusia.

The Commission asked Spain to provide further information by letter of 19 September 2008, to which Spain replied on 27 October 2008. Furthermore, upon request of the Commission service in a meeting held on 11 November 2008, the Spanish authorities have submitted a second set of information on 26 November 2008.

2. DESCRIPTION OF THE AID

Categories of measures to be financed

1. The aim of the present scheme, which is to be introduced by the "Proyecto de Decreto, por el que se establece el marco regulador de las ayudas a favor del medio ambiente y del desarrollo energetico sostenible de Andalusia que se concedan por la Junta de Andalusia" (hereinafter "Draft Decree"), is to finance projects aimed at: i) increasing the level of environment protection beyond the Community standards or in the absence of Community standards; ii) acquisition of new vehicles which go beyond the Community environmental standards; iii) completion of environmental studies; iv) energy saving; v) adoption of renewables; vi) cogeneration; vii) district heating with low energy consumption; viii) waste management; ix) remediation of polluted sites.

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

2. The present measure provides exclusively for investment aid, which will be granted through grants and interest rate reduction.
3. More particularly the present scheme will finance measures aimed at the following:
 - (i) Investment aid to undertakings which will carry out projects increasing the level of environment protection beyond the Community standards or in the absence of Community standards, more specifically by: a) reducing or eliminating the negative impact of their activities on the environment; b) substituting the use of fossil combustibles for renewable ones with the aim of reducing the greenhouse gases emissions. The Spanish authorities submit that through these interventions it will be possible to achieve the substitution of around 1800 tonnes of oil for other fuels per year, leading to reductions of greenhouse gas emissions of 5.6 ktCO₂ per year.
 - (ii) Acquisition of new vehicles using environmentally friendly fuels (electric, hydrogen, hybrid, LNG or LPG vehicles¹). The Spanish authorities submit that through these interventions it will be possible to achieve reductions of greenhouse gas emissions of 1600 ktCO₂ per year in the transport sector.
 - (iii) Environmental studies for the realisation of energy saving, energy efficiency, or the development of renewable energies.
 - (iv) Energy saving measures. The present scheme provides for aid to be granted for investments aimed at: a) in different industrial sectors, mainly for energy-intensive users, the substitution of the existing equipment and installations and the adoption of the best technology available; b) in the construction sector, the improvement of the isolation of the buildings. The Spanish authorities submit that through these interventions it will be possible to achieve reductions of greenhouse gas emissions of 11000 ktCO₂ by 2013.
 - (v) Production of energy from renewable sources (in particular electricity, heating and biofuels from hydro, photovoltaic, biomass and biogas technologies). According to the Spanish authorities, the present investment aid scheme should allow renewables to reach 4282 tonnes equivalent petrol ('tep' hereinafter) as primary energy in 2013, growing at an average rate of 27.5% per year by this date.
 - (vi) Cogeneration. In line with the new environmental guidelines, only high-efficient cogeneration projects, defined under the terms of Directive 2004/8/EC and Decision 2007/74/EC, will receive investment aid. According to the Spanish authorities, the aid scheme should allow the installed cogeneration capacity to grow from 903.5 MW in 2006 to 1400 MW in 2013.
 - (vii) Energy-efficient district heating and/or cooling. Investment aid will be granted to high-efficient cogeneration or conventional system based on (i) supply of heating from industrial processes; (ii) supply of heating in the form of steam or hot water, from a central source through a transmission system. Energy-efficient district heating is defined as in point 70(13) of the Environmental Aid Guidelines².

¹ Please note that the measure does not include support to vehicles fuelled by biofuels.

² OJ C 82 of 1.4.2008, p. 1

- (viii) Waste management. The present scheme provides for investment aid to projects which apply the state of the art techniques available for waste management.
- (ix) Remediation of polluted sites. The present scheme provides for investment aid for the remediation of contaminated sites. However, as further explained below (see paragraph 12), this measure will not qualify as state aid and therefore will not be analysed in the present decision.

Aid intensities and budget

4. The overall budget and maximum aid intensities per type of measure are the following:

Type of measure	Overall budget (MEUR, 2009-2015)	Maximum aid intensity (% of eligible costs)
(i) Increase of the level of environment protection beyond the Community standards or in the absence of Community standards	14	50 to 70% depending on the size of the beneficiary ³ 10% more if a project features ecoinnovation
(ii) Acquisition of new vehicles which go beyond the Community environmental standards	17.5	50 to 70% depending on the size of the beneficiary ⁴
(iii) Environmental studies	14.2 ⁵	50 to 70% depending on the size of the beneficiary ⁶ for projects linked to an investment, 50% or less ⁷ for other projects
(iv) Energy saving	420	60 to 80% depending on the size of the beneficiary ⁸
(v) Renewable energy sources	280	60 to 80% depending on the size of the beneficiary ⁹
(vi) Cogeneration	8.4	60 to 80% depending on the size of the beneficiary ¹⁰
(vii) Energy-efficient district heating and/or cooling	7	50 to 70% depending on the size of the beneficiary ¹¹
(viii) Waste management	5.25	50 to 70% depending on the size of the beneficiary ¹²
(ix) Remediation of polluted sites	4.025	100%
TOTAL	770.375	

³ The maximum aid intensity for large enterprises is increased by a further 10% for medium-sized enterprises and a further 20% for small-sized enterprises (i.e. maximum aid intensity of 50, 60 and 70% or 60, 70 and 80%), in line with the relevant points of the EAG.

⁴ See footnote 3.

⁵ The overall budget line provided for this type of intervention is 8 million Euros, in cases of studies related to the completion of an investment, or 8.5 million Euros in cases of studies which are not related to the completion of an investment.

⁶ See footnote 3.

⁷ 50% maximum aid intensity for small and medium enterprises, *de minimis* aid only for large enterprises.

⁸ See footnote 3.

⁹ See footnote 3.

¹⁰ See footnote 3.

¹¹ See footnote 3.

¹² See footnote 3.

3. ASSESSMENT

3.1 Procedural requirements

5. By notifying this aid scheme before it enters into force, the Spanish authorities have complied with their obligation of Article 88 (3) of the EC Treaty.

3.2 Existence of State aid under Article 87(1) of the EC Treaty

6. Article 87(1) EC lays down four conditions in order for a State measure to be considered aid. First, there must be an intervention by the State or through State resources. Second, it must confer an advantage on the beneficiary, which has to be an undertaking, i.e. a public or private entity carrying out an economic activity. Third, the intervention must be likely to affect trade between Member States. Fourth, it must distort or threaten to distort competition.
7. The beneficiaries of the present aid scheme will receive a contribution to partially compensate the extra costs incurred to carry out the abovementioned type of projects in their business organisation. The abovementioned measures therefore confer an advantage on them.
8. The beneficiaries constitute a selective group of undertakings in the sense of Article 87(1) EC as the measure solely favours certain undertakings.
9. At least some of the measure's beneficiaries are engaged in sectors where trade between Member States takes place and, therefore, the measure is likely to affect trade and distort competition.
10. On the basis of the elements presented above, the Commission takes the view that all envisaged measures (see (i) to (viii) above), with the exception of (ix) aid for remediation of polluted sites, further described below, constitute State aid in the meaning of Article 87(1).
11. As regards aid for remediation of polluted sites, the Commission notes that the Spanish authorities have committed to apply this kind of measures only to municipalities or other public entities not carrying out any economic activity. Moreover, the Spanish authorities have specified that, even in case the sites would be sold to third parties after their remediation, the remediation costs shall be included in the sale price and the sale shall take place through a public tender procedure. They have committed to respect such procedures. The potential buyer of the remediated site would, thus, indemnify the municipalities for the costs incurred for the remediation and would not, therefore, receive any advantage from the present measure.
12. Accordingly, the financing of the remediation of polluted sites through the present scheme does not constitute State aid because direct beneficiaries (municipalities or public entities) are not undertakings under the terms of State aid rules and potential indirect beneficiaries (third parties purchasing the remediated land), even if qualifying as undertakings, would not receive any advantage. Consequently, this measure will not be analysed any further in the present decision.

13. Moreover the Spanish authorities have committed to apply a public tender procedure to select the undertakings to be entrusted with the remediation works, should such works be outsourced to third parties. This would ensure that no undertaking will receive an undue advantage from the present scheme.

3.3 Compatibility

General Remarks

14. The Commission assessed the compliance of the scheme contained in the present Resolution with Article 87(3) (c) EC, in particular on the basis of the Environmental Aid Guidelines (EAG), which apply as of 2 April 2008.
15. As for the environmental benefit, the Commission takes the view that the emissions reduction and energy saving forecasts described in paragraph 3 of the present decision represent a significant contribution to environmental protection.

- Eligible costs calculation

16. Concerning the calculation method for eligible costs, the Commission considers that the principles contained in the Draft Decree as well as the methodology detailed and the concrete examples submitted by the Spanish authorities for each and every category of aid foreseen by the present scheme in the notification Form and in the reply to the Commission's request for information are in line with points 80 to 84 of the EAG. The Commission finds that the Spanish authorities have illustrated that the support granted under the measure at stake will not exceed the extra costs necessary to achieve higher environmental protection through the interventions described above.
17. As regards more specifically the methodology applied by the Spanish authorities, the Commission notes that Article 14 of the Draft Decree, in line with point 81 of the guidelines, provides that the identification of the part of the investment directly related to environmental protection can be done either a) when the cost of investing in environmental protection can be easily identified in the total investment cost, by considering this precise environmental protection-related cost to constitute the eligible costs; b) or in all other cases by comparing the investment with the counterfactual situation in the absence of State aid, i.e. with the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'). The Commission notes that in all the illustrative examples provided by the Spanish authorities, the reference investments are in line with the criteria set out by the guidelines: i.e. i) they are investments with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection) of the investment under assessment and ii) constitute, from a business point of view, a credible alternative. This will ensure that no overcompensation is given to the investment financed by the present scheme.
18. Moreover, as regards more specifically i) aid for the increase of the level of environment protection beyond the Community standards or in the absence of Community standards; ii) aid for the acquisition of new vehicles and iii) energy saving measures, Article 14 provides that: a) where the undertaking is adapting to, or goes beyond, national standards which are more stringent than the relevant Community standards or goes beyond

Community standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards; b) where no standards exist, eligible costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking or undertakings in question would achieve in the absence of any environmental aid.

19. The Spanish authorities finally clarified that they will finance the cost for the acquisition of material and immaterial assets and they will deduce from such costs the operating net benefits realised through the financed investments in the 5 years following the realisation of the investments. These principles have been applied in all the concrete examples provided by the Spanish authorities to the Commission to show the effect of the aid on the different kinds of measures financed.

- Aid intensities

20. As explained more in detail below, the aid intensities contained in the present scheme are in line with the relevant points of the EAG for each type of measure.
21. In addition, the Spanish authorities have committed to comply with point 78 of the EAG for the identification and the classification of a project as ecoinnovation allowing for a 10% bonus on maximum aid intensity. The Spanish authorities have committed to illustrate in their monitoring report the application of the eco-innovation bonus to the different cases.

- Cumulation

22. As regards cumulation, the Spanish authorities have confirmed that such aid intensity will not exceed the amounts provided for in the relevant section of the new EAG, should the contributions payable under the present scheme be cumulated between them or with those paid under any other measure.

- Incentive effect

23. As regards the incentive effect, the Spanish authorities have confirmed that no aid will be awarded under the present scheme to projects that have already been initiated. Therefore the aid scheme complies with point 143 of the EAG, and the incentive effect is presumed to be automatically met for all categories of aid granted to SMEs, in line with point 144 of the EAG.
24. In addition, when beneficiaries are not SMEs but large enterprises, the Spanish authorities have provided sufficient evidence to prove the need for public support through the present aid scheme for the realisation of the projects described above. In particular, they have submitted representative examples of investment for each type of measure including calculations of the net present value of the investment and showing that state aid is necessary for the beneficiary to undertake the investment, whereas it would not have been realised without the aid.
25. The Spanish authorities have submitted examples related to the following projects: substitution of old equipments with new ones which increase the level of environment protection beyond the Community standards or in the absence of Community standards; substitution by an undertaking active in the service sector of old vehicles by new hybrid

vehicles; adoption of less energy consuming equipment which would entail a saving of 120 MWh and 7 500 tep per year; installation of a biomass fuelled boiler; realisation of a cogeneration project and of district heating through the distribution of hot water in a 4.6 kilometers long network, collection of vegetal oil to be used for the production of soap. For all these investments, the aid has the effect of changing the net present values of the investment from a negative to a positive value (without going beyond the aid intensities foreseen by the EAG).

26. Therefore the Spanish authorities have demonstrated the incentive effect of the measure for large enterprises as well, in line with point 145 and 146 of the EAG.
27. On the basis of all these elements, the Spanish authorities have committed to respect the necessity of the incentive effect for the measures to be financed for beneficiaries of all sizes and to provide the necessary information to the Commission.

Compatibility of each category of aid with the new EAG

(i) - Aid for increase of the level of environment protection beyond the Community standards or in the absence of Community standards

28. The present scheme provides for investment aid to undertakings which will carry out projects increasing the level of environment protection beyond the Community standards or in the absence of Community standards, more specifically by: a) reducing or eliminating the negative impact of their activities on the environment; b) substituting the use of fossil combustibles for renewable ones with the aim of reducing greenhouse gases emissions. These measures are in line with the EAG¹³ (point 73), in particular as regards the provisions concerning the calculation of eligible costs, which reproduce the same mechanism of points 80 to 84 of the EAG; the aid intensity, which is in line with point 76 of the EAG, will range from 50 to 70% including the requirements on the bonus for ecoinnovation (point 78).

(ii) Acquisition of new vehicles which go beyond the Community environmental standards

29. The aid measures provided for in the present scheme for the acquisition of new environmentally friendly vehicles (electric, hydrogen, hybrid, LNG or LPG vehicles) which go beyond the Community environmental standards are in line with the EAG¹⁴. In particular the provisions for the acquisition of vehicles in the absence of Community standards or when Community standards have been adopted but did not yet enter into force (Article 6 of the Draft Decree) follows the line set out by point 85. Moreover, as regards the adaptation of vehicles which are already circulating, Article 6(2) of the Draft Decree provides, in line with point 86, that for retrofitting operations with an environmental protection objective in the transport sector the eligible costs are the total net extra costs involved according to the methodology of calculating eligible costs set out in points 80 to 84 if the existing means of transport are upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport or if the means of transport are not subject to any environmental standard. The aid intensities provided for in this kind of measure (50% to 80% depending on the size of the beneficiaries) are also in line with the EAG.

¹³ See Article 5 of the Draft Decree.

¹⁴ See Article 6 of the Draft Decree.

(iii) *Aid for environmental studies*

30. As regards aid for environmental studies which are linked to the possible realisation of an investment, the Commission notes that the measures provided for in the present aid scheme comply with the EAG¹⁵, in particular with point 91 since studies are directly linked to investments for the purposes of achieving higher environmental protection than required by Community standards, perform energy saving projects or produce energy from renewable sources.
31. On the contrary, the EAG do not consider aid to environmental studies which are not linked to the possible realisation of an investment. According to Article 13 of the Draft Decree the Spanish authorities will finance consultancy services aimed at the analysis of an eco-innovation project; environmental and energy audits; the adoption of organizational improvements which will have a positive impact on the environment or the installation of a system of energy and/or environmental management aimed inter alia at leading the undertaking to adopt a system in line with ISO 14001 and to voluntarily participate in the Community system for environmental management and auditing. However the Spanish authorities clarified that such aid would be granted to SMEs only, while large enterprises would only be allowed to receive aid below the *de minimis* threshold. The Spanish authorities have confirmed that such contributions would fulfil the requirements provided for by Article 26 of the General Block Exemption Regulation (hereinafter "GBER"), which applies to aid for the financing of consultancy services to SMEs in every domain, including environmental studies. The relevant requirements are that (i) the aid intensity shall not exceed 50 % of the eligible costs; (ii) the eligible costs shall be the consultancy costs of services provided by outside consultants; (iii) the services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising¹⁶. Therefore this type of aid for environmental studies is block exempted under the terms of Article 26 of the GBER.

(iv) *Energy saving*

32. Under the present scheme the Spanish authorities intend to finance in different industrial sectors, mainly for energy-intensive users, the substitution of the existing equipment and installations and the adoption of the best technology available. The Spanish authorities explain that for instance, for the food industry (which represents 70% of the total number of industries in Andalusia) the present scheme will finance initiatives such as the use of residual heating; installations aimed at heating recovery and improvement of control of the energy employed in the production process. In the construction sector, the present scheme will finance the improvement of the isolation of the buildings. Aid for energy saving measures is in line with the EAG¹⁷, in particular with point 98 of the EAG, on the identification of the extra costs directly related to energy saving and the obligation to achieve a level of energy saving higher than Community standards. Moreover Article 7 of the Draft Decree is in line with point 98 (c) of the EAG, as it foresees that eligible costs for energy saving measures must be calculated net of any operating benefits and operating costs related to the extra investment for energy saving and arising during the first three years of the life of this investment in the case of SMEs, the first four years in

¹⁵ See Article 13 of the Draft Decree.

¹⁶ The latter condition is expressly mentioned in Article 13 of the Draft Decree.

¹⁷ See Article 7 of the Draft Decree.

the case of large undertakings that are not part of the EU CO2 Emission Trading System and the first five years in the case of large undertakings that are part of the EU CO2 Emission Trading System.

33. The aid intensities foreseen by this kind of measure (ranging from 60-80% depending on the size of the beneficiaries) are also in line with points 95 and 96 of the EAG.

(v) Renewable energy sources

34. Aid for renewable energy sources includes aid for the promotion of solar, hydropower installations, biomass, and biogases, in line with point 70(5) of the EAG¹⁸. The Spanish authorities clarified that the present scheme could also apply to a combination of the different energy sources listed above as well as to the small wind powered electricity generation installations not connected to the grid.

35. The aid intensities envisaged by the present scheme (ranging from 60 to 80% depending on the size of the beneficiaries) are in line with those set in points 102-103 of the EAG. The costs calculations are also in line with points 105-106 of the EAG.

36. In particular, as regards the production of biofuels, Article 4 of the Resolution provides, as the Spanish authorities have confirmed to the Commission, that only biofuels which are "sustainable", under the terms of the EAG¹⁹, can be financed through the present scheme. The Spanish authorities have committed to provide the Commission with the necessary information on the implementation of the applicable sustainability criteria for the biofuels benefiting from aid under the present scheme. This information will be submitted to the Commission in the annual monitoring reports.

(vi) Cogeneration

37. Investment in cogeneration will be limited to high-efficiency cogeneration systems and will result in primary energy savings compared to separate production as defined by Directive 2004/8/EC and Decision 2007/74/EC, so that the measure is in line with points 70(11) and 112 of the EAG²⁰. The present aid scheme will finance both types of interventions foreseen by point 112, notably: (a) the installation of a new cogeneration unit, which will overall make primary energy savings compared to separate production as defined by Directive 2004/8/EC and Decision 2007/74/EC; (b) the improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit, which will create primary energy savings compared to the original situation.

38. The aid intensities (ranging from 60 to 80% depending on the size of the beneficiaries) comply with points 114-115 of EAG. The calculation of eligible costs for this kind of investments is in line with points 117-118 of the EAG, in particular with the requirement that eligible costs must be limited to the extra investment costs necessary to realise a high-efficiency cogeneration plant as compared to the reference investment.

(vii) Energy-efficient district heating and/or cooling

¹⁸ See Article 8 of the Draft Decree.

¹⁹ See point 70 (8) of the EAG.

²⁰ See Article 9 of the Draft Decree.

39. Investment in district heating and/or cooling will be limited to high-efficiency systems and will result in primary energy savings, so that the measure is in line with points 70(13) and 120(a) of the EAG²¹. According to Article 10 of the Draft Decree, this will not include aid to infrastructures. Aid intensities (ranging from 50 to 70% depending on the size of the beneficiaries) comply with points 121-122 of the EAG.
40. In addition, the eligible cost calculation is in line with points 124-125 of the EAG.

(viii) Waste management

41. The present scheme provides for investment aid to waste management projects which comply with the following requirements set out in the EAG²², in particular in point 127: (a) the investment is aimed at reducing pollution generated by other undertakings ('polluters') and does not extend to pollution generated by the beneficiary of the aid; (b) the aid does not indirectly relieve the polluters from a burden that should be borne by them under Community law, or from a burden that should be considered a normal company cost for the polluters; c) the investment goes beyond the 'state of the art' or uses conventional technologies in an innovative manner; d) the materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner; (e) the investment does not merely increase demand for the materials to be recycled without increasing collection of those materials.
42. Moreover, the aid intensities (ranging from 50 to 70% depending on the size of the beneficiaries) and the cost calculation provided by the present scheme for this category of aid are in line with points 128-129 and 130-131 of the EAG respectively.

4. DECISION

43. The Commission has concluded not to raise objections to the notified scheme N 363/2008 "State aids for environment and sustainable energy development. (Spain)" as it complies with the environmental aid guidelines (OJ C 82 of 1.4.2008, p. 1) and is therefore considered compatible with the common market in application of Article 87(3) (c) EC.
44. The Commission requests Spain to submit an annual report on the implementation of the aid enabling the Commission to verify that all conditions stipulated above were fulfilled when implementing the measure. Any change in the conditions under which the aid is granted must be notified in advance.
45. If this letter contains confidential information which should not be disclosed to third parties, 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 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.

²¹ See Article 10 of the Draft Decree.

²² See Article 11 of the Draft Decree.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B-1049 Brussels
Fax No: (0032) 2-296.12.42

Please mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission