



EUROPEAN COMMISSION

Brussels, 30.10.2010
C (2009) 8482

PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid N 455/2009 – Spain

Plan de mejora de la calidad del suministro de energía eléctrica de Galicia

Dear Sir,

1. PROCEDURE

- (1) By electronic notification of 27 July 2009, registered by the Commission the same day, the Spanish authorities notified the aid scheme named “Plan de mejora de la calidad del suministro de energía eléctrica de Galicia” (hereinafter the “scheme”).
- (2) The Commission requested additional information by letter of 25 August 2009 (D/53614) to which the Spanish authorities replied by letter of 23 September 2009 (A/20368).

2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (3) The objective of the scheme is to encourage regional development in Galicia by encouraging the provision of infrastructure to improve the quality of the electricity distribution to disadvantaged areas in the region.

2.2. Legal basis

- (4) The legal bases of the measure are:
 - The framework agreements of collaboration subscribed between the Consellería de Economía e Industria de la Xunta de Galicia (regional administration) and the beneficiary enterprises

Consellería de Economía e Industria de la Xunta de Galicia.
Edificio Administrativo San Caetano, s/n, bloque 5-planta 4ª
15781 Santiago de Compostela
Spain

- *Law 38/2003, of 17 November, concerning grants 38/2003, ; the Royal Decree 887/2006, of 21 July, which develops the former*
- *Law 9/2007, of 13 July, of Galicia, concerning direct grants, and Decree 11/2009, of 8 January, which approves the regulation that develops the Law.*
- *Law 54/1997, of 27 November, of the Electrical Sector (modified by Law 17/2007, of 4 July)*
- *Real Decree 1955/2000, of 1 December, by means of which the transport, distribution, commercialization, supply, and procedures for authorising electricity plans are regulated.*

2.3. Authority granting the aid

- (5) The granting authority is the *Consellería de Economía e Industria de la Xunta de Galicia*.

2.4. Geographical scope

- (6) The scheme is applicable to Galicia which is an economic development region in accordance with the Spanish regional aid map for 2007-2013¹. The region in question is currently covered under the derogation of Article 87 (3)(a) of the EC Treaty.

2.5. Beneficiaries

- (7) The potential aid beneficiaries of the scheme are all enterprises (small and medium-sized enterprises and large enterprises). The estimated number of beneficiaries is approximately 40. The scheme excludes from its application undertakings that are in difficulty in the meaning of the Community Guidelines on State Aid for rescuing and restructuring firms in difficulty.

2.6. Sectoral scope

- (8) The aid will be granted to the electricity supply sector.

2.7. Form of aid

- (9) The aid consists of non reimbursable grants.
- (10) The collaboration agreements include a suspensive clause under which the payment of the aid is conditional on the Commission approval of the aid scheme.

2.8. Eligible costs

- (11) The eligible costs for the investments are established on the basis of investments in material assets, including land, materials, equipment and accessories for the

¹ Commission Decision of 20 December 2006 on case N 626/2006 – ES – *Mapa de Ayudas Regionales 2007-2013*.

distribution installations, technical facilities and associated civil works necessary to ensure the distribution of electricity to disadvantaged areas.

- (12) In all cases, the recipient's contribution to the financing of the aided investment will be at least 25%.

2.9. Aid intensity

- (13) *Galicia* is a region covered under Article 87(3)(a) of the EC Treaty. For the period until 31 December 2013, the maximum aid intensity for Galicia will not exceed 30% Gross Grant Equivalent (hereinafter "GGE"). The maximum aid intensity foreseen for this scheme is 30% GGE².

2.10. Duration of scheme

- (14) The notified scheme will apply as from 1 January 2010 until 31 December 2013.

2.11. Budget of scheme

- (15) The estimated amount of aid allocated to the scheme is EUR 48,000,000 for the period 2010-2013. The budget allocation for each of the 4 years is of EUR 12,000,000.

2.12. Incentive effect

- (16) The beneficiaries have to submit an application for aid requesting the implementation of the collaboration agreements and the authority responsible for administering the scheme has to confirm in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project.

2.13. Cumulation

- (17) Cumulation of aid from different local, regional, national or Community sources is not foreseen under the scheme. However, in case of cumulation with other aid, it will be authorized under the condition of respecting for the region concerned the aid intensity ceilings laid down in the Spanish regional aid map for 2007-2013.
- (18) Regional investment aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses.

3. ASSESSMENT

3.1. State aid character of the scheme

- (19) The proposed aid scheme involves the transfer of State resources by public authorities within the meaning of Article 87(1) of the EC Treaty.

² For investment projects with eligible expenditure not exceeding EUR 50 million, this ceiling could be increased by 10 percentage points for medium sized companies and for small companies as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (20) The scheme is selective since it applies only to potential beneficiaries that carry out the initial investments foreseen in the scheme.
- (21) The scheme relieves the beneficiary companies from costs which they would have to bear under normal market conditions. Therefore, the companies benefit from an economic advantage over their competitors which distorts or threatens to distort competition.
- (22) Finally, as the scheme concerns a sector and undertakings which are involved in trade between Member States, there is a risk that the aid could affect that trade.
- (23) Consequently, the proposed aid scheme constitutes aid within the meaning of Article 87(1) of the EC Treaty.

3.2. Legality of the aid scheme

- (24) The Spanish authorities have fulfilled their obligation under Article 88(3) of the EC Treaty by notifying the aid before putting it into effect. The Commission takes note of the fact that the scheme will enter into force only after its approval by the Commission.

3.3. Compatibility of the aid scheme

- (25) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the scheme can be found to be compatible with the common market.
- (26) The Commission has examined the proposed aid scheme in the light of the Regional Aid Guidelines³ (hereinafter “RAG”).
- (27) The notified scheme is applicable to Galicia, a region which is currently eligible for regional aid under Article 87(3)(a) of the EC Treaty. The applicable aid ceiling is in line with section 4.1.2 of the RAG and the Spanish regional aid map 2007-2013.
- (28) In general, regional aid is not conceived for schemes which support a specific sector of activity. As stated in point 10 of the RAG, where, exceptionally, it is envisaged to grant aid confined to one area of activity, it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition.
- (29) The Commission considers that in this particular case, the scheme improves the quality of the electricity supply to centres of population where the quality of this service is deficient.
- (30) In terms of the contribution of the scheme to regional development, the Spanish authorities consider that the scheme will improve the electricity distribution in the whole region, and more specifically, in rural and semi urban areas as a result of the construction and maintenance of the projected electrical infrastructures for

³ Guidelines on National Regional aid for 2007-2013, OJ C 54, 4.3.2006, p.13.

2010-2013. Likewise, the estimated size of the beneficiary population amounts to 800.000 inhabitants, covering approximately a 30% of the Region of Galicia. The electricity distribution in Galicia is considerably conditioned by the special orography, climate, population dispersion and consumption characteristics. The increased demand of electricity by households and companies requires a quality electricity supply. The scheme improves the quality of the regional energy provision and minimises the risk, scope and duration of incidents of electricity provision in the region. In 2007, the average incidents ratio was of 1.47 hours/year (0.55 h/year in urban areas, 1.53 h/year in semi urban areas, 3.63 h/year in concentrated rural areas and 4.91 h/years in dispersed rural areas), showing the great discrepancies between the urban areas and the rest. The distortion of competition implied by the measure is limited since the project improves the overall quality of the electrical infrastructure within an EU disadvantaged region while increasing economic efficiency by enhancing security in the energy supply.

- (31) The scheme complies with the remaining relevant criteria established for investment aid in the RAG:
- The eligible expenses comply with the definition of initial investment as laid down in point 34 of the RAG.
 - The eligible expenditure concerns land, materials and equipment within the scope of section 4.2 of the RAG.
 - The condition on the incentive effect as laid down in point 38 of the RAG is respected.
 - The condition of maintenance of the investment, 5 years after its completion for large enterprises and 3 years after its completion for SME as stipulated in point 40 of the RAG is respected.
 - The rules on cumulation of aid as defined in point 90 of the RAG are respected.
 - The aid beneficiary's own contribution to the financing of the aided investment will be at least 25%.
 - No aid will be granted to firms in difficulty.
 - Assistance to beneficiaries which are subject to an outstanding recovery order following a previous Commission decision declaring the aid illegal and incompatible with the common market is excluded from the scheme.
 - The provisions for large investment projects as defined in section 4.3 of the RAG are respected.
 - The duration of the scheme is in line with the duration of the Spanish regional map 2007-2013. The notified scheme will expire on 31 December 2013.
 - In conformity with point 108 of the RAG, projects for which expenses were incurred before the date of publication of the scheme will not be eligible for regional aid.

(32) In view of the above, the Commission considers that the notified aid scheme is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

4. DECISION

(33) The Commission has accordingly decided to consider the aid scheme to be compatible with the EC Treaty.

(34) The Commission reminds the Spanish authorities that the reporting conditions described in the Commission Regulation (EC) N° 794/2004 implementing Council Regulation (EC) N° 659/1999 laying down detailed rules for the application of Article 93 of EC Treaty have to be respected.

(35) The Commission further reminds the Spanish authorities that all plans to modify this aid scheme have to be notified to the Commission.

(36) The Commission, as well, reminds the Spanish authorities to respect the principles established under Directive 2003/54/EC⁴ and Regulation (EC) 1228/2003⁵, in particular transparency and equal treatment among undertakings, with respect to construction and putting into operation of the new infrastructure.

In case 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/state_aids_texts_en.htm.

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

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: +32 2 29 61242

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

⁴ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; OJ L 176, 15/07/2003, p.37.

⁵ Regulation (EC) No 1228/2006 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity; OJ L 176, 15/07/2003, p.1.