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Subject: State Aid SA.57019 (2020/N) - Spain - Second National Temporary Framework for State aid related to the containment of the COVID-19 outbreak

Excellency,

1. PROCEDURE

- (1) By electronic notification of 21 April 2020, Spain notified the second National Temporary Framework for State aid for the containment of COVID-19 (“Second National Temporary Framework”) that includes aid for COVID-19 relevant research and development (“R&D”), investment aid for testing and upscaling infrastructures, investment aid for the production of COVID-19 relevant products, aid in the form of deferrals of tax and/or of social security contributions and aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak. The aid was notified under article 107(3)(b) and article 107 (3)(c) of the Treaty on the Functioning of the European Union, as interpreted by sections 3.6 to 3.10 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).¹
- (2) In addition, Spain notified amendments to the first National Temporary Framework for State aid in the form of direct grants, repayable advances, tax or payments advantages, guarantees on loans and subsidised interest rates for loans

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended on 3 April 2020 ((C(2020) 2215), OJ C 112I, 4.4.2020, p. 1-9).

Excma. Sr. D.^a Arancha González Laya
Ministra de Asuntos Exteriores y de Cooperación
Plaza de la Provincia 1
E-28012 MADRID

to support the economy in the current COVID-19 outbreak (hereinafter “the first National Temporary Framework”)² approved by way of the State aid decision C(2020) 2154 final of 2 April 2020³.

- (3) The Spanish authorities confirm that the notification does not contain confidential information.
- (4) Spain exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (5) The Second National Temporary Framework is intended by Spain as a response to the COVID-19 outbreak.
- (6) Spain considers that the COVID-19 outbreak is already affecting the real economy. Following this outbreak, on 14 March 2020 Spain declared a State of emergency enforced on its whole territory for a period of 15 days. It forced restriction in movement applicable to citizens with very limited exceptions (such as purchase of food, pharmaceuticals and essential items; attending medical appointments; assisting and caring for seniors, minors, dependants, the disabled, or people who are particularly vulnerable). On 29 March 2020, the Government approved a new Law⁵ declaring the lockdown for the following 15 days of the whole economy, with the exception of essential activities. On 13 April 2020, the restrictions laid down on 14 March were further extended, implying the closure of all premises and establishments that carry out public-facing activity (apart from those distributing food, medicines and essential items). Mobility restrictions for citizens were also maintained. At the moment, the duration of the State of emergency has been further extended until 26 April 2020⁶.
- (7) The Spanish authorities indicate that the economic and social impact of the COVID-19 outbreak will deeply affect the whole economy. According to the International Monetary Fund, a fall of 8 % in the GDP and a rise of employment above 20 % can be expected. Economists and experts forecast an intense and severe recession in Spain, with liquidity shortage and severe unemployment in all sectors and all types of undertakings.

² Agreement of the National Government Commission for Economic Affairs of 26 March 2020 on a National Temporary Framework for State aid in the form of direct grants, repayable advances, tax or payments advantages, guarantees on loans and subsidised interest rates for loans to support the economy in the current COVID-19 outbreak

³ Decision C(2020) 2154 final of 2 April 2020 in case SA.56851 (2020/N) – Spain – Umbrella Scheme – National Temporary Framework for State aid in the form of direct grants, repayable advances, tax or payment advantages, guarantees on loans and subsidized interest rates for loans to support the economy in the current COVID outbreak

⁴ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

⁵ <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-4166>

⁶ Real Decreto 487/2020, de 10 de abril, por el que se prorroga el estado de alarma declarado por el Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19.

- (8) The Second National Temporary Framework covers support to accelerate COVID-19 relevant R&D, testing and upscaling infrastructures, as well as production investments that contribute to developing COVID-19 relevant products needed to respond to the COVID-19 pandemic. In addition, the Framework covers liquidity support to undertakings in the form of wage-support, as well as deferrals of tax and/or social security contributions. The Second National Temporary Framework is based on Article 107(3)(c) and Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by the applicable sections of the Temporary Framework.

2.1. The nature and forms of aid

- (9) The Second National Temporary Framework provides aid in the form of direct grants, repayable advances, tax or payments advantages (see also recital (10)).
- (10) The Second National Temporary Framework also expands the form of aid that can be granted under the first National Temporary Framework. As a result, support granted under section 2.7.1 of Commission decision C(2020) 2154 final of 2 April 2020 can also be granted in the form of guarantees, subsidised interest rates, as well as equity, in addition to direct grants, repayable advances and tax or payment advantages.

2.2. National legal basis

- (11) The legal basis for the Second National Temporary Framework is the *Agreement of the National Government Commission for Economic Affairs of 17 April 2020 on a National Temporary Framework* for State aid for the containment of COVID-19 outbreak for relevant research and development, investment aid for testing and upscaling infrastructures, investment aid for the production of COVID-19 relevant products, aid in form of deferrals of tax and/or of social security contributions and aid in the form of wage subsidies.

2.3. Administration of the measures

- (12) The General State Administration, the Administration of the Autonomous Communities, 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 under the notified measure.
- (13) The Spanish authorities confirmed that at national, regional and local level aid schemes implemented under the Second National Temporary Framework will fully respect the conditions covered by the measures (such as eligible activities, eligible costs, aid intensities, aid instruments).

2.4. Budget and duration of the measures

- (14) According to the Spanish authorities, it is difficult to provide the budget for the scheme, as individual measures based on this umbrella scheme will be implemented at various administrative levels. The aid volume available under this scheme has therefore not yet been definitely adopted. The Spanish authorities could only provide preliminary figures estimating that approximately EUR 3,500 million will be disbursed for the measures implemented under the Second National Temporary Framework.

- (15) Aid may be granted under the Second National Temporary Framework as from its approval by the European Commission until 31 December 2020. If the aid is granted in the form of tax advantages (other than tax deferrals⁷), this deadline does not apply and the aid will be considered granted at the time when the declaration of the taxes accrued in the period between 13 March 2020 and 31 December 2020 is due.
- (16) The Second National Temporary Framework may be financed by the European Regional Development Fund, European Social Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund, European Union Solidarity Fund or the Coronavirus Response Investment Initiative when implemented at various administrative levels. The Spanish authorities confirmed that the rules applicable under these Funds will be respected.

2.5. Beneficiaries

- (17) All undertakings (operating or registered in Spain), regardless of the size and sector and in which they are active, are eligible for aid under the Second National Temporary Framework.
- (18) However, at national, regional and local level aid measures implemented under the Second National Temporary Framework described in section 2.7.3 and 2.7.4 may be restricted to certain types of undertakings.
- (19) For the measures described in section 2.7.1 and 2.7.2, aid may not be granted under the Second National Temporary Framework to undertakings which were already in difficulty (within the meaning of Commission Regulation (EU) No 651/2014 (“GBER”), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014 as applicable) on 31 December 2019. For the measures described in section 2.7.3 and 2.7.4 support may be granted to undertakings in difficulty without the fulfilment of the mentioned above criterion.

2.6. Sectoral and regional scope of the measures

- (20) The Second National Temporary Framework is open to all sectors. However, credit institutions are excluded as eligible final beneficiaries. It applies to the whole territory of Spain.
- (21) At national, regional and local level aid measures implemented under the Second National Temporary Framework described in section 2.7.3 and 2.7.4 may be restricted to certain sectors, regions.

⁷ The Spanish authorities have confirmed that the aid in the form of tax deferrals can only apply to payment obligations due before 31 December 2020.

2.7. Basic elements of the measures

2.7.1. Amendments to the first National Temporary Framework

- (22) The Second National Temporary Framework alters the first National Temporary Framework, allowing for aid in the form of guarantees, loans and equity contributions, in addition to the existing possibility of granting aid in the form of direct grants, repayable advances and tax or payments advantages, up to a cumulated amount of EUR 800,000 per undertaking (including self-employed persons) for all sectors but the fishery and aquaculture sector, where the maximum amount per undertaking is EUR 120 000, and the primary production of agricultural products, where the maximum per undertaking is EUR 100 000. In addition, the Second National Temporary Framework lays down the rules of cumulation for the two national frameworks.
- (23) All other conditions of section 2.7.1 of the Commission decision C(2020) 2154 final of 2 April 2020 approving the first National Temporary Framework remain unaltered and binding.

2.7.2. Aid for COVID-19 related R&D, testing and upscaling infrastructures and production of COVID-19 relevant products

- (24) The Spanish authorities confirmed that for R&D and investment projects covered by this section, the aid will be considered to have an incentive effect for projects starting as of 1 February 2020. This will also be the case where the R&D project has received a COVID-19 specific Seal of Excellence. For projects started before 1 February 2020, the aid shall be considered to have an incentive effect only if it is necessary to accelerate or extend the scope of the project, in which case aid may be claimed only for the additional costs related to the acceleration efforts or the extension of the scope of the project.
- (25) Investment projects concerning testing and upscaling of infrastructures (section 2.7.2.2 below) and production of COVID-related products (section 2.7.2.3 below) that may be supported must be completed within six months after the date on which the aid was granted. An investment project is deemed to be completed when the national authorities accept it as such. Where the six-month deadline is not met, the amount of aid granted in the form of direct grants or tax advantages shall be reimbursed at the rate of 25 % for each month of delay, unless the delay is due to factors beyond the control of the aid beneficiary. If the deadline is respected, the aid granted in the form of a repayable advance will be converted into grants; if this is not the case, the repayable advance will be repaid in equal annual instalments within five years of the date on which the aid was granted.
- (26) For the purpose of the relevant investment projects, the covered COVID-19 relevant products are: COVID-19 relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators and protective clothing and equipment, as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for the production; as well as data collection/processing tools.

- (27) For R&D and investment projects, the aid may take the form of direct grants, repayable advances or tax benefits. In addition to this, investment projects may also benefit from a loss cover guarantee. These can either be part of the same aid measure or be an independent aid measure. The loss cover guarantee shall be issued within one month after the undertaking applied for it and the amount of loss to be compensated shall be established five years after completion of the investment. The compensation amount shall be calculated as the difference between the sum of investment costs, a reasonable profit of 10 % p.a. on the investment cost over five years, and the operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project.

2.7.2.1. COVID-19 relevant R&D projects

- (28) Under this measure, aid can be granted for R&D projects carrying out COVID-19 and other anti-viral relevant research, including projects having received a COVID-19 specific Seal of Excellence quality label under the Horizon 2020 SME-instrument.
- (29) The eligible costs shall be costs necessary to carry out the R&D project limited to the R&D project's duration, including, inter alia: personnel costs, costs for digital and IT equipment, diagnostic tools, data collection and processing tools, pre-clinical tests and clinical trials (test phases I-IV). Stage IV tests are eligible, provided that they allow for further scientific or technological advance. In addition, eligible R&D project costs shall consist of costs relating to obtaining, validating and defending patents and other intangible assets, costs of obtaining conformity assessments or authorisations necessary for the marketing of new and improved vaccines and medicines, medical devices, hospital and medical equipment, disinfectants and new and improved personal protective equipment.
- (30) The Spanish authorities confirmed that assets (such as instruments, equipment) that are not used for the full duration of the R&D project and/or are used for other purposes than the R&D projects covered by the notified measure are taken into account only pro rata (depreciation over the period of duration of R&D project or pro rata of the capacity used for the R&D project).
- (31) Each beneficiary may be awarded up to 100 % of eligible costs for fundamental research. The aid intensity may not exceed 80 % of the eligible costs for industrial research and experimental development activities, as defined in paragraphs 84, 85 and 86 of Article 2 of the GBER.
- (32) Furthermore, the aid intensity for industrial research and experimental development may be increased by 15 percentage points, if more than one Member State supports the research project or if it is carried out in cross-border collaboration(s) with research organisations or other undertakings.
- (33) The Spanish authorities confirmed that beneficiaries of the aid must undertake to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA.

2.7.2.2. *Investment aid for testing and scaling up infrastructures*

- (34) The Spanish authorities may grant investment aid for the construction or upgrade of testing and upscaling infrastructures required for the development, testing and upscaling (up to the first industrial deployment prior to mass production) of COVID-19 relevant products, as referred to in recital (26) above.
- (35) The Spanish authorities confirmed that the eligible costs are limited to investment costs necessary for setting up the testing and upscaling infrastructures (up to the first industrial deployment prior to mass production) necessary to develop the COVID-19 related products.
- (36) The intensity of aid granted under the measure shall not exceed 75 % of the eligible investment costs.
- (37) However, the maximum allowable aid intensity of the direct grant or tax advantage or repayable advance can be increased by 15 additional percentage points if the investment is completed within two months from the date on which the aid is granted or the date of application for the tax advantage or if the support comes from more than one Member State.
- (38) The price charged for services provided by testing and scale extension infrastructures must correspond to the market price.
- (39) The Spanish authorities confirmed that the testing and scaling up infrastructures shall be open to different users, and be granted on a transparent and non-discriminatory basis. Notwithstanding the above, preferential access may be granted on more favourable terms to undertakings which have financed at least 10 % of the investment costs.

2.7.2.3. *Investment aid for the production of COVID-19 related products*

- (40) Under the measure, aid may be granted for the production of COVID-19 relevant products as covered by recital (26) above.
- (41) The eligible costs are all investment costs necessary for producing the COVID-19 relevant products and the costs of trial runs of the new production facilities.
- (42) The aid intensity shall not exceed 80 % of the eligible costs. However, the maximum allowable aid intensity of the direct grant or tax advantage or repayable advance can be increased by 15 additional percentage points if the investment ends within two months from the date on which the aid is granted or the date of application for the tax advantage, or if the support comes from more than one Member State.

2.7.3. *Aid in the form of a deferral of payment of taxes or social security contributions*

- (43) Under this measure, aid may be granted in the form of a deferral of payment of taxes⁸ or social security contributions applicable to enterprises and self-employed persons who are particularly affected by the outbreak of COVID-19 and by the declaration of the State of emergency, as a result of the outbreak.
- (44) The enterprises and self-employed persons concerned may be limited/restricted, inter alia, on the basis of geographical criteria, by sectors of economic activity or by reference to the size of the undertaking. The measure could be provided for both in connection with fiscal and social security obligations, including but not limited to the deferral of payments due in instalment, easier access to debt payment plans and the granting of interest-free periods, the suspension of tax debt recovery and expedited tax refunds.
- (45) The Spanish authorities have confirmed that this measure only applies to payment obligations due before 31 December 2020. Aid will be granted before 31 December 2020. The deferrals must end before 31 December 2022.

2.7.4. *Aid in the form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak.*

- (46) The Spanish authorities confirmed that aid under this measure will be granted under a scheme in the form of wage subsidies to employers. The purpose of the aid is to avoid reductions in the workforce (i.e. lay-offs) for undertakings (including self-employed persons) affected by the outbreak of COVID-19 and the subsequent state of emergency.
- (47) The Spanish authorities explained that the Second National Temporary Framework foresees that in line with paragraph 42 of the Temporary Framework the different administration levels can design a scheme restricted to certain sectors, regions or types of undertakings providing that the implemented scheme meets the eligibility criteria applicable to this measure.
- (48) The Spanish authorities confirmed that the wage subsidy can be granted, for a maximum period of 12 months after the aid application, to employees who would otherwise have been laid-off as a result of the suspension or reduction of business activities due to the outbreak of the COVID-19 pandemic and subject to the condition that the benefiting employees remain continuously employed throughout the entire period for which the aid is granted. Subject to decision at the different administrative levels, the aid can also be granted retroactively for wage costs, which have been incurred by employers following the announcement of the State of Emergency in Spain. In this case, all aid granting conditions covered by this section will also be respected.
- (49) The monthly wage subsidy shall not exceed 80 % of the monthly gross salary (including employers' social security contributions) of the benefiting employee.

⁸ The Spanish authorities have confirmed that the notified scheme is limited to deferral of taxes within the meaning of Article 2(2)(c) of the Spanish General Tax Law (*Ley 58/2003, de 17 de diciembre, General Tributaria*).

- (50) The Spanish authorities clarified that there are no restrictions regarding the maximum number of employees that a company can include in the application for aid, but the aid intensity of the grant per employee must be respected.
- (51) The Spanish authorities also confirmed that if the wage subsidy is combined with other general or targeted employment support measures, the resulting combined support will not result in overcompensation of the wage costs of the employees concerned.

2.8. Cumulation

- (52) The aid ceilings and total maximum aid intensities fixed under the Second National Temporary Framework shall apply, regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
- (53) Aid under the notified measures, may be cumulated with other compatible aid (such as aid under the different *de minimis* Regulations⁹ and/or aid implemented under the GBER) provided the cumulation rules under the relevant Regulations are respected.
- (54) In case aid is cumulated with other aid granted under the same measure or under another measure authorised under the Temporary Framework by the same competent granting authority or by another one, the maximum aid amounts established in the Temporary Framework will be respected.
- (55) Furthermore, the Spanish authorities have confirmed that aid for COVID-19 relevant R&D under section 2.7.2.1 may be combined with support from other sources for the same eligible costs, provided the combined aid does not exceed the ceilings set out under section 2.7.2.1 of the present decision.
- (56) The Spanish authorities have also committed that investment aid for testing and upscaling infrastructure under section 2.7.2.2 and investment aid for the production of COVID-19 relevant products under section 2.7.2.3 shall not be combined with other investment aid for the same eligible costs.
- (57) In addition, aid granted under section 2.7.2.1, 2.7.2.2 and 2.7.2.3 of the present decision shall not be cumulated if the aid concerns the same eligible costs.
- (58) Finally, the Spanish authorities assured that aid in the form of wage subsidies, covered by section 2.7.4 above, if combined with other generally available or

⁹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

selective employment support measures, will not lead to overcompensation of the wage costs of the supported employees.

2.9. Monitoring and reporting

- (59) The Spanish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework.

3. ASSESSMENT

3.1. Existence of State aid

- (60) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (61) The measures are imputable to the State, since they are administered by the competent granting authorities (see recital (12) to (13)) and they are based on a legislative act (recital (11)). They are financed through State resources, since they are financed by public funds.
- (62) The measures under the Second National Temporary Framework confer an advantage on their beneficiaries in the form of direct grants, repayable advances, tax or payments advantages, guarantees, subsidised interest rates, as well as equity (recitals (9)-(10)). They relieve those beneficiaries of costs, which they would have to bear under normal market conditions.
- (63) The advantage granted through the measures under the Second National Temporary Framework is selective, since it can in practice be awarded only to certain undertakings, in particular undertakings involved in COVID-19 relevant R&D, undertakings investing in testing and upscaling infrastructures, as well as undertakings investing in the production of COVID-19 relevant products (for the aid described in section 2.7.2). In particular, credit institutions are excluded as eligible final beneficiaries (see recital (20)). Also only certain undertakings will be partially relieved of their wage costs, or will benefit from deferral of tax and/or social security contributions. Furthermore, the granting authorities at national, regional and local level will be in charge for the selection of the beneficiaries.
- (64) The measures under Second National Temporary Framework are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (65) In view of the above, the Commission concludes that the measures under the Second National Temporary Framework constitute aid within the meaning of Article 107(1) TFEU. The Spanish authorities do not contest that conclusion.

3.2. Lawfulness of the measures

- (66) By notifying the measures under the Second National Temporary Framework before putting them into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU.

3.3. Compatibility

- (67) Since the measures under the Second National Temporary Framework involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that they can be found compatible with the internal market.
- (68) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (69) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (70) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”. The Second National Temporary Framework aims at reducing liquidity constraints of undertakings (including self-employed), preserving employment and avoiding lay-offs as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of Member States (see recitals (5) to (8)). In this regard, the Second National Temporary Framework has been designed to meet the requirements of specific categories of aid (“aid in the form of deferral of tax and/or social security contributions” and “aid in the form of wage subsidies”) described in sections 3.9 and 3.10 of the Temporary Framework, respectively.
- (71) The Commission also acknowledged in the Temporary Framework, as amended on 3 April 2020, the need to take specific temporary measures enabling Member States to combat the health crisis caused by the COVID-19 outbreak. The Second National Temporary Framework aims at enhancing and accelerating COVID-19 relevant research, investment into testing and upscaling infrastructure, as well as the production of COVID-19 relevant products to address the current emergency health crisis. The Second National Temporary Framework has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development”, “Investment aid for testing and upscaling of infrastructure” and “Investment aid for the production of COVID-19 relevant products”) described in sections 3.6, 3.7 and 3.8 of the Temporary Framework. The Commission considers such measures compatible with the internal market under Article 107(3)(c) TFEU.

- (72) The Second National Temporary Framework is one of a series of measures conceived at national level by the Spanish authorities to remedy a serious disturbance in the economy. The importance of the measures under the Second National Temporary Framework is widely accepted and these measures are of a scale that can be reasonably anticipated to produce effects across the entire Spanish economy.
- (73) The Commission accordingly considers that the different measures covered by the decision are necessary, appropriate and proportionate to remedy both a serious disturbance in the economy of a Member State, as well as contribute to the achievement of a common objective of crucial importance to fight the health crisis. The Second National Temporary Framework meets all the conditions of the Temporary Framework. In particular:

3.3.1. Amendments introduced to the first National Temporary Framework

- (74) The amendments introduced by Spain to the first National Temporary Framework are in line with paragraph 22 lit a) of the Temporary Framework, allowing for aid to be granted under section 3.1 of the Temporary Framework in the form of direct grants, tax and payment advantages, or other forms such as repayable advances, guarantees, loans, and equity provided the total nominal value of such measures remains below the overall cap of EUR 800,000 per undertaking (all figures used must be gross that is, before any deduction of tax or other charge). As required by paragraph 23(a) of the Temporary Framework, this cap per undertaking is EUR 120 000 for the fishery and aquaculture sector, and EUR 100 000 for the primary production of agricultural products (see recital (22)).
- (75) The Commission notes that all other conditions of the aid covered by section 2.7.1 of the Commission decision C(2020) 2154 final of 2 April 2020 remain unchanged and that the new forms of aid introduced by this Second National Temporary Framework do not affect the compatibility assessment made in the mentioned decision C(2020) 2154.

3.3.2. Aid for COVID-19 relevant R&D

- (76) With respect to COVID-19 relevant R&D projects as described in the introductory part of section 2.7.2 and in section 2.7.2.1 of the present decision, the measure meets all the conditions of the Temporary Framework, and in particular its section 3.6:
- R&D aid under this measure is limited to the eligible research areas that are listed in paragraph 35 of the Temporary Framework (see recital (28)).
 - In accordance with paragraph 35 lit. a) of the Temporary Framework, aid is granted in the form of direct grants, tax advantages or repayable advances (see recital (27)).
 - In accordance with paragraph 35 lit. b) of the Temporary Framework, eligible R&D projects under the aid measure are projects started as from 1 February 2020, while for projects on which works were started before that date are eligible provided the aid serves to accelerate their implementation, or to extend their scope (recital (24)).

- Eligible costs under the aid measure are defined in accordance with the provisions laid down in paragraphs 35 lit. c) of the Temporary Framework (recital (29)). Eligible are all the costs necessary for the R&D project for its duration. For projects started before 1 February 2020, only the costs incurred after the date of the aid application, in relation to the acceleration efforts or the widened scope of the project are eligible as required by paragraph 35 lit. b) of the Temporary Framework (recital (24)).
- The overall aid intensities are defined in conformity with the provisions laid down in paragraphs 35 lit. d) of the Temporary Framework (recital (31)). The cooperation/collaboration bonus does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 35 lit. e) of the Temporary Framework (recital (32)).
- As required by paragraph 35 lit. g) of the Temporary Framework, the aid beneficiaries have to commit to grant non-exclusive licences under market conditions to third parties in other EEA states (recital (33)).
- Under the measure in line with paragraph 35 lit. h) of the Temporary Framework aid may not be granted to undertakings which were already in difficulty (within the meaning of Commission Regulation (EU) No 651/2014 (“GBER), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014 as applicable) on 31 December 2019 (see recital (19)).
- In case of cumulation with other aids for the same costs, the cumulation ceilings laid down in paragraph 35 lit. f) of the Temporary Framework will not be exceeded (recital (54)). Moreover, aid cannot be cumulated with aid for the same eligible costs granted under section 2.7.2.2 and/or section 2.7.2.3 in line with paragraph 20 of the Temporary Framework (recital (57)).

3.3.3. Investment aid for testing and upscaling infrastructure

(77) With respect to aid for investment and upscaling of infrastructure covered by the introductory part of section 2.7.2 and by section 2.7.2.2 of the decision, the scheme meets all the conditions of the Temporary Framework, and in particular its section 3.7 whether the aid is granted at national or regional level:

- The aid is granted for the construction or upgrade of testing and upscaling infrastructures under the conditions outlined in paragraph 37 lit. a) of the Temporary Framework (recital (34)).
- The aid is granted in the form of direct grants, tax advantages or repayable advances in accordance with paragraph 37 lit. b) of the Temporary Framework (recital (27)).
- In accordance with paragraph 37 lit. c) of the Temporary Framework, eligible investment projects under the aid measure are projects started as from 1 February 2020, and projects on which works were started before that date are eligible provided the aid serves to accelerate their implementation, or to extend their scope (recital (24)).
- In accordance with paragraph 37 lit. d) of the Temporary Framework, the investment projects have to be completed within six months after the

investment aid was granted. If this deadline is not respected, the aid amount is reduced by 25 % per month of delay for aid in the form of direct grants. Repayable advances are transformed into grants if that deadline is respected, otherwise the repayable advance is reimbursed in equal annual instalments within five years of the date of granting the aid (recital (25)).

- In accordance with paragraph 37 lit. e) of the Temporary Framework, eligible costs are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the COVID-19 relevant products listed in paragraph 37 lit.a) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible, as required by paragraph 37 lit. c) of the Temporary Framework (see recital (25)).
- The overall aid intensities under this aid measure are defined in conformity with the provisions laid down in paragraph 37 lit.e) of the Temporary Framework. Where a bonus is granted, it does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 37 lit. f) of the Temporary Framework (see recitals (36) and (37)).
- In accordance with paragraph 37 lit. i) of the Temporary Framework, the price charged for the services provided by the testing and upscaling infrastructure shall correspond to the market price (see recital (38)).
- In accordance with paragraph 37 lit. j) of the Temporary Framework, the testing and upscaling infrastructures shall be open to several users and access shall be granted on a transparent and non-discriminatory basis. Undertakings, which have financed at least 10 % of the investment costs may be granted preferential access under more favourable conditions (see recital (39)).
- Pursuant to paragraph 37 lit. h) of the Temporary Framework, if loss cover guarantees are issued, they will have to be issued within one month after they were applied for. The amount of loss to be compensated is established five years after the completion of the investment. The compensation amount is calculated as the difference between the sum of investment costs, reasonable profit of 10 % p.a. on the investment cost over five years, and the operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project (see recital (27)).
- Under the measure in line with paragraph 37 lit. k) of the Temporary Framework aid may not be granted to undertakings which were already in difficulty (within the meaning of Commission Regulation (EU) No 651/2014 (“GBER), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014 as applicable) on 31 December 2019 (see recital (19)).
- In accordance with paragraph 37 lit. g) of the Temporary Framework, cumulation of the aid granted under this measure with other investment aid for the same eligible costs is not allowed (see recital (57)).

3.3.4. Investment aid for the production of COVID-19 relevant products

(78) Regarding COVID-19 related investment projects described in the introductory part of section 2.7.2 and in section 2.7.2.3 of this decision, the scheme meets all the conditions of the Temporary Framework, and in particular of its section 3.8:

- Investment aid under this aid measure is limited to creating production capacities for COVID-19 relevant products that are listed in paragraph 39 lit. a) of the Temporary Framework (see recital (26)).
- In conformity with paragraph 39 lit. b) of the Temporary Framework, the aid is granted in the form of a direct grant, tax advantages or repayable advances (see recital (27) of this decision).
- In accordance with paragraph 39 lit c) of the Temporary Framework, eligible investment projects under the aid measure are projects started as from 1 February 2020, as well as investment projects on which works were started before that date, provided the aid serves to accelerate their implementation, or to extend their scope (see recital (24)).
- In conformity with paragraph 39 lit. d) of the Temporary Framework, eligible investment projects have to be completed within six months after the investment aid was granted. If this deadline is not respected, the aid amount is reduced by 25% per month of delay for aid in the form of direct grants and tax advantages. Repayable advances are transformed into grants if that deadline is respected, otherwise the repayable advance is reimbursed in equal annual instalments within five years of the date of granting the aid (see recital (25)).
- Eligible investment costs are defined in accordance with the provisions laid down in paragraph 39 lit. e) of the Temporary Framework (see recital (41)). For projects started before 1 February 2020, only costs incurred after the date of the aid application are eligible, as required by paragraph 39 lit. c) of the Temporary Framework (see recital (24)).
- The overall aid intensities under this aid measure are defined in conformity with the provisions laid down in paragraph 39 lit. e) of the Temporary Framework. Where a bonus is granted, it will not exceed 15 percentage points, and will be granted under the conditions outlined in paragraph 39 lit. f) of the Temporary Framework (see recital (42)).
- Pursuant to paragraph 39 lit. h) of the Temporary Framework, loss cover guarantees have to be issued within one month after they were applied for. The amount of loss to be compensated is established five years after the completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10 % p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project (see recital (27)).
- Under the measure in line with paragraph 39 lit. i) of the Temporary Framework aid may not be granted to undertakings which were already in difficulty (within the meaning of Commission Regulation (EU) No

651/2014 (“GBER), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014 as applicable) on 31 December 2019 (see recital (19)).

- In accordance with paragraph 39 lit. g) of the Temporary Framework cumulation of the investment aid with other investment aid for the same eligible costs is not allowed under this measure (see recital (56)).

3.3.5. Aid in the form of deferral of payments of taxes and social security contributions

(79) With respect to aid in the form of deferral of payments of taxes and social security contributions, described under section 2.7.3 of this decision the aid measure meets all the conditions of the Temporary Framework, and in particular its section 3.9:

- Pursuant to paragraph 41 of the Temporary Framework, the measure should consist of temporary deferrals of taxes or of social security contributions, which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 outbreak, for example in specific sectors, regions or of a certain size. The notified measure complies with this requirement, as it comprises the deferral of payments of taxes or social security contributions applicable to enterprises and self-employed persons, who are particularly affected by the COVID-19 outbreak and by the declaration of the state of emergency as a result of that outbreak, inter alia, on the basis of geographical criteria, by sectors of economic activity or by reference to the size of the undertaking.
- Furthermore, in line with paragraph 41 of the Temporary Framework, the measure includes other possible implementations that have a similar effect to deferrals, such as the deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, suspension of tax debt recovery, and expedited tax refunds.
- In line with the Temporary Framework conditions applicable to measures implemented under section 3.9, the measure is open to undertakings in difficulty within the meaning of Commission Regulation (EU) No 651/2014¹⁰ (“GBER), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014, as applicable (see recital (19)).
- Finally, paragraph 41 of the Temporary Framework requires that aid under section 3.9 of the Temporary Framework shall be granted before 31 December

¹⁰ As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37.

2020 and the end date for the deferral shall not be later than 31 December 2022. The notified measure complies with those requirements, (see recitals (15) and (45)).

3.3.6. Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak

- (80) The aid in the form of wage subsidies covered in section 2.7.4 of this decision, meets all the conditions of the Temporary Framework, and in particular its section 3.10 whether the aid is granted at national or regional level.
- As required by paragraph 43 lit. a) of the Temporary Framework, the aid is aimed at avoiding lay-offs during the COVID-19 outbreak (see recital (46)).
 - As required by paragraph 43 lit. b) of the Temporary Framework, the aid is granted in the form of schemes to undertakings that are particularly affected by the COVID-19 outbreak (see recital (46) to (47)).
 - As required by paragraph 43 lit. c) of the Temporary Framework, the wage subsidies are granted over a period of not more than twelve months after the application for aid for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak, and subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (see recital (48)).
 - As required by paragraph 43 lit. d) of the Temporary Framework, the monthly wage subsidy shall not exceed 80% of the monthly gross salary (including employer's social security contributions) of the benefitting personnel (see recital (49)).
 - In line with the Temporary Framework conditions applicable to measures implemented under section 3.10, wage subsidies granted under the measure are open to undertakings in difficulty within the meaning of Commission Regulation (EU) No 651/2014 ("GBER), Commission Regulation (EU) No 702/2014 and Commission Regulation 1388/2014, as applicable (see recital (19)).
 - As required by paragraph 43 lit. e) of the Temporary Framework, the wage subsidy if combined with other generally available or selective employment support measures, will not lead to overcompensation of the wage costs of the personnel concerned (see recital (51)).
- (81) The Spanish authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (59)).

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) and Article 107 (3) (c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

