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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.54558 (2020/N) – Spain
Compensation for EIUs for the cost of financing of RES, CHP and non-peninsular territories in Spain**

Excellency,

1. PROCEDURE: NOTIFICATION, CORRESPONDENCE, DEADLINE ETC.

- (1) On 13 February 2020, following pre-notification contacts, the Spanish authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”),
 - a) a support scheme compensating energy intensive users (“EIUs”) for a number of electricity charges, and
 - b) a related state guarantee scheme for long-term power purchase agreements (PPA) for electricity from renewable energy sources.
- (2) The Commission sent to the Spanish authorities requests for information on 23 March 2020, on 14 September 2020 and on 29 October. The Spanish authorities submitted their replies on 22 July 2020, on 1 October 2020 and on 12 November 2020.
- (3) On 2 December 2020, Spain waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958 to have the decision

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adopted and notified in Spanish and agreed that the decision be adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURES:

2.1. Compensation to EIUs for a number of electricity charges

2.1.1. The financing of the support systems for promotion of the production of electricity from renewable energy sources, promotion of Combined Heat and Power, and promotion of electricity generation in non-peninsular territories

- (4) The notified measure concerns a reduction for EIUs in the payment of the charges aimed at financing electricity production from renewable energy sources (“RES charge”), promotion of Combined Heat and Power (“CHP charge”), and promotion of electricity generation in non-peninsular territories¹. The maximum compensation is equal to 85 % of these charges, meaning that beneficiaries would bear at least 15% of the full relevant charges.
- (5) These charges are paid by all final electricity consumers, including the EIUs, as components of a single “access charge” that include both “network tariffs” and “other charges”. The latter is a fixed component for each kWh of electricity consumed and it includes both the charges compensable under this measure and charges that are not compensable under this measure.
- (6) Promotion of energy from renewable energy sources (RES) in Spain is financed through three means: (i) taxes regulated by Law 15/2012 of 27 December on fiscal measures for energy sustainability, (ii) revenues from the auctioning of CO2 emission allowances and (iii) the access charge paid by electricity consumers. In 2019, promotion of RES was financed with 5474 million euros, to which access charges contributed with 2194 million euros.
- (7) CHP promotion is entirely financed through the access charge. In 2019, this amounted to 1320 million euros.
- (8) The support to power generation in the Spanish non-peninsular territories entails a compensation to electricity producers in the Canary Islands, Balearic Islands, Ceuta and Melilla systems in order to cover the higher costs of producing electricity in these systems. This support is provided so that electricity suppliers in these territories are entitled to energy wholesale prices equivalent to those paid by suppliers in the peninsular territory, despite a much higher cost of the generation mix in non-peninsular territories. According to the Spanish authorities, this support is ultimately reflected in the price of electricity paid by the final consumers in these territories, which benefit from equivalence with the cost of the energy mix in the peninsula. The measure is financed through the general budget of Spain and through the access charge. In 2019, the access charge financed 50% of the overall compensation to the non-peninsular electricity producers with 712 million euros. Therefore, this compensation is reflected in the price of electricity paid by all the final consumers in Spain.

¹ Those support schemes have received State aid clearance by Commission Decisions C(2017)7384final and C(2020)3401 final.

- (9) Separate calculation methodologies for “network tariffs” and “other charges” are expected to enter into force on the 1st of April 2021. In line with the Directives 2009/72/EC and 2009/73/EC, the competence to establish the network tariffs is being transferred to the Spain's National Authority for Markets and Competition (CNMC), while the Ministry for the Ecological Transition and the Demographic Challenge will retain the competence to set the other charges.
- (10) Until then, given the lack of an adequate breakdown of the compensable charges within the access charge, it is envisaged to calculate them by means of implicit charges. The compensable charges will be calculated on the basis of the following methodology:
- a) For each voltage level, all “other charges” are calculated by subtracting from the access charges the network tariffs, calculated according to the methodology set by CNMC. The ratios of “other charges” over the “access charge” is then calculated.
 - b) In addition, the overall portion of “other charges” that are compensable is calculated. First, financing needs for non-compensable items (such as waste, annuities of the deficit and other charges) are subtracted from the amount of “other charges”. Second, as the overall financing needs for renewable energy are partly covered by charges other than the “access charges”, this amount is also deducted. Therefore, the remaining part corresponds to the cost of financing RES, CHP and the non-peninsular territories scheme through access charges. The percentage of compensable charges over all “other charges” is then calculated.
 - c) The two shares computed in points “a” and “b” are used to calculate which share of the “access charge” is compensable. This amount can be compensated up to the limit described in recital (4) above.

2.1.2. Beneficiaries

- (11) According to Article 17 of the draft Royal Decree, the beneficiaries of the notified compensations of the RES, CHP and non-peninsular charges are undertakings that satisfy the following cumulative requirements:
- a) are set up in full compliance with the Spanish legal requirements in force at the moment of the charge compensation request;
 - b) are certified as Electro Intensive users by the Spanish authorities.
 - c) operate in at least a sector listed in the Annex of the draft Royal Decree, which is exclusively composed by sectors included in the Annex 3 of the EEAG. The Annex of the draft Royal Decree will be automatically aligned with future lists of EIUs sectors approved by the European Commission;
 - d) prove that they have borne the charges for the supply of electricity for the year preceding the call for applications.
- (12) In order to qualify for the certification as EIU, Article 3 of the draft Royal Decree requires to meet the following cumulative conditions:

- a) purchase energy on the electricity production market² by any of the methods laid down by the legislation;
 - b) during at least two of the previous three years, having consumed an annual electricity volume of more than 1 GWh;
 - c) during at least two of the previous three years, having consumed at least 50 per cent of the energy during the hours corresponding to the off-peak tariff period;
 - d) operate in at least a sector listed in the Annex of the draft Royal Decree, which is exclusively composed by sectors included in the Annex 3 of the EEAG;
 - e) for at least two of the previous three years, having a ratio between the annual consumption and the gross value added of the installation at the point of supply for which it has an electro-intensive consumer category exceeding 1.5 kWh/EUR.
 - f) The undertaking that owns the point of supply or installation must be set up in full compliance with the legal requirements in force at the moment in time when the application is filed
- (13) Spain argues that the eligibility requirement to consume at least 50% of the electricity during off-peak hours is proportionate and attainable, since off-peak hours are the same for all electricity consumers and they represent more than 50% of all hours in a given year. In 2020, the number of off-peak hours were 5040, or 57.4% of the total hours of the year³. Moreover, Spain argues that the requirement is also non-discriminatory and it applies in the same way to all consumers, in particular among industrial consumers within the same sector, since the consumption patterns are linked to the production processes and the potential to adopt a production process in line with the requirement is similar.
- (14) According to Spain, this requirement contributes to national energy and climate objectives, as it favours the deployment of renewable energy generation during off-peak hours and it contributes to the reduction of system management costs, such as voltage control and balancing costs during off-peak hours. The consumption shift towards off-peak hours would also contribute to lower electricity prices during peak hours.
- (15) Furthermore, based on an analysis of all 1771 consumers of over 1GWh/year, Spain concludes that the selected benchmark of 50% is appropriate. On the one hand, it allows a large number of consumers to access the scheme, as 761 consumers already comply with the requirement and additional 261 are close to the 50% benchmark. These 761 consumers amount to 16.2% of the total

² For non-peninsular territories, the references to the electricity market should be understood as participation in the technical dispatching of energy

³ According to the new network tariff methodology developed by CNMC that is expected to enter into force on the 1st of April 2021, the number of off-peak hours in 2020 would have been 4704, or 53.6% of the total hours of the year.

electricity demand in Spain and therefore can contribute to the objectives of the requirement. On the other hand, removing the selected benchmark would increase the total cost of the measure by more than 33% and the complexity of the administrative management of the scheme. This would not bring a significant additional contribution in terms of demand that would be shifted to off-peak hours, as these additional consumers amount to 2.3% of the total electricity demand in Spain.

Table 1: Differential analysis using the level of 50% during off-peak as baseline

	N. of Consumers	Consumption (GWh)	% Consumption/Total demand	Off peak consumption (GWh)	% Off peak consumption / Total demand	Compensation (millions of euros)	% increase of compensation
No requirement	1,010	6,726	2.3%	2,439	1.0%	43.6	33.5%
Off peak 30%	925	5,550	2.2%	2,396	1.0%	41.4	31.8%
Off peak 40%	571	4,210	1.7%	1,906	0.8%	29.2	22.4%
Off peak 45%	271	2,388	1.0%	1,133	0.5%	15.8	12.2%
Off peak 50%	0	0	0.0%	0	0.0%	0.0	0.0%
Off peak 60%	-649	-29,613	-11.9%	-16,955	-6.8%	-98.4	-75.6%
Off peak 70%	-719	-37,509	-15.1%	-22,017	-8.9%	-121.8	-93.6%
Off peak 75%	-739	-38,353	-15.4%	-22,623	-9.1%	-126.1	-96.8%

Source: Spanish authorities

- (16) Based on a sector-specific analysis of all consumers of over 1GWh/year, the Spanish authorities have also shown that this requirement does not structurally affect the ability of companies with lower electricity consumption to access the scheme, compared to companies active in the same sector and consuming higher amounts of electricity. Indeed, in the vast majority of eligible sectors there are consumers close to the minimum consumption of 1GWh/year that already meet this requirement. Furthermore, in around 90% of the sectors there is a low difference in consumption between the companies with the lowest consumption meeting and not meeting the requirement. This is indeed the case for 54 sectors out of the 62 eligible sectors.
- (17) For the remainder 8 sectors, the analysis shows that in 1 sector (NACE 1106) all undertakings meet the requirement while, in the other 7 sectors (NACE 1711, 2017, 2060, 2319, 2434, 2446, 2720), the Spanish authorities argue that the more significant difference is not conclusive of a discrimination on the basis of size:
- a) [...]
 - b) [...]
 - c) [...]
 - d) [...]
 - e) [...]

- (18) Lastly, Spain notes that according to the draft Royal Decree this requirement has to be reviewed after three years and, based on the evaluation aimed at verifying that the requirement does not discriminate within the same sector, the 50% benchmark could be lowered or the condition could be eliminated.
- (19) With regard to the ratio between the annual consumption and the gross value added of the installation exceeding 1,5 kWh/EUR, the Spanish authorities have shown that the requirement is equivalent to an electro intensity of 10% for an electricity cost of EUR 66,67/MWh. This amount is equal to the average daily electricity market price in 2017 plus the average amount of access charge for consumption at the highest voltage level.
- (20) This ratio between the beneficiary's consumption and gross value added of 1,5 kWh/EUR will be reviewed annually, in line with the average electricity market price of the preceding year, so to ensure that each year the correspondence between this ratio is adjusted to an intensity of no less than 10%.
- (21) The Spanish authorities consider the calculation of electricity prices in line with Annex 4 of the EEAG as too cumbersome. First, consumers would need to be differentiated by volume and, within each volume, by the voltage level to which they are connected and by their form of consumption. Second, the price of energy may still be very different, depending on the contract the consumer has signed with the trader. In short, each consumer would have to be asked to submit their bills to verify the price it has actually paid, which would entail complicated administrative management and the handling of confidential information from private contracts.
- (22) The Spanish authorities therefore consider it simpler to establish an alternative criterion, equivalent to the level of 10% of electro-intensity on the basis of average electricity prices, even though the ratio between the beneficiary's consumption and gross value added will have to be reviewed annually.
- (23) According to Spain, the requirement to have an annual electricity consumption of more than 1 GWh is introduced to ensure that the management of the scheme is not threatened by an excessive number of applications that would be impossible to duly process. In addition, below this threshold, the administrative burden for potential beneficiaries is considered to outweigh the economic benefits that the compensation would bring to them.
- (24) According to the Spanish authorities, the one-off administrative fees associated with the EIU certification amounts to EUR 5,095 while annual fees to maintain the status range from EUR 2145/year and EUR 641/year, depending on whether the users has self-consumption or not. Moreover, the administrative fees for participating in the annual call for the compensation amounts to EUR 570/year. On the other hand, the highest compensation that an user consuming less than 1 GWh/year could receive equals EUR 6459, which leads to a net compensation of just EUR 163 if the most conservative cost estimates are used.
- (25) The companies meeting the above criteria of recital (12) will be certified as EIUs by the Directorate General of Industry and Small and Medium Enterprises. The certification is valid for one year, until 30 April of the following year and can be renewed

- (26) Furthermore, for the purpose of benefitting from the notified measure, certified Electro Intensive users will be subject to the following set of requirements spelled out in Articles 9 to 12 of the Draft Royal Decree:
- a) provide the system operator with consumption forecast on a monthly basis with an accuracy of their schedule of consumption over 75% on average,
 - b) have an energy management system regularly audited and certified in accordance with UNE-EN ISO 50001: 2018, improve the energy performance when economically viable, and regularly report to the authorities on energy consumption, savings, and efficiency measures,
 - c) Within one year from the entry into force of the Reserve Fund to Guarantee Large Electricity Consumers (FERGEI), have at least 10% of its annual electricity consumption covered directly or indirectly by a forward instrument for the supply of electricity from renewable sources, with a minimum duration of five years. EIUs having the status of SMEs as defined in Annex I of Commission Regulation (EU) No 651/2014 are exempted from this requirement,
 - d) Maintain production for a period of three years, in line with article 5 of Royal Decree-Law 20/2018.
- (27) With regard to the requirement under point c, the Spanish authorities note that there are different types of forward instrument available to electricity consumers, such as forward trading on the Iberian power derivatives exchange (OMIP), over-the-counter instruments, or contracting power through a purchase power agreement (PPA) with a power producer. In addition, the requirement also allow EIUs to associate or subscribe to a collective forward contract, using central purchasing bodies or similar forms.
- (28) In summary, Spain argues that the obligation is drafted in such a way as to give flexibility to consumers to comply, irrespective of size, and therefore does not result from the same discrimination between undertakings in the same sector that could distort the degree of competition in the market. Nevertheless, Spain has decided to exempt SMEs from this requirement.
- (29) Lastly, the Spanish authorities also argue that the amount of energy subject to this requirement is limited and has been set in proportion to the total consumption to take into account the situation of individual consumers. Moreover, there is sufficient time for accreditation (1 year from the entry into force of the coverage mechanism or accreditation as an electro-intensive consumer, whichever is later), which can be extended if the term of the pre-existing contracts so warrants.
- (30) This requirement is linked to the entry into force of the guarantee scheme financed through the Reserve Fund to Guarantee Large Electricity Consumers, which aims at facilitating the conclusion of long-term PPAs for electricity from renewable sources (see section 2.3).
- (31) The Directorate General for Industry and SMEs at the Ministry of Industry, Trade and Tourism will carry out the procedure of certifying EIUs. The Ministry of Industry, Trade and Tourism and the Ministry for the Ecological Transition and

the Demographic Challenge will monitor the implementation of the above-mentioned requirements.

- (32) With regard to the geographical localisation of the EIUs potentially eligible under the scheme, the Spanish authorities have indicated that 98,8% of them is located in peninsular territories, while only 1,2% is located in non-peninsular territories.

2.1.3. Objective

- (33) Pursuant to the notified measure, the scheme will provide eligible consumers with the possibility to apply for compensation from the charges mentioned in recital (4) above. Spain argues that EIUs are the companies for which the electricity costs represents a significant share of the total production costs and are therefore significantly affected by the financing costs of those schemes. The eligible EIUs are exposed to a risk to their competitive position due to those costs, as a function of their electro-intensity and their exposure to international trade. This, in turn, may affect the sustainability of and public acceptance of the schemes referred to in recital (4) above.
- (34) According to the Spanish authorities, the notified compensation mechanism aims at mitigating such risks. On the one hand, it contributes to enhancing the competitiveness of the beneficiaries and, consequently, foster economic growth and employment. On the other hand, it aims at securing a sufficient financing basis for the RES, CHP and non-peninsular territories schemes.
- (35) Lastly, the requirements related to off-peak consumption and the conclusion of renewables PPAs pursue national energy and climate objectives, as the former favours the deployment of renewable energy generation during off-peak hours and it contributes to the reduction of system management costs, while the latter fosters the conclusion of long-term contracts for the supply of power from renewable energy sources.

2.1.4. Functioning of the scheme and granting authority

- (36) The Ministry of Industry, Trade and Tourism is the competent body for announcing and deciding on the granting of support under this scheme. The Directorate-General for Industry and SMEs manages the award procedure and monitors the granting of the compensation.
- (37) Undertakings apply for support through annual calls, which can be launched separately for each type of charge compensation. The submitted applications will be assessed by an inter-ministerial evaluation committee chaired by the head of the Directorate-General for Industry and SMEs.
- (38) Undertakings have to provide a confirmation from the entity to whom, in the previous year, they paid a system operation tariff. The beneficiaries will therefore have to pay first the full charges before receiving compensation the following year.
- (39) The compensation is financed through the general State budget and within the limits of amounts allocated in any given year. In case the annual budget allocation is insufficient to cover the maximum compensation, i.e. 85 % of eligible costs for all EIUs, the compensation amounts will be reduced to all EIUs on a pro-rata basis.

2.1.5. *Legal basis*

- (40) The legal basis of the scheme are Royal Decree-Law 20/2018 of 7 December 2018 on urgent measures to promote economic competitiveness in industry and commerce in Spain and Draft Royal Decree regulating the status of energy-intensive consumers.

2.1.6. *Duration and budget*

- (41) The draft Royal Decree indicates that the compensation will be granted only after the approval of the scheme by the Commission. Therefore, the notified scheme will be put in place after the date of notification of this Decision. Spain has notified the scheme until 31 December 2022.
- (42) The budget allocated to the notified scheme is estimated to amount to a total of EUR 91,88 million per year.

2.1.7. *Cumulation*

- (43) As described in recital (39), in case of insufficient budget the compensation under the scheme could be reduced below 85% of the eligible costs. In this case, compensation under this scheme may be cumulated with other schemes or ad hoc aid (which could be implemented, for example, by the Autonomous Communities or by other Ministries). However, the cumulated amount of aid for an activity or project cannot exceed the ceilings fixed in the Commission' Guidelines on State aid for environmental protection and energy 2014-2020⁴ (hereinafter EEAG).
- (44) The compensation of the charges can be cumulated with aid to compensate EIUs for indirect cost emissions⁵.

2.1.8. *Deggendorf conditions and undertaking in difficulties*

- (45) The notified compensation cannot be granted to undertakings that are subject to an outstanding recovery order following a previous Commission Decision declaring an aid measure illegal and incompatible may not be beneficiaries of this aid.
- (46) The notified compensation cannot be granted to entities to which any of the circumstances set out in Article 13.2 of Law 38/2003 of 17 November applies.
- (47) In the notification of this measure, the Spanish authorities have confirmed that the notified compensation cannot be granted to undertakings in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁶.

⁴ 2014/C 200/01

⁵ C(2019) 1931 final

⁶ 2014/C 249/01

2.1.9. Transparency

- (48) The compensation granted will be made public in accordance with Article 18 of Law 38/2003 of 17 November 2003 and Article 30 of the Regulation of the General Law on Subsidies.
- (49) The Spanish authorities have confirmed that they will comply with the transparency requirements set out in paragraphs (104) and (106) of the EEAG, which requires Member States to ensure the transparency of aid granted by publishing certain information on a comprehensive State aid website.

2.2. Reserve Fund to Guarantee Large Electricity Consumers (FERGEI)

- (50) The Spanish authorities notified to the Commission the State guarantee scheme “Reserve Fund to Guarantee Large Electricity Consumers” (hereinafter “FERGEI”) for reasons of legal certainty, since they consider that it does not constitute State aid.
- (51) The FERGEI entails the grant of guarantees in relation to long-term power purchase agreements (PPA) for electricity from renewable energy sources. Through the FERGEI, Spain aims at facilitating the conclusion of long-term PPAs for renewable energy. Given the considerable payment obligations related to such agreements, the energy seller often requires hedges as a condition for their conclusion. According to the Spanish authorities, such guarantees for contracts beyond three to five years are not currently available on the Spanish market. The FERGEI will offer State guarantees to PPA lasting for a minimum of five years.
- (52) The guarantees offered through the FERGEI cover the risk of losses incurred under a PPA as a result from the de facto or de jure insolvency of the power purchaser certified as an electro-intensive consumer. Guarantees under the scheme may be provided in one of the following forms:
 - a) guarantee/insurance policy covering up to 80% of the non-payment risk in favour of a financial entity that is bearing such risk, or
 - b) guarantee covering up to 80% of the non-payment risk, directly to the power seller or intermediary that is bearing such risk .
- (53) With regard to option a), in case of non-payment of the EIU the bank would be required to pay up to 100% of the claimed amount of the guarantee. If the bank then fails to recover this amount then the FERGEI would indemnify up to 80% of the unpaid amount. The residual risk of 20% or above is borne by the bank. On a case-by-case basis, the amount covered by the guarantee will be minimised in line with the circumstances allowing to reduce the loss incurred by the power seller.
- (54) With regard to option b), the guarantee is designed as a contract for differences. The coverage would encompass: (i) the power already supplied and not paid for, and (ii) the difference between the PPA agreed price and the spot market price. In case the market price is above the PPA price, the generator would pay the difference. However, if the market price is below the PPA price, the FERGEI would cover up to 80% of the difference. The residual risk is borne by the power seller.

- (55) Each individual cover (insurance or guarantee) will be regulated by one individual contract that will determine the exact starting date and ending date. This duration will never go beyond that of the underlying PPA. As each generator will produce a variable amount of electricity in any given year, a specific amount of MWh will be covered by the guarantee each year from the starting date until the ending date.
- (56) The Spanish Export Credit Agency “CESCE” has been appointed as Managing Agent of the FERGEI, given its experience in the management of long-term guarantees. The Spanish authorities note that the historical experience of the managing agent’s activity in covering the risks of internationalisation is positive. CESCE will act on behalf of the Spanish State and will therefore not bear any risk associated with the supply of the guarantees.
- (57) The Electointensive Market Risk Commission, an inter-ministerial collegiate body attached to the Ministry of Industry, Trade and Tourism, is the supervisory, monitoring and participatory body of the State in the management carried out by CESCE. Among other, it approves the risk cover, risk management proposals rates charged for each transaction, in accordance with the principle of sufficient premiums and prices.

2.2.1. Legal basis

- (58) The legal basis of the measure is Royal Decree-Law 24/2020 of 26 June on social measures to boost employment and protect self-employment and the competitiveness of the industrial sector and Draft Royal Decree regulating the status of energy-intensive consumers.

2.2.2. Budget

- (59) The resources of the FERGEI come from allocations from the General State Budget, with an initial endowment of 200 million EUR.
- (60) For the first three years after the entry into force of the Fund, a maximum amount of operations for the issuance of cover or guarantees of 600 million EUR has been approved. The future General State Budget Laws shall establish the maximum amount of operations that may be approved during each financial year for the issuance of GHG cover or guarantees.

2.2.3. Remuneration of the State guarantee

- (61) In case the insurance policy/guarantee is provided to a financial institution, CESCE will charge, as a minimum, the same risk margin charged by the financial institution to cover the non-payment risk of the EIU under a PPA. The financial institution will notify all fees associated with its guarantee and the price of the State guarantee will be calculated on the basis of the applied risk margin (that is, commissions that are not reflective of the risk will not be taken into account).
- (62) In regards to the pricing of the guarantee to be provided directly to the generator, the current proposed methodology contemplates that that the premium will take into consideration (i) the risk of the transaction, (ii) the administrative costs and (iii) the capital cost.
- (63) The risk of the transaction will be based on the following assessments:

- a) An individual credit risk assessment will be performed for each transaction and, on this basis, a rating given to each EIU. Risk classes may be the managing agent's internal ones instead of following a rating agency's system, but they will be defined in similar terms.
 - b) An assessment of the power purchase price and estimations on the evolution of the price of electricity in Spain, in order to determine the potential losses under the guarantee once a default has occurred.
- (64) Administrative costs will be factored into the premium.
- (65) Remuneration on the capital will feed into the overall pricing, in line with the Commission's communication regarding articles 87 and 88 of the EU Treaty (2008/C 155/02) and in particular the guarantee regime as described in point 3.4.

2.2.4. Remuneration to the managing agent

- (66) Although CESCE will not bear any risk associated with the supply of the guarantees, it will bear the costs associated to the management of the system. In case no guarantees are issued while resources have been used to establish and run the scheme, the managing agent will bear those costs.
- (67) The remuneration to the Managing Agent for the management, administration and control of the coverage of the risks taken on behalf of the State will be laid down in a Collaboration Agreement. That remuneration will be based on two components:
- a) a percentage of the premium paid for the covers supplied under the scheme, and
 - b) a participation in the result for the State of the insurance or guarantee operations.

2.2.5. Forward projections and evaluation

- (68) As the scheme is currently under construction and concerns the supply of covers that are currently not supplied in the Spanish market, Spain is not able to estimate with a sufficient degree of certainty the volumes and prices of power as well as the risk profile of the potential applicants. For this reason, forward projections on the scheme results are not available.
- (69) At the end of the first three years of operations, the Ministry of Industry, Trade and Tourism will submit a report to the Government Delegated Committee for Economic Affairs on the results and functioning of the Fund.

3. ASSESSMENT OF THE MEASURES

3.1. Existence of State aid and compliance with Article 108(3) TFEU

3.1.1. *Support scheme compensating EIUs for a number of electricity charges*

- (70) Article 107(1) of the TFEU provides that “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*”.

Selective advantage

- (71) In the present case, EIUs are advantaged because they are being compensated for part of the charges aimed at financing electricity production from renewable energy sources (“RES charge”), promotion of Combined Heat and Power (“CHP charge”), and promotion of electricity generation in non-peninsular territories. The measure is selective as only EIUs within certain sectors, namely those belonging to certain sectors listed in Annex 3 of the EEAG and complying with the requirements mentioned in recitals (12) and (26) above, may benefit from support under the scheme.

State resources and imputability

- (72) The advantage stems from the Royal Decree-Law 20/2018 of 7 December 2018 on urgent measures to promote economic competitiveness in industry and commerce in Spain and the Draft Royal Decree regulating the status of energy-intensive consumers. The scheme is administered by the Ministry of Industry, Trade and Tourism and is financed from the State budget. In the light of those considerations, the Commission observes that the aid is therefore financed from State resources and imputable to the State.

Effect on trade and impact on competition

- (73) The potential beneficiaries are EIUs active in sectors listed in Annex 3 of the EEAG, in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.

Conclusion with regard to the existence of State aid

- (74) For the reasons set out above, the Commission considers that the notified scheme for EIUs constitutes State aid within the meaning of Article 107(1) of the TFEU.

Lawfulness of the aid

- (75) The Spanish authorities have confirmed that the notified scheme would not be applied before the Commission has adopted a final decision. Spain therefore complies with the stand-still obligation set out in Article 108(3) TFEU.

3.1.2. *Reserve Fund to Guarantee Large Electricity Consumers (FERGEI)*

- (76) The Spanish authorities claim that the State guarantee scheme is aid-free. Therefore, the Commission assesses the features of that scheme on the basis of section 3.4 of Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees⁷, which spells out the conditions for aid-free guarantee schemes.

Section 3.4 (a) The scheme is closed to borrowers in financial difficulty

- (77) The Spanish authorities have confirmed that EIUs in difficulty⁸ are not eligible for the guarantee.

Section 3.4 (b): The extent of the guarantees can be properly measured when they are granted. This means that the guarantees must be linked to specific financial transactions, for a fixed maximum amount and limited in time

- (78) The extent of the guarantees can be properly measured when they are granted as they are linked to a specific PPA, limited in time and specifying power volumes and price. The duration of the State cover will not exceed that of the underlying PPA.

Section 3.4 (c): The guarantee will be provided up to a maximum of 80 % of the value of the outstanding subordinated loan

- (79) The FERGEI will issue guarantees up to 80% of the losses incurred by the power seller. At least 20% of the risk will be borne either by the power seller or by the bank granting the guarantee to the power seller. The guaranteed amount will decrease in line with the progressive power payments under the PPA.

Section 3.4 (d): Premiums paid by the beneficiaries will make the scheme self-financing, Section 3.4 (e): Progressive evaluation of the self-financing and Section 3.4 (f): In order for the scheme to be in line with market pricing the premiums charged have to cover at least guarantee risk, administrative costs and yearly remuneration of capital

- (80) The Spanish authorities has confirmed that each new guarantee will be individually assessed and that the methodology that will be used to calculate the premium for each guarantee will factor in (i) the risk of the transaction, (ii) the administrative costs and (iii) the remuneration of capital.
- (81) The individual credit risk analysis performed by the managing agent will link the EIU to a risk class and a related risk premium, following either a rating agency's system or the internal rating of the managing agent. In addition, an individual assessment of the terms of the underlying agreement will be carried out to determine the potential losses under the guarantee.

⁷ 2008/C 155/02, 20.6.2008.

⁸ as set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

- (82) The administrative costs will be factored into the premium cost.
- (83) As regards the remuneration of the capital, Spain has confirmed that the premium will be calculated in line with the different levels of capital remunerations indicated in section 3.4 (f), according to the different risk ratings.
- (84) For insurance policies/guarantees provided to a financial institution, the State cover will use at least the same risk margin that the financial institution applies for guaranteeing the same transaction, thereby linking the pricing of the State guarantee with the market premium.
- (85) Spain has selected as managing agent the Spanish Export Credit Agency CESCE, which already manages the export credit insurance on behalf of the State and has extensive experience in covering the risks of default.
- (86) For each new guarantee the inter-ministerial Electointensive Market Risk Commission, in accordance with the principle of sufficient premiums and prices, will review and approve the pricing proposed by the managing agent.
- (87) The Spanish authorities will regularly verify whether the scheme is self-financing. In particular, they have confirmed that the adequacy of pricing will be reviewed at least once a year and, as needed, pricing will be adjusted accordingly with a view of ensuring the self-financing nature of the scheme.
- (88) The Commission concludes that the scheme meets the conditions laid down in section 3.4(d) to (f) of the Guarantee Notice and is, in all probability, self-financing.

Section 3.4 (g): In order to ensure transparency, the scheme must provide for the terms on which future guarantees will be granted, such as eligible companies in terms of rating and, when applicable, sector and size, maximum amount and duration of the guarantees

- (89) The guarantee scheme is linked to the notified support scheme for energy intensive users and the related eligibility criteria. The scheme is open to all PPAs lasting for at least five years and concluded between a certified electro intensive and a supplier of electricity from renewable energy sources. The duration of the guarantee will not exceed the duration of the underlying PPA.
- (90) The Commission concludes that the scheme meets the conditions laid down in section 3.4 (g) of the Guarantee Notice.

Conclusion with regard to the existence of State aid

- (91) The scheme as notified by the Spanish authorities meets the cumulative criteria enumerated in the 2008 Guarantee Notice for a measure to be free of aid. The Commission therefore concludes that the scheme does not entail State aid within the meaning of Article 107(1) TFEU.
- (92) Section 6 of the 2008 Guarantee Notice states that “For guarantee schemes, for which the Commission has taken a non-aid decision, and especially when no solid historic data exists for the scheme, the Commission may request, when taking its non-aid decision for such reports to be presented, thereby clarifying on a case-by-case basis the frequency and the content of the reporting requirement”.

- (93) Given the novelty of the scheme, there is no historic data. Moreover, as detailed in recitals (51), the scheme supplies products currently not available on the Spanish market and, as elaborated in recital (68), forward projections on the scheme results are not available. Therefore, the Commission considers it appropriate to request Spain to submit such reports on a yearly basis. Reports should include at least the following information:
- a) the number and amount of guarantees issued;
 - b) the number and amount of guarantees outstanding at the end of the period;
 - c) the number and value of defaulted guarantees (displayed individually) on a yearly basis;
 - d) the yearly income:
 - 1. income from the premiums charged;
 - 2. income from recoveries;
 - 3. other revenues (e.g. interest received on deposits or investments);
 - e) the yearly costs:
 - 1. administrative costs;
 - 2. indemnifications paid on mobilised guarantees;
 - f) the yearly surplus or shortfall (difference between income and costs); and
 - g) the accumulated surplus or shortfall since the beginning of the scheme

3.2. Compatibility of the aid

3.2.1. Applicable legal framework

- (94) In order to determine the compatibility rules applicable to the notified compensation scheme, it should be pointed out that the components of the access charge that are compensable under the measure pursue a specific objective, namely financing of the support for RES, high-efficiency cogeneration and electricity generation in non-peninsular territories.
- (95) As the notified scheme compensates EIUs for part of the charge used to finance electricity production from RES, the Commission has assessed the compatibility of the reduction from this charge on the basis of the EEAG and, in particular, section 3.7.2 thereof (Aid in the form of reductions in the funding of support for energy from renewable sources).
- (96) Since Sections 3.7.2 and 3.7.3. of the EEAG apply solely to reductions in funding of support for energy from renewable sources, the assessment criteria laid down herein may not be applied directly to the reductions of the charges aimed at financing promotion of cogeneration and promotion of electricity generation in non-peninsular territories.

- (97) In the past, the Commission has already concluded that compensation from electricity charges other than for the financing of renewable energy may be assessed applying by analogy the compatibility criteria laid down in Section 3.7.2 of the EEAG. In particular, in its decision in case SA.36511⁹ of 31 July 2018 concerning reductions granted on components of the electricity charge called ‘contribution to the public electricity service’ (‘CSPE’), the Commission concluded that:
- a) reductions in components of the CSPE intended to fund cogeneration may be assessed applying by analogy the compatibility criteria laid down in Section 3.7.2 of the EEAG. The reasoning of the Commission in its decision SA.36511 relies on similar assessments made by the Commission in case SA.38635¹⁰ and SA.42393¹¹.
 - b) reductions in components of the CSPE aimed at limiting energy costs in the French Oversea territories may be assessed applying by analogy the compatibility criteria laid down in Section 3.7.2 of the EEAG.
- (98) The Commission notes in this respect that the amended Energy Efficiency Directive¹² establishes a headline EU energy efficiency target for 2030 of at least 32.5%, with a clause for a possible upwards revision by 2023, to which highly efficient cogeneration installations can make an important contribution. As a result, financing needs to support cogeneration can also be significant. This is the case for Spain, as financing of cogeneration through the access charge component amounted to EUR 1,32 billion in 2019, equivalent to 19,5% of the total “other charges” (see recital 7) under the access charge.
- (99) Like the components of the CSPE aimed at limiting energy costs in the French Oversea territories, the portion of the access charge used to finance the non-peninsular territories scheme aims at limiting energy costs in isolated regions where connection to the mainland electricity networks is absent or insufficient (see recital (8) of this Decision and recitals (30) and (104) of Decision SA.42270¹³). In 2019, the non-peninsular territories component of the access charge amounted to EUR 712 million, equivalent to 10.5% of the total “other charges” under the access charge.
- (100) In addition, like the components of the CSPE aimed at limiting energy costs in the French Oversea territories and at supporting cogeneration, also in Spain the cogeneration and non-peninsular territories components add to the charges already in place to finance support to RES. These three components of the access charge are structured and levied in an identical and undifferentiated manner and,

⁹ C(2018) 4975 final

¹⁰ C(2017) 3406 final

¹¹ C(2016) 6714 final

¹² Directive (EU) 2018/2002 of 11 December 2018, amending Directive 2012/27/EU on energy efficiency

¹³ C(2020)3401 final

altogether, they represent a major share of the total “other charges” under the access charge (62.6 % in 2019).

- (101) To avoid that electricity consumers particularly affected by the financing costs of the promotion of highly efficient cogeneration and power generation in non-peninsular territories (and renewable energy) can be put at a significant competitive disadvantage, Spain intends to grant partial compensation from these components of the access charges.
- (102) Based on those elements, the Commission considers that the reductions of the access charge components dedicated to the financing of support to cogeneration and to power generation in non-peninsular territories can be considered necessary and appropriate to mitigate a significant competitive disadvantage and maintain the components in place, thus ensuring support to these policies. The purpose of these reductions therefore follows the same logic provided by paragraph (182) of the EEAG.
- (103) The Commission observes that, if reductions in surcharges intended to fund cogeneration and power generation in non-peninsular territories are too large, or if they are granted to too many sectors or beneficiaries, the distortions of competition and the impact on trade caused by such reductions can also be significant. Furthermore, the overall charge intended to fund these measures can also be threatened.
- (104) In order to assess the compatibility of such reductions with the internal market, in its Decisions in case SA.36511, SA.38635 and SA.42393 the Commission referred to the provisions of paragraphs (185) to (187) of the EEAG. The Commission has noted that these provisions provide a relevant analytical basis for identifying the undertakings most sensitive to the introduction of high charges on electricity consumption and for determining the incentive effect of the aid.
- (105) This seems particularly justified in the case at hand given that support for high-efficiency cogeneration and power generation in non-peninsular territories are financed through the access charges, and therefore these components add-up to the renewable component of the access charge. All these components of the access charge are structured and levied in an identical and undifferentiated manner. Since the access charge is levied in proportion to the electricity consumed, it will affect in particular companies for which the cost of energy represents a significant part of their added value and which cannot easily transfer these costs to final consumers without losing market share, given the exposure to international trade of the sectors in which they operate. These are undertakings that can be identified on the basis of the criteria specified in point (185) of the EEAG.
- (106) The Commission also indicated in its decisions in case SA.36511, SA.38635 and SA.42393 that paragraphs (188) and (189) of the EEAG can be used as a basis for assessing the proportionality of reductions of charges to finance cogeneration and tariff equalisation in remote regions. This seems appropriate also in the case at stake given that the compensation on components for cogeneration and power generation in non-peninsular territories aims at limiting the burden on companies particularly affected by energy charges, while at the same time requiring a sufficient own contribution. In this respect, the criteria laid down in paragraph (188) of the EEAG serve to define this balance. Furthermore, the components for

cogeneration and power generation in non-peninsular territories are included together with the component for renewable energy in the access charge and these three components are structured and levied in an identical and undifferentiated manner.

- (107) The Commission has therefore assessed the compensation to access charge components for cogeneration and power generation in non peninsular territories directly under Article 107(3)(c) of the Treaty, applying by analogy the compatibility criteria laid down in Section 3.7.2 of the EEAG.

3.2.2. The aid facilitates the development of an economic activity

- (108) Article 107(3)(c) TFEU provides that the Commission may declare compatible “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”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activities. Furthermore, the aid should not distort competition in a way contrary to the common interest.
- (109) As explained in recitals (100) to (102) above, the financing costs of the promotion of highly efficient cogeneration, power generation in non-peninsular territories and renewable energy put eligible EIUs at a significant competitive disadvantage, due to their electro-intensity and exposure to international trade. The pursuit of the economic activities carried out by those EIUs would be harmed in the absence of the proposed measure: the economic consequences may lead to a shift of production towards other regions outside the EU, to a reduction of the European market share globally, or to investment plans that would not take place within the EU borders.
- (110) Therefore, the notified aid measure contributes to the development of the economic activities carried out by the eligible EIUs.

3.2.3. Compatibility with the criteria of Section 3.7.2 of the EEAG

- (111) Reductions granted to EIUs aim at securing a sufficient financing base for the support measures themselves. Point 182 of the EEAG provides that Member States may wish to grant partial compensation for the additional costs of RES support schemes to undertakings particularly affected by the financing costs who would otherwise be put at a significant competitive disadvantage. On the other hand, point 182 of the EEAG also states that such compensation should not be too high or awarded to too many electricity consumers in order to limit distortions of competition and trade. Those targeted reductions may be needed to secure a sufficient financing base for support to energy from RES and hence help reaching the renewable energy targets set at EU level. As elaborated in recitals (97) to (102), the same logic can be extended to the components financing support to cogeneration and power generation in non peninsular territories.
- (112) Points 185 and 186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to RES as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can, as a general rule, only be granted if the undertaking belongs to the sectors listed in Annex 3 of the

EEAG or for undertakings belonging to sectors listed in Annex 5 of the EEAG in so far as an undertaking has an electro-intensity of at least 20%. As detailed in recitals (103) to (105), these provisions provide a relevant analytical basis for identifying the undertakings most sensitive to the components financing support to cogeneration and power generation in non peninsular territories.

- (113) It follows from information provided by the Spanish authorities, set out in recitals (11) and (12) above, that the aid will be granted to EIUs belonging to the manufacturing sectors listed in Annex 3 of the EEAG. Restricting the aid only to these sectors limits the distortive effects of the aid on competition and trade. In addition, as Annex 3 of the EEAG includes specific sectors that are economically similar to other listed sectors and produce substitutable products, it also limits the distortion of competition among Spanish operators of substitutable economic activities.
- (114) The Spanish authorities also require that the beneficiaries:
- a) are not undertakings in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty and
 - b) do not have any unrecovered or outstanding debts stemming from an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

These requirements directly reflect the requirements of points 16 and 17 of the EEAG, which are therefore complied with.

- (115) In addition, where Member States impose additional eligibility criteria, they need to ensure that, within the eligible sectors, the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation (point 187 of the EEAG). In this respect, Spain limits the eligibility to the measure to undertakings that are certified as EIUs by the Spanish authorities (see recital (11)). In turn, the certification process (see recital (12)) and the obligations put on certified EIUs (see recital (26)) impose additional eligibility criteria.
- (116) First, as indicated in point “b” of recital (12), eligibility under the notified scheme is limited to undertakings with an annual electricity consumption of more than 1 GWh during at least two of the preceding three years. The Commission observes that this threshold has been introduced for reasons of administrative simplification. The Commission also notes that below this threshold the administrative burden for potential beneficiaries outweighs the economic benefits that the compensation would bring to them (see recital (24)). The Commission finds that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.
- (117) Second, as indicated in point “c” of recital (12), eligibility under the notified scheme is limited to undertakings having consumed at least 50 per cent of the energy during the hours corresponding to the off-peak tariff period, during at least two of the preceding three years. The Commission observes that this requirement has been introduced to pursue national energy and climate objectives, as it favours the deployment of renewable energy generation during off-peak hours

and it contributes to the reduction of system management costs (see recital (14)). The Commission also notes that off-peak hours are the same for all electricity consumers and they represented more than 50% of all hours in 2020 (see recital (13)).

- (118) The Commission observes that, based on an analysis of relevant undertakings with consumption over 1 GWh/year, Spain has selected a level of consumption during off-peak hours of 50% also for reasons of effectiveness, administrative simplification and budgetary implications. The analysis of the Spanish authorities exposed in recital (15) shows that this consumption level allows covering a significant number of undertakings (thereby limiting selectivity) and a significant share of their consumption (thereby ensuring the effectiveness of the requirement). A consumption level lower than 50% would entail significant additional implications in terms of administrative and budgetary burden, without a similar degree of additional benefits in terms of additional power demand contributing to the objective of the requirement.
- (119) The Commission observes that, based on a sector-specific analysis of all consumers of over 1GWh/year exposed in recital (16), the Spanish authorities have also shown that this requirement does not structurally affect the ability of companies with lower electricity consumption to access the scheme, compared to companies active in the same sector and consuming higher amounts of electricity.
- (120) Based on these considerations, the Commission finds that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.
- (121) Third, as indicated in point “e” of recital (12), eligibility under the notified scheme is limited to undertakings having a ratio between the annual consumption and the gross value added of the installation at the point of supply for which it has an electro-intensive consumer category exceeding 1,5 kWh/EUR, for at least two of the previous three years. The Commission observes that, as elaborated in recital (19) and (20), this requirement is equivalent to an electro intensity of 10% calculated in line with Annex 4 of the EEAG and that the value of 1,5 kWh/EUR will be reviewed annually to ensure the equivalence in light of electricity prices developments. The Commission notes that, as illustrated in recital (21) and (22), this alternative approach has been introduced for reasons of administrative simplification. The Commission finds that this additional criterion is objective and transparent and it is applied consistently to all undertakings. For these reasons, it does not discriminate between undertakings in a similar factual situation.
- (122) Lastly, as indicated in point “c” of recital (26), eligibility under the notified scheme is limited to undertakings that, within one year from the entry in force of the FERGEI, have at least 10% of their annual electricity consumption covered directly or indirectly by a forward instrument for the supply of electricity from renewable sources, with a minimum duration of five years. EIUs having the status of SMEs as defined in Annex I of Commission Regulation (EU) No 651/2014 are however exempted from this requirement. This requirement is linked to the entry into force of the guarantee scheme financed through the FERGEI, which aims at facilitating the conclusion of long-term PPAs for electricity from renewable sources and which has been assessed in section 3.1.2 of the present Decision.

- (123) The Commission notes that, as elaborated in recitals (27) to (29), this requirement does not entail discrimination between undertakings in the same sector due to:
- a) the different types of forward instruments available to electricity consumers, including collective forward contract,
 - b) the amount of energy subject to this requirement, which is limited and has been set in proportion to the total consumption to take into account the situation of individual consumers,
 - c) the time established to get in compliance with the requirement (1 year from the entry into force of the coverage mechanism or accreditation as an electro-intensive consumer, whichever is later), which can be extended if the term of the pre-existing contracts so warrants.
- (124) Based on the above and in light of the fact that this requirement does not apply to electro-intensive SMEs, which may be disadvantaged by it (for instance, due to a lower bargaining power compared to a larger undertaking), the Commission finds that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.
- (125) Based on the above, the Commission finds that these additional requirements are objective and transparent, and apply equally to all beneficiaries in the same factual situation, in line with point 187 of the EEAG. Therefore, the possible distortions of competition among Spanish operators of the same economic activity are limited.
- (126) As undertakings eligible for the aid would pay at least 15% of the full RES charge in line with point 188 of the EEAG, the measure is proportionate. This requirement also contributes at limiting the distortive effects of the aid on competition and trade. As illustrated in recital (106), this can be used as a basis for assessing the proportionality of the components financing support to cogeneration and power generation in non-peninsular territories.
- (127) The Commission also notes that the requirement to calculate compensation on the basis of historical data set out in point 192 of the EEAG are complied with.
- (128) Therefore, the Commission concludes that the aid facilitates the development of the economic activities carried out by the EIUs eligible to the compensation (see recitals (109) and (110) above).
- (129) With regard to the distortive effects of the aid, in light of the considerations included in recitals (113), (125), (126) and (127), the Commission concludes that the distortive effects on competition among Spanish operators are limited.
- (130) On the other hand, the measure may distort intra-EU competition and trade vis-à-vis operators outside of Spain, which operate in the same markets as those eligible under the notified measure. At the same time, reductions from RES charges to the same sectors covered by this measure can be and are granted already in a large number of Member States. Furthermore, as explained in recital (113) above, the number of eligible sectors is limited, as it only includes those manufacturing sectors particularly affected by the financing costs of renewables, co-generation and the non-peninsular territories scheme. In addition, the number of eligible undertakings is further limited due to the additional eligibility criteria imposed

under Spanish legislation (see recitals (116), (117), (121) and (122) above). Those additional criteria are non-discriminatory (see recital (125)). Finally, the compensation is limited to the amount necessary in order to mitigate the competitive risk triggered by the imposition of the financing charges (see recitals (126) and (127) above). Therefore, the distortive effects on intra-EU competition and trade are limited.

- (131) In light of the above, the Commission concludes that the positive effects of the aid from the development of the economic activities in question outweigh the negative effects of the aid on competition and trade.

3.2.4. Cumulation

- (132) The Commission observes that, as illustrated in recital (43), the compensation under this scheme may be cumulated with other schemes or ad hoc aid as long as the cumulated amount of compensation for an activity or project does not exceed the ceilings fixed in paragraph (188) of the EEAG.
- (133) The Commission underlines that the present Decision does not assess any of such schemes, which would be subject to a separate notification and approval procedure.
- (134) The Commission notes that the compensation of the charges at stake can be cumulated with aid to compensate EIUs for indirect cost emissions as the latter concerns different identifiable eligible costs.

3.2.5. Transparency

- (135) Member States are required under Section 3.2.7. of the EEAG to publish certain information related to beneficiaries of aid. The Commission takes note that the Spanish authorities have confirmed the compliance with the transparency requirements.

3.2.6. Conclusions

(136) Based on the elements above, the Commission concludes that:

- a) the compensation to the charges to finance RES pursue the development of an economic activity. The aid is proportionate as the compensation amounts, calculated in line with point 192 of the EEAG, do not exceed the threshold established by point (188) of the EEAG. Furthermore, the eligibility criteria do not discriminate between undertakings operating within the same sector. Therefore, the aid is compatible with the internal market on the basis of the EEAG, and in particular section 3.7.2 of the EEAG.
- b) the compensation to the charges to finance cogeneration and power generation in non-peninsular territories pursue the development of an economic activity. The aid is proportionate as the compensation amounts, calculated in line with point 192 of the EEAG, do not exceed those needed in order to ensure the development of the economic activity. Furthermore, the eligibility criteria do not discriminate between undertakings operating within the same sector. Therefore, the aid does not unduly distort competition and is thus compatible with Article 107(3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid compensating EIUs for a number of electricity charges on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union
- that the State guarantee scheme does not constitute aid within the meaning of Article 107(1) TFEU.
- that Spain shall submit to the Commission on yearly basis a report in line with section 6 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees.

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/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President