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**Subject: State Aid SA.62696 (2021/N) – Spain - RRF - Extension of Broadband Scheme for NGA White and Grey Areas**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 25 May 2021, registered by the Commission on the same day, Spain notified the above-mentioned measure ('the notified measure'), under Article 107(3)(c) of the Treaty of the Functioning of the European Union (TFEU).
- (2) The legal basis of the measure<sup>1</sup> contains a provision stating that the granting of the aid is conditional upon the authorisation of the Commission of the notified measure. Pursuant to the standstill clause of Article 108(3) TFEU, and to Article 3 of Council Regulation (EU) 2015/1589<sup>2</sup>, new aid measures must not be put into effect before the Commission has notified the decision not to raise objections to Spain.

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<sup>1</sup> Draft Order amending Order ETD/348/2020 of 13 April laying down the regulatory basis for the granting of aid under the NGA Broadband extension programme. "Proyecto de orden por la que se modifica el orden ETD/348/2020, de 13 de abril, por la que se establecen las bases reguladoras de la concesión de ayudas con cargo al Programa de extensión de la banda ancha de nueva generación".

<sup>2</sup> Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union OJ L 248 of 24.9.2015, p.9.

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- (3) Spain exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>3</sup>, and to have this Decision adopted and notified in English.

## 2. DETAILED DESCRIPTION OF THE MEASURE

### 2.1. Objective and design of the measure

- (4) The notified measure is an extension of a scheme previously approved by the Commission and subsequently extended several times. In 2008, the Spanish authorities launched the programme *Avanza Infraestructuras* (SA.25137 ex. N 73/2008), which was designed to facilitate the investment needed to extend coverage of telecommunications services to rural areas (with similar conditions to those available in urban areas), in order to enhance the economic development and the incorporation of the local citizens and businesses to the Information Society. The measure was continued through the measure SA.31229 (ex. N 304/2010) known as *Programa Avanza Nuevas Infraestructuras de Telecomunicaciones ("Plan Avanza")*. Plan Avanza was designed to bridge the digital divide as far as basic broadband was concerned and to build NGA (next generation access) broadband infrastructure in market failure areas where private investment alone did not suffice.
- (5) The Commission subsequently approved, by decision of 5 July 2013, a measure in case SA.35834<sup>4</sup>, which was based in substance on the previously approved measure SA.31229 (ex. N 304/2010). On the basis of the experience gained with the implementation of that aid measure, together with the fundamental technological shift due to the development of Next Generation Networks, the Spanish authorities amended the scope of the measure, which focused on investments in high speed (above 30 Mbps (megabit per second) download) and very high speed (above 100 Mbps download) broadband. On 11 April 2017, the Commission registered a decision by the Spanish authorities in application of the GBER<sup>5</sup> to extend the temporal scope of the measure until 2020.
- (6) By decision of 10 December 2019, the Commission approved a measure in case SA.53925<sup>6</sup>, based in substance on the previously approved scheme SA.35834, which concerned an extension of the previously approved NGA access scheme (“the PEBA-NGA scheme”)<sup>7</sup>. Until 2019 the PEBA-NGA scheme covered only NGA white areas

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<sup>3</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>4</sup> [http://ec.europa.eu/competition/state\\_aid/cases/246932/246932\\_1452186\\_126\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/246932/246932_1452186_126_2.pdf)

<sup>5</sup> Commission Regulation (EU) N°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.

<sup>6</sup> [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_53925](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53925)

<sup>7</sup> The first State aid measure Programme Avanza Infraestructuras was approved by the Commission under State aid rules in 2008 (SA.25137 ex. N 73/2008), continued through the measure Plan Avanza approved by the Commission under State aid rules in 2010 (SA.31229 ex. N 304/2010, OJ C 170 of 10.6.2011, page 1, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3)). An extension of the measure was approved by the Commission under State aid rules in 2013 (SA.35834, OJ C 256 of 5.9.2013, [http://ec.europa.eu/competition/state\\_aid/cases/246932/246932\\_1452187\\_125\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/246932/246932_1452187_125_2.pdf)). Spain

where no infrastructure is present, or likely to be developed in the near future, able to reliably provide speeds of at least 30 Mbps download. The decision SA.53925 covered a prolongation of the on-going measure for NGA white areas for 2020-2022, and a modification concerning new projects in white areas under the measure which would now aim to ensure speeds of 300 Mbps symmetrical, upgradeable to 1Gbps (gigabit per second) symmetrical.<sup>8</sup> A further modification in SA.53925 concerned the extension of the on-going measure into grey areas where only one infrastructure is present, or likely to be developed in the near future, able to reliably provide speeds of at least 30 Mbps download, for the period 2020-2022, by rolling out infrastructure capable of providing speeds of 300 Mbps symmetrical, upgradeable to 1 Gbps symmetrical, in areas where one network is present, or planned within three years following a public consultation, providing more than 30 Mbps but less than 100 Mbps download speeds.

- (7) The now notified modified measure supports this deployment process, which allows the implementation of projects covering the last 8% of the population living in NGA white and grey areas where less than 100 Mbps download speed is provided, with the objective of offering 300 Mbps symmetrical, upgradeable to 1 Gbps symmetrical. This is expected to contribute to ensuring more than 100 Mbps download speed coverage for 100% of the population by 2025.
- (8) The present notification specifically concerns an extension of the duration of the measure until 31 December 2024 and an increase of the budget by EUR 200 million in the form of direct grants. The funds of EUR 200 million are made available through the Recovery and Resilience Facility (RRF)<sup>9</sup>. The new overall maximum estimated budget of the scheme is therefore EUR 600 million and the annual budget EUR 287 million. For the notified measure the RRF funds are provided in addition to support from ERDF<sup>10</sup> and national funds (recital 23 of SA.53925).
- (9) All other features of the previously approved aid scheme SA.25137, extended through SA.31229, modified through SA.35834 and SA.53925, remain unchanged. In particular, all reporting obligations remain unchanged. The Spanish authorities have committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589. In line with point 78(k) of the Broadband Guidelines<sup>11</sup>, the Spanish authorities will also report key information on the implementation of the measure to the European Commission every two years.

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once again extended the measure under the General Block Exemption Regulation (GBER), via a communication registered by the Commission under SA.48000 on 11.4.2017.

<sup>8</sup> Under the previous scheme and until the entry into force of the modifications approved by decision SA.53925, projects in white areas aimed to ensure speeds of 30 Mbps download.

<sup>9</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.

<sup>10</sup> European Regional Development Fund.

<sup>11</sup> Communication from the Commission - EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01), OJ C 25, 26.01.2013, p. 1-26.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Existence of aid**

- (10) The changes introduced by the notified measure do not alter the prior conclusion of the Commission in the case SA.25137 (recital (35)) that the scheme constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.2. Lawfulness of the measure**

- (11) By notifying the measure before putting it into effect, the Spanish authorities have respected their obligations under Article 108(3) TFEU.

#### **3.3. Compatibility of the aid**

- (12) The Commission's analysis confirms that the prolongation of the scheme does not modify the essence of the original compatibility assessment regarding the approved measure SA.25137 (recitals (36)-(46)) as extended by the decision in State aid case SA.31229 (recitals (36)-(47)), and as modified through SA.35834 (recitals (35)-(54)) and SA.53925 (recitals (62)-(118)).
- (13) The Spanish authorities have committed to set up a comprehensive State aid website where, in accordance with the Transparency Communication<sup>12</sup>, the following information will be published on a national website<sup>13</sup>: the full text of the approved aid scheme, or a link to it; the identity of the granting authority; the identity of the individual beneficiaries, the aid instrument and amount of aid granted to each beneficiary; the objective of the aid, the date of granting, the type of undertaking (for example SME, large company); the Commission's aid measure reference number; the region where the beneficiary is located and the principal economic sector of the beneficiaries.
- (14) Indeed, there are no other amendments to the scheme; therefore the Commission sees no reason to depart from its previous positive compatibility assessment in recitals (36)-(46) of Commission decision in case SA.25137, as extended by Commission decision in State aid case SA.31229 (recitals (36)-(47)), modified by Commission decision in State aid case SA.35834 (recitals (35)-(54)), and Commission decision in State aid case SA.53925 (recitals (62)-(118)). The measure contributes to the development of very high speed broadband infrastructure. The Commission therefore concludes that the positive impact of the aid measure in developing the economic activity at issue outweighs any potential negative effects on competition and trade.

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<sup>12</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014–2020, on State aid for films and other audio-visual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (OJ C 198, 27.6.2014, p. 30).

<sup>13</sup> <http://www.pap.hacienda.gob.es/bdnstrans/es/index>

#### 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)(c) of the Treaty on the Functioning of the European Union.

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:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Executive Vice-President

