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**Subject: State Aid SA.108653 (2023/N) – Spain.  
RRF – TCTF: scheme for projects of equipment necessary for the  
transition towards a net-zero economy**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 18 July 2023, Spain notified aid for projects of equipment necessary for the transition towards a net-zero economy (*Order to be established on the convocations of the incentive programme for projects of equipment necessary for the transition to a net-zero economy, in the framework of the recycling, transformation and resilience plan, financial by the European Union – NextGenerationEU*, the ‘measure’) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the ‘Temporary Crisis and Transition Framework’) <sup>(1)</sup>. Spain submitted additional information on 31 July, 5, 25 and

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<sup>(1)</sup> Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3), as amended by Commission Communication C(2023)8045 (OJ C/2023/1188, 21.11.2023, ELI: <http://data.europa.eu/eli/C/2023/1188/oj>).

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26 September and 3, 17, 25, 27, 30 and 31 October, and 1, 6, 8, 20 and 23 November 2023.

- (2) Spain exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with Article 3 of Regulation 1/1958 <sup>(2)</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

- (3) Spain considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia have economic repercussions on the entire internal market ('the current crisis'). The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.
- (4) The current crisis, which caused serious disruptions in the supply of natural gas and electricity and significantly impacted electricity and gas prices, affected the Spanish economy and highlighted the EU's and Spain's dependence on fossil fuels. Additional investments in strategic goods for the transition towards a net-zero economy are thus required, particularly in the current global context where such investments are at risk of being diverted away from the European Economic Area ('EEA'). According to Spain, the measure is the appropriate instrument to compensate for the identified market failures and support technologies strategic for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps and electrolyzers.
- (5) Spain considers that the current crisis illustrated the need to move away from fossil fuels and to incentivise further investments in those technologies that are essential for the transition towards a net-zero economy. Spain reminds that, as acknowledged by the Commission <sup>(3)</sup>, '*batteries, windmills, heatpumps, solar, electrolyzers, carbon capture and storage technologies*' are products that are '*key to meet the Commission's climate neutrality goals*'. Thus, with the measure Spain intends to create the necessary ecosystem for accelerated investments into the value chain for the production of such products.
- (6) Spain confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area ('EEA') to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

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<sup>(2)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

<sup>(3)</sup> Communication from the Commission of 1.2.2023, A green deal industrial plan for the net-zero age, COM(2023)62 final.

- (7) The compatibility assessment of the measure is based on Article 107(3), point (c), TFEU, in light of sections 1 and 2.8 of the Temporary Crisis and Transition Framework.

### **2.1. The nature and form of aid**

- (8) The measure provides aid on the basis of a scheme in the form of direct grants.

### **2.2. Legal basis**

- (9) The legal basis for the measure is the *‘Order to be established on the convocations of the incentive programme for projects of equipment necessary for the transition to a net-zero economy, in the framework of the recycling, transformation and resilience plan, financial by the European Union – NextGenerationEU’* (the ‘draft legal basis’). The draft legal basis will be adopted by the Spanish Ministry for the Ecological Transition and the Demographic challenge after the notification of the Commission decision.

### **2.3. Administration of the measure**

- (10) The Institute for the Diversification and Saving of Energy (IDAE) is responsible for granting and managing the measure. IDAE is a public body assigned to the Spanish Ministry for the Ecological Transition through the Secretary of State for Energy to which it reports.

### **2.4. Budget and duration of the measure**

- (11) The estimated budget of the measure is EUR 1.1 billion. The measure is financed by funding made available from the Recovery and Resilience Facility (RRF) <sup>(4)</sup>.
- (12) Aid may be granted under the measure after the notification of the Commission’s decision approving the measure until no later than 31 December 2025.

### **2.5. Beneficiaries**

- (13) The beneficiaries of the measure are small and medium-sized enterprises (‘SMEs’) <sup>(5)</sup> and large enterprises <sup>(6)</sup> that meet all the following conditions:
- (a) any legal or private legal person, legally constituted and validly established in Spain and duly registered in the Spanish Business Register <sup>(7)</sup>;

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<sup>(4)</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). This State Aid Decision does not prejudice the Commission’s assessment of the satisfactory fulfilment of the relevant milestones and targets as laid out in the Spanish recovery and resilience plan.

<sup>(5)</sup> As defined in Annex I to 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).

<sup>(6)</sup> As defined in Article 2, point 24, of Commission Regulation (EU) No 651/2014.

<sup>(7)</sup> Participants are not required to have their headquarters, or their principal activity in Spain. This means, for example, that a Spanish branch of a legal person established in another member State can be a

- (b) they must not be subject to an outstanding recovery order following a previous decision of the Commission declaring aid to the beneficiary illegal and incompatible with the internal market;
  - (c) undertakings in difficulty <sup>(8)</sup> are not eligible to receive aid.
- (14) The Spanish authorities confirm that credit institutions or other financial institutions are excluded as eligible final beneficiaries and the aid will not be channelled through credit or other financial institutions.
- (15) Spain confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (16) Spain confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations <sup>(9)</sup>. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

## **2.6. Sectoral and regional scope of the measure**

- (17) Under the measure, the planned aid is aimed at incentivising investments for:
- (a) the production of relevant equipment for the transition to a net-zero emission economy, namely batteries, solar panels, wind turbines, heat-pumps and electrolyzers; or
  - (b) the production of key components <sup>(10)</sup> provided that they are designed and primarily used as direct input for the production of the equipment defined under (a); or

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beneficiary of aid under the measure. The Spanish authorities confirmed that a company that is not present in Spain remains eligible if it plans to create an establishment or branch in Spain as part of its investment.

<sup>(8)</sup> As defined in Article 2, point 18, of Commission Regulation (EU) No 651/2014.

<sup>(9)</sup> For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

<sup>(10)</sup> Key components for the production of batteries are: anodes, cathodes (precursor cathode active material (pCAM)/cathode active material (CAM), cation or anion exchange membranes/separators, electrolytes, battery-grade (raw) materials (hydrofluoric acid, sulphuric acid, phosphoric acid, etc.), battery modules, battery machinery and equipment, battery housings, cases and accessories, enclosures and other plastic structural materials (tubes, sheets, plates), battery tabs/ metal lead plates, carbon plates, bipolar plates, control elements, battery management systems (BMS), busbars, wire harness, current collectors (copper plate or foil), electrode materials (porous graphite felt, carbon felt, carbon cloth), electrolyte solution storage tanks; electrolyte solutions containing one or more electroactive redox pair systems (inorganic or organic), gaskets, pumps for circulating the electrolyte solution, heat exchanger, phase-change material filling, binders, coatings and additives. Key

- (c) the recovery (extraction or transformation)<sup>(11)</sup> of related critical raw materials<sup>(12)</sup> necessary for the production of the equipment and key components defined in (a) and (b) above.

(18) The measure applies to the whole territory of Spain.

### **2.7. Basic elements of the measure**

- (19) The purpose of the measure is to grant aid for investments for the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, and electrolyzers (recital (17)(a)), of key components designed and primarily used as direct input for the production of batteries, solar panels, wind turbines, heat-pumps and electrolyzers (recital (17)(b)), and for the recovery (extraction or transformation) of related critical raw materials necessary for the production of batteries, solar panels, wind turbines, heat-pumps and electrolyzers and key components (recital (17)(c)).
- (20) Only tangible and intangible assets required for the production or recovery of the goods listed in recital (17) may be eligible under the measure. Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) be amortisable; 4) be purchased under market conditions from third parties

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components for the production of photovoltaic modules or panels are: polysilicon, silicon crystals, wafers, crystal puller, dicing saws, diamond wires, (silver and aluminium) metallisation pastes for the manufacture of photovoltaic cells, photovoltaic cells, solar glass, laminar films, encapsulant, frames, back sheets, junction boxes, and inverters. Key components for the production of wind turbines are: nacelles, rotor hubs, blades, blade cups, mechanical transmission shafts in the rotor, generators (including permanent magnets for wind power stations), main axle, bearings, gearboxes, coupling elements, cooling system, current/voltage transformers, converters, switch cabinets, electrical protections, controllers, motors for nacelle turning, motors for blade turning, oscillation dampers, bat/avian sensors, lightning protection devices, stretch stamps, sensors, structure, towers, monopiles (and other foundation structures), crane and elements; crane rails, cables, UPS (uninterruptible power supply), circuit breakers, control building/elements and measuring equipment. In the case of offshore wind turbines, the scope also includes fixed and/or floating substructures, as well as elements for anchoring to the seabed. Key components for the production of heat pumps are: heat exchangers (including fans), compressors, evaporators, evaporator antifreeze units, refrigerants, coolant filters, four-way gas valves, electronic expansion valves, valve technology, gas/liquid piping systems, liquid control units, oil separator tanks, ventilators, water pumps, inverters, electric motors (including permanent magnets), support units for the different components of the heat pumps (heat exchanger, compressor, evaporator, oil separator, control panel, ventilator, water pump, etc.), heat pump frame systems, fixing support units and, other casing elements. Key components for the production of electrolyzers are: anodes, cathodes, diaphragms, bipolar plates, heat exchangers, circulation pumps, hydrogen cooling systems, hydrogen purification systems, fuel cell stack, gas filter systems, gas dryers, water treatment systems, transformers, power electronics, converters, electric switchboards, high and low pressure gas cylinders, piping, connectors and fittings, manual on/off valves, solenoid valves, oxygen and hydrogen separators, radiators, evaporators, containers, refrigeration system (chiller, air coolers), cooling system deionizers, pressure/temperature regulators, gas-detection system, ATEX components, compressors, operating and emergency ventilation, electronic control software and unit, tools and, sensors.

<sup>(11)</sup> Spain has confirmed that the production of critical raw materials is not part of the scope of the measure.

<sup>(12)</sup> Spain refers to the EU list of critical raw materials contained in Annex IV to Commission Regulation No 651/2014.

unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).

- (21) The beneficiary must apply for aid before the start of works <sup>(13)</sup>. The aid application will include the information required in Annex II to the Temporary Crisis and Transition Framework.
- (22) The aid intensity may not exceed 15 % of the eligible costs and the total aid amount cannot exceed EUR 150 million, in nominal value, per undertaking in Spain <sup>(14)</sup>. However:
- (a) for investments in assisted areas designated in the regional aid map 2022-2027 for Spain <sup>(15)</sup> in accordance with Article 107(3), point (c), TFEU ('c' areas), the aid intensity may be increased to 20 % of the eligible costs and the total aid amount may not exceed EUR 200 million, in nominal value, per undertaking in Spain;
  - (b) for investments in assisted areas designated in the regional aid map 2022-2027 for Spain <sup>(16)</sup> in accordance with Article 107(3), point (a), TFEU ('a' areas), the aid intensity may be increased to 35 % of the eligible costs and the total aid amount may not exceed EUR 350 million, in nominal value, per undertaking in Spain;
  - (c) for investments made by small enterprises, the aid intensities may be increased by a further 20 percentage points and, for investments made by medium-sized enterprises <sup>(17)</sup>, by 10 percentage points.
- (23) The beneficiary must commit to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.

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<sup>(13)</sup> 'Start of works' means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

<sup>(14)</sup> According to Article 10(7) of the draft legal basis, in calculating the aid intensities mentioned in this recital, all figures used shall be taken into account before any deduction of tax or other charge.

<sup>(15)</sup> See SA.100859 – Regional aid map for Spain (1 January 2022 – 31 December 2027), OJ C 324, 26.8.2022, p. 1) as amended by SA.106039 - Amendment to the Regional aid map for Spain (1 January 2022 – 31 December 2027) - increased aid intensities for territories identified for support from the JTF (OJ C 102, 17.3.2023, p. 1).

<sup>(16)</sup> See SA.100859 – Regional aid map for Spain (1 January 2022 – 31 December 2027), OJ C 324, 26.8.2022, p. 1) as amended by SA.106039 - Amendment to the Regional aid map for Spain (1 January 2022 – 31 December 2027) - increased aid intensities for territories identified for support from the JTF (OJ C 102, 17.3.2023, p. 1).

<sup>(17)</sup> Within the meaning of Annex I to Commission Regulation (EU) No 651/2014.

- (24) Aid may not be granted to facilitate the relocation of the production activities <sup>(18)</sup> to another contracting state of the EEA agreement. For this purpose, the beneficiary must confirm that, in the two years preceding the aid application, no relocation has taken place to the establishment in which the aided investment will be carried out and commit not to carry out such relocation for a period of two years after completion of the investment.
- (25) The Spanish authorities confirm that the granting authority shall verify, *inter alia*, before granting the aid, the real risk that the investment will not be carried out in the EEA in the absence of aid and that there is no risk of relocation within the EEA, as defined in recital (24).
- (26) The Spanish authorities confirm that they must inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II to the Temporary Crisis and Transition Framework.

## **2.8. Compliance with relevant provisions of Union law**

- (27) The Spanish authorities confirm that the proposed measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law.

## **2.9. Cumulation**

- (28) The Spanish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations <sup>(19)</sup> or the General Block Exemption Regulation <sup>(20)</sup> provided the provisions and cumulation rules of those Regulations are respected.
- (29) The Spanish authorities confirm that aid under the measure may not be cumulated with aid under the COVID-19 Temporary Framework <sup>(21)</sup>.
- (30) The Spanish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework or the Temporary Crisis Framework provided the provisions in those specific sections are respected.

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<sup>(18)</sup> Within the meaning of footnote 147 to the Temporary Crisis and Transition Framework.

<sup>(19)</sup> 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), 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, 26.4.2012, p. 8).

<sup>(20)</sup> Commission Regulation (EU) No 651/2014.

<sup>(21)</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

- (31) The Spanish authorities confirm that aid granted under the measure can be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances will the total aid amount exceed 100 % of the eligible costs.

### **2.10. Monitoring and reporting**

- (32) The Spanish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 6 months from the moment of granting <sup>(22)</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (33) By notifying the measure before putting it into effect (recital (9)), the Spanish authorities have respected their obligations under Article 108(3) TFEU.

### **3.2. Existence of State aid**

- (34) 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.
- (35) The measure is imputable to the State, since it is granted and managed by the Institute for the Diversification and Saving of Energy (IDAE) (recital (10)) and it will be based on an order to be issued by the Spanish Ministry for the Ecological Transition and the Demographic challenge (recital (9)). It is financed through State resources, since it is financed by public funds (recital (11)).
- (36) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (8)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (37) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. those that meet the criteria listed in recital (13) and who pursue investments referred to in recital (17).
- (38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

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<sup>(22)</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.



- (39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Spanish authorities do not contest that conclusion.

### **3.3. Compatibility**

- (40) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (41) Pursuant to Article 107(3), point (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.’
- (42) The current crisis has demonstrated the urgent need to reduce dependency on imports of fossil fuels and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures and to address the productive investment gap in sectors strategic for the transition towards a net-zero economy in order to achieve the Union’s climate targets. The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission’s view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for a limited period of time if it contributes to accelerating the economic transition and addressing the productive investment gap in sectors strategic for the transition towards a net-zero economy by providing incentives for their fast deployment, also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA.
- (43) The Commission considers that the measure is necessary, appropriate and proportionate in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU. In particular:
- the measure is aimed at investment projects with strategic importance for the transition towards a net-zero economy. The measure will support the following activities: production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, and electrolyzers (recital (17)(a)); production of key components designed and primarily used as direct input for the production of the said equipment (recital (17)(b)); and recovery of related critical raw materials necessary for the production of the said equipment and key components defined in recital (17)(c) (recital (19)). The measure therefore complies with point 85(a) of the Temporary Crisis and Transition Framework;
  - the aid is granted under the measure on the basis of a scheme with an estimated budget (recital (8)). The measure therefore complies with point 85(b) of the Temporary Crisis and Transition Framework;
  - aid under the measure can be granted until 31 December 2025 at the latest (recital (12)). The measure therefore complies with point 85(c) of the Temporary Crisis and Transition Framework;

- the measure provides that beneficiaries must apply for the aid before the start of works and must provide the information required in Annex II to the Temporary Crisis and Transition Framework (recital (21)). The measure therefore complies with point 85(d) of the Temporary Crisis and Transition Framework;
- aid under the measure will be granted in the form of direct grants (recital (8)). The measure therefore complies with point 85(e) of the Temporary Crisis and Transition Framework;
- the calculation of eligible costs as set out in recital (20) fulfils the requirements of point 85(f) of the Temporary Crisis and Transition Framework;
- the aid intensities and the overall aid amounts under the measure (recital (22)) correspond to the thresholds in point 85(g) of the Temporary Crisis and Transition Framework;
- Spain commits that beneficiaries under the measure will maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment, and to respect the additional conditions set in line with point 85(i) of the Temporary Crisis and Transition Framework (recital (23)). The measure therefore complies with point 85(i) of the Temporary Crisis and Transition Framework;
- Spain commits that before each individual grant of aid under the scheme, the granting authority will verify, on the basis of the information provided by the beneficiary, the concrete risks of the productive investment to be supported under the measure not taking place within the EEA and that there is no risk of relocation within the EEA (recital (25)). The measure therefore complies with point 85(j) of the Temporary Crisis and Transition Framework;
- Spain commits that beneficiaries under the measure will have to (i) confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place; and (ii) commit not to carry out such relocation up to a period of two years after completion of the investment (recital (24)). The measure therefore complies with point 85(k) of the Temporary Crisis and Transition Framework;
- aid under the measure will not be granted to undertakings in difficulty (recital (13)(c)). The measure therefore complies with point 85(l) of the Temporary Crisis and Transition Framework;
- Spain confirmed that aid under the measure may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules (recital (31)). Under no circumstances may the total aid amount exceed 100 % of the eligible costs (recital (31)). The measure therefore complies with point 85(m) of the Temporary Crisis and Transition Framework;

- Spain committed to inform the Commission, within 60 days from the moment of granting individual aid under the measure, about the granting date, the aid amount, the eligible costs, the beneficiary’s identity, the type and location of the investment supported on the basis of the information provided by the beneficiary (recital (26)). The measure therefore complies with point 85(o) of the Temporary Crisis and Transition Framework.
- (44) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market <sup>(23)</sup>.
- (45) The Spanish authorities have confirmed that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.
- (46) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (47) The Spanish authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (6)).
- (48) The Spanish authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
  - (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
  - (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
  - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (15)).
- (49) The Spanish authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (32)). The Spanish authorities further confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework, the previous Temporary Crisis Framework and the cumulation rules in the relevant Regulations and applicable Communications are respected (recitals (28) to (30)).

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<sup>(23)</sup> Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

(50) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure, which accelerates the economic transition and overcomes the current crisis, when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to Article 107(3), point (c), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

#### **4. CONCLUSION**

The Commission has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

Yours faithfully,

For the Commission

Didier REYNDERS  
Member of the Commission