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COMMISSION DECISION (EU) 2025/1014

of 16 May 2025

granting the Kingdom of Spain a derogation from certain provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council and of Directive (EU) 2019/944 of the European Parliament and of the Council as regards the Balearic Islands

(notified under document C(2025) 3174)

(Only the Spanish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ([1]), and in particular Article 64 thereof,

Having regard to Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU ([2]), and in particular Article 66 thereof,

Whereas:

1. PROCEDURE AND THE SCOPE OF THE DECISION

(1) On 23 November 2020, the Kingdom of Spain ('Spain') submitted to the Commission a request for derogation (the 'Application') for the non-peninsular territories of the Canary Islands, the Balearic Islands, Ceuta and Melilla (jointly, 'NPT') in accordance with Article 64 Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944.

(2) The Application initially asked for derogations from Article 8 and Article 54 of Directive (EU) 2019/944 and from Articles 3, 6, 7(1),8(1) and (4), 9, 10, 11, Articles 14 to 17, Articles 19 to 27 and Articles 35 to 47 of Regulation (EU) 2019/943. That Application did not specify the duration of the requested derogation.

(3) On 18 March 2021, the Commission published the Application on its website and invited Member States and stakeholders to provide comments by 30 April 2021.

(4) The Commission requested from Spain additional information on the Application on 17 August 2021 and 16 December 2021. Spain replied on 4 October 2021 and 17 January 2022. In the latter submission, Spain modified the scope of its Application as follows:

— the request for derogation from Article 8 of Directive (EU) 2019/944 was withdrawn for all NPT;

— the request for derogation from Article 54 of Directive (EU) 2019/944 was withdrawn for the Balearic Islands and Ceuta;

— Spain included a new request for derogation from Article 40(4) to (7) of Directive (EU) 2019/944 for all NPT;

— the request for derogation from Article 3, first paragraph, points (d), (f), (g), (h), (i), (l), (m) and (q) of Regulation (EU) 2019/943 was withdrawn for all NPT;

— Spain also withdrew the request for derogation for all NPT from Article 16(1) and (2), Article 20(1) and (2); Article 21(1) to (6); Article 22(1), except for points (f) and (h); Article 22(4); and Articles 35 to 47 of Regulation (EU) 2019/943;

([1]) OJ L 158, 14.6.2019, p. 54 ELI: http://data.europa.eu/eli/reg/2019/943/oj.
([2]) OJ L 158, 14.6.2019, p. 125, ELI: http://data.europa.eu/eli/dir/2019/944/oj.

— Spain set out a limited duration for the requested derogation for the Balearic Islands and Ceuta until the effective integration of these territories with the mainland (not expected before 2030).

(5) This Decision should cover only the Balearic Islands, as the Commission decision on the derogation request submitted by Spain concerning the NPT of the Canary Islands was adopted on 8 December 2023 ([3]) and the derogation requests submitted by Spain concerning the NPT of Ceuta and Melilla will be addressed in separate decisions.

2. **THE BALEARIC ISLANDS**

The electricity system and electricity market in the Balearic Islands

(6) The Balearic Islands jointly form a single interconnected system (Mallorca, Menorca, Ibiza and Formentera). According to Spain, the Balearic Islands had a consumption of less than 3 000 GWh in 1996 (2 856 GWh, measured in customer metering) ([4]). In 2023, annual consumption in the Balearic Islands was 6 047 GWh, out of which 8,7 % (i.e., 526 GWh) was covered through renewable energy sources ([5]).

(7) The Balearic Islands were isolated from Spain's mainland electricity system until 2012. Historically, the Balearic Islands comprised two electric systems ('Mallorca-Menorca' and 'Ibiza-Formentera') with capacities of 1,9 GW and 0,3 GW respectively. At the end of year 2012, a cable connected the 'Mallorca-Menorca' electricity system with Spain's mainland system through a 400 MW interconnector, whereas the 'Ibiza-Formentera' electricity system remained isolated. Since December 2018, following the entry into operation of a cable connecting Mallorca with Ibiza, the cable has connected the now integrated Mallorca-Menorca-Ibiza-Formentera electricity system to the mainland system ([6]). In 2023, the cable covered approximately 24 % of the Balearic Islands' electricity demand ([7]).

(8) Based on the Ministerial Order TEC/212/2019 of 25 February 2019, the 2021-2026 electricity transmission network plan provides for a second cable linking the Balearic Islands' electricity system with mainland Spain. The cable is expected to be operational by 2030 (best estimation provided by Spain, 2029) and to cover up to 65 % of the Balearic Islands' electricity supply ([8]).

(9) According to Spain, in June 2021 the Balearic Islands had an installed generation capacity of 1 999,4 MW, out of which 91 % (1 819 MW) constitutes thermal generation (mainly combined-cycle gas turbines, following the closure of two coal-fired power plants) and the remaining 9 % (180,4 MW) are renewable generation. In this context, Spain explains that the lower rate of renewables in the NPT, compared to Spain's mainland, is mainly due to the limited geographic space available for new generation capacity, the higher needs for dispatchable generation and the limited availability of energy storage facilities.

(10) Spain notes that the Balearic Islands are characterised by their small market size, which prevents them from reaping the benefits of the economies of scale present in the mainland electricity system. Spain also submits that the Balearic Islands' system faces higher fuel costs. Their historical isolation also results in a greater need for installed reserve capacity.

([3]) Commission Decision (EU) 2024/560 of 8 December 2023 granting the Kingdom of Spain a derogation from certain provisions of Regulation (EU) 2019/943 of the European Parliament and of the Council and of Directive (EU) 2019/944 of the European Parliament and of the Council as regards the Canary Islands (OJ L, 2024/560, 15.2.2024, ELI: http://data.europa.eu/eli/dec/2024/560/oj).

([4]) See figure A1.1 in Annex I of Red Eléctrica's 1997 *Informe del Sistema Eléctrico español*: PORTADA.eps (Convertido)-1 (ree.es).

([5]) Evolución demanda | Informes del sistema.

([6]) Ministerial Order TEC/1172/2018, of 5 November, redefining the isolated electricity systems of the non-peninsular territory of the Balearic Islands: Orden TEC/1172/2018, de 5 de noviembre, por la que se redefinen los sistemas eléctricos aislados del territorio no peninsular de las Illes Balears y se modifica la metodología de cálculo del precio de adquisición de la demanda y del precio de venta de la energía en el despacho de producción de los territorios no peninsulares. (boe.es).

([7]) Evolución demanda | Informes del sistema.

([8]) See Spain's final updated National Energy and Climate Plan 2021-2030, 211d83b7-b6d9-4bb8-b084-4a3bfb4cad3e_en.

(11) Spain further notes that almost all thermal generation in the Balearic Islands is directly or indirectly owned by Endesa S.A. As a result, even if the increasing roll out of renewables is facilitating the entry in the Balearic Islands of competing undertakings, Endesa S.A. will still produce most of the electricity in this non-peninsular territory.

(12) According to Spain, those market specificities entail higher electricity production costs compared to the mainland and a lack of attractiveness for new undertakings to enter the market. As a result, no effective competition has developed in the Balearic Islands.

(13) In view of the problems associated with the lack of effective competition and high costs, and despite the national measures adopted to promote competition and introduce economic incentives to encourage operational efficiency of installations and reduce generating costs, Spain submits that it has not been possible to establish a market mechanism which is identical to the one in place on the mainland.

(14) Spain further explains that electricity generated in all the NPT, including the Balearic Islands, is excluded from the bidding system on the mainland market. NPT electricity systems use a mechanism of economic precedence for dispatch ([9]):

— the system operator ranks the generation plants in order of economic merit based on variable costs until demand is covered, taking into account the technical constraints and the reserves necessary to guarantee electricity supply;

— the dispatch involves weekly, daily, intraday forecasting as well as deviations in real time. In the Balearic system, the dispatch also takes into account the maximum exchange of electricity available through the interconnection with the mainland;

— the demand side (direct consumers and suppliers) notifies the system operator of the hourly demand in the electricity systems of each NPT;

— following the daily dispatch, the demand side purchases the energy at a price equivalent to that of the bidding system on the mainland.

(15) According to Spain, this mechanism takes account of the high electricity generation costs and specificities of the NPT and aims to ensure that consumers and suppliers in those territories are not exposed to the higher cost of producing electricity in the NPT compared to mainland Spain, this being based on inter-regional solidarity principles.

(16) Spain further explains that electricity generation in the NPT constitutes a system of regulated remuneration instead of a market remuneration system and is applied in conditions where a wholesale market could not function and where costs, for geographical and territorial reasons, are higher than electricity generation costs in mainland Spain.

(17) Spain notes that the mechanism ensures that the electricity system and the public budget cover the extra cost resulting from the difference between the higher generating costs in the NPT, and the electricity price equivalent to that on the mainland, so that all consumers pay the same for electricity, irrespective of the system in which they consume it.

(18) According to Spain, the regulation of the activities of transmission and distribution of electricity in the NPT is similar to that on mainland Spain.

(19) In relation to the retail market, Spain explains that final customers in the NPT have a right to choose their supplier on the same terms as final customers in mainland Spain. Similarly, the concept of vulnerable consumers is defined for the whole of Spain and, in general, supply is organised uniformly throughout the country. In this respect, Spain notes that there are no differences between the mainland and non-mainland retail markets.

([9]) The framework is set out in Royal Decree 738/2015 of 31 July 2015 (Real Decreto 738/2015, de 31 de julio, por el que se regula la actividad de producción de energía eléctrica y el procedimiento de despacho en los sistemas eléctricos de los territorios no peninsulares) ('Royal Decree 738/2015').

Overview of the legal framework for the NPT

(20) Spain explains that Law 24/2013 sets out that the supply of electricity in the NPT is subject to a specific regulation. It also sets out that this activity can receive an additional remuneration to cover the difference between the costs to generate electricity in the NPT and the revenues from the sales of electricity in these territories. Law 24/2013 provides for the conditions that must be met for an isolated system not to be considered as such anymore, namely that the capacity of the connection of the NPT with the mainland allows them to enter the mainland production market and that there are market mechanisms in place to integrate their electricity.

(21) Spain notes that Law 17/2013 sets out the general provisions for the guarantee of supply and increase of competition in the electricity systems in the NPT ([10]).

(22) Spain indicates that Royal Decree 738/2015 regulates in detail the activity of producing electricity and the dispatching procedure in the electricity systems in the NPT as well as the remuneration scheme of this activity. The remuneration scheme is based on two remuneration components: one for the investment made and other fixed costs, and one for the variable costs incurred during operation. The objective of this remuneration is to cover the extra costs of electricity generation in the NPT. The Royal Decree 738/2015 defines the extra cost as the difference between all the costs of generation and the price paid in the electricity dispatch run by the system operator.

(23) Additionally, the Royal Decree 738/2015 introduces a competitive procedure for the selection of new capacity and capacity to be refurbished.

(24) The Commission notes, in this regard, that the remuneration mechanism set out in Royal Decree 738/2015 received State aid approval by the Commission in its Decision 'SA.42270 'Spain Electricity production in Spanish non-peninsular territories' ([11]).

3. THE REQUESTED DEROGATIONS CONCERNING THE BALEARIC ISLANDS

(25) The request for derogation submitted for the Balearic Islands is based on its qualification as a small connected system pursuant to Article 2(43) of Directive (EU) 2019/944.

3.1. Derogation pursuant to Article 66 of Directive (EU) 2019/944

(26) Spain requests a derogation from Article 40(4) to (7) of Directive (EU) 2019/944 as regards the procurement of ancillary services by the transmission system operator ('TSO').

3.2. Derogation pursuant to Article 64 of the Regulation (EU) 2019/943

(27) Spain requests a derogation for the Balearic Islands from the following provisions of Regulation (EU) 2019/943:

— the market principles in Article 3(1), points (a), (b), (c), (e), (j), (k), (n), (o) and (p);

— electricity trading rules pursuant to Article 6, Articles 7(1), 8(1) and 8(4), Articles 9, 10, 11, 14, 15, 16 and 17;

— the rules on congestion income set out in Article 19;

— Articles 14, 15, Article 16(3) to 16(13), Articles 17, 19, Articles 20(3) to 20(8), 21(7) and 21(8), 22(1), points (f) and (h), 22(2), 22(3) and 22(5), and 25(2) to 25(4) for any new support capacity mechanisms that might be established in the future;

— Articles 14 to 17, 19 to 27, 35 to 47 for the existing mechanism defined in Royal Decree 738/2015.

([10]) Ley 17/2013, de 29 de octubre, para la garantía del suministro e incremento de la competencia en los sistemas eléctricos insulares y extrapeninsulares.

([11]) Decision of 28 May 2020, *SA.42270 (2016/NN) – Spain Electricity production in Spanish non-peninsular territories*, C(2020) 3401.

3.3. **Duration of the requested derogations**

(28) Spain considers that the effective integration of the NPT in the Iberian electricity market depends on the existence of interconnection with the Spanish mainland.

(29) Regarding the Balearic Islands, Spain explains that the derogations should last until the effective integration of this territory in the mainland electricity market. According to Spain, the effective integration does not only comprise the commission of the new interconnectors, but also testing time and the necessary regulatory developments. Based on this, the Spain requests a derogation at least until 2030.

4. **COMMENTS RECEIVED DURING THE CONSULTATION PERIOD**

(30) As described in recital 3, throughout March and April 2021, the Commission carried out a public consultation.

(31) All the comments submitted in response to the public consultation concerned the derogation requested by Spain from Article 54 of Directive (EU) 2019/944 regarding ownership, management and operation of storage facilities by the TSO. As described in recital 4, Spain withdrew the request for derogation from Article 54 of Directive for the Balearic Islands.

5. **ASSESSMENT OF THE DEROGATION REQUEST CONCERNING THE BALEARIC ISLANDS**

5.1. **Small connected system**

(32) In accordance with Article 64 of Regulation (EU) 2019/943, a derogation from the relevant provisions of Articles 3 and 6, Article 7(1), Article 8(1) and (4), Articles 9 to 11, Articles 14 to 17, Articles 19 to 27, Articles 35 to 47 and Article 51 of that Regulation may be granted in two cases:

(a) for small isolated systems and small connected systems, if the Member State(s) can demonstrate that there are substantial problems for the operation of those systems. In such a case, the derogation is to be subject to conditions that aim to increase competition and integration with the internal market for electricity;

(b) for outermost regions with the meaning of Article 349 TFEU, if they cannot be interconnected with the Union's energy market for evident physical reasons.

(33) In accordance with Article 66(1), first subparagraph, of Directive (EU) 2019/944, a derogation from the relevant provisions of Articles 7 and 8 and of Chapters IV, V and VI may be granted for small isolated systems and small connected systems, if the Member State(s) can demonstrate that there are substantial problems for the operation of those systems. Article 66(2), second subparagraph, of Directive (EU) 2019/944 sets out that for outermost regions within the meaning of Article 349 TFEU that cannot be interconnected with the Union electricity markets, the derogation is to be subject to conditions aimed to ensure that the derogation does not hamper the transition towards renewable energy.

(34) Both under Regulation (EU) 2019/943 and Directive (EU) 2019/944, in the case of small connected systems, the derogation is to be limited in time and subject to conditions aiming to increase competition and integration with the internal market for electricity. In addition, the derogation is to ensure that it does not obstruct or hamper the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response.

(35) Article 2(43) of Directive (EU) 2019/944 defines 'small connected system' as 'any system that had consumption of less than 3 000 GWh in the year 1996, where more than 5 % of annual consumption is obtained through interconnection with other systems'.

(36) In its submission, Spain explains that the Balearic Islands (Mallorca, Menorca, Ibiza and Formentera) conform a single, interconnected system with a consumption of less than 3 000 GWh in 1996 (recital 6). Approximately 25 % of the electricity demand in the Balearic Islands is covered through the interconnector with mainland Spain.

(37) Based on the information provided by Spain, and in line with the Commission decision in case SA.42270 'Spain Electricity production in Spanish non-peninsular territories', the Balearic Islands qualify as a small connected system within the meaning of Article 2(43) of Directive (EU) 2019/944.

5.2. **Substantial problems for the operation of the system**

5.2.1. *The meaning of 'substantial problems for the operation' of the system*

(38) The term 'substantial problems' referred to in Article 64(1), point (a) of Regulation (EU) 2019/943 and Article 66(1) of Directive (EU) 2019/944 has not been defined by the legislator. The open formulation allows the Commission to consider all potential problems related to the particular situation of small systems, provided they are substantial and not only marginal. Such problems can vary significantly depending on the geographical particularities, production and consumption of the system in question, but also on technical developments (such as electricity storage and small generation).

(39) In past Commission decisions, the problems to be resolved related to maintaining social coherence and/or equal competitive conditions between the mainland and islands in a situation where system security on the island required additional measures or implied significantly higher costs on an island compared to the mainland. 'Operation' can thus not be understood narrowly, such as requiring that without the derogation, secure system operation would not be possible. Instead, 'problems' have always been considered to also include socioeconomic problems for the users of the system at hand ([12]).

(40) Furthermore, those substantial problems need to occur for the operation of the small isolated systems or the small connected systems. It thus appears difficult to imagine a justification which would be based exclusively on impacts occurring outside of the system, e.g., impacts on national subsidy schemes. This does not exclude the relevance of 'indirect' impacts on the secure operation of the system.

5.2.2. *Substantial problems presented by Spain in the Application*

(41) Spain highlights several challenges and problems for the operation of the electricity markets and systems in the NPT, including the Balearic Islands:

— the small market size of the NPT, which prevents them from reaping the benefits of the economies of scale present in the mainland electricity system;

— the higher costs associated with the fuel mix, which result in higher electricity costs, since most of the generation in the NPT is fuelled by gas, coal or diesel;

— the high investment and operation costs linked to power plants, derived from the geographical isolation resulting from the low degree of connection to the mainland and small size of the systems;

— the greater need for installed reserve capacity as a result of the geographical isolation resulting from the low degree of connection of the systems. In particular, Spain explains that NPT need a higher level of spinning reserve to cover the security of supply standards. Such supply standard is 40-70 % higher than the installed capacity, compared to the 10 % of the mainland. This results in the power plants being idle a significant amount of time, which leads to a low interest to invest in new capacity;

— The environmental restrictions for the localisation of new generation capacity, both for conventional and renewable generation facilities;

([12]) See e.g. Commission Decision of 14 August 2014 granting the Hellenic Republic a derogation from certain provisions of Directive 2009/72/EC which refers to the higher costs of producing electricity on the islands while prices are by law equal to those on the mainland.

— the high seasonality of demand, which is strongly linked to the tourism sector in the Balearic Islands;

— the cost associated and the investments needed to build new interconnections with the mainland, due to their geographic location.

(42) According to Spain, these challenges and problems result in two major features which characterise the NPT: a higher cost of electricity and a lack of competition in electricity generation.

(43) Regarding the high cost of producing electricity in the NPT, Spain explains that due to the challenges and problems listed above, the dispatchable generation costs often double the dispatchable generation costs in mainland Spain. Spain argues that the NPT, including the Balearic Islands, need to be excluded from the mainland market system in order for its consumers to pay prices that are similar to those of the mainland. Spain adds that an assessment would be needed before the integration of the NPT in the mainland electricity market, to ensure that the high generation costs in these territories do not distort marginal electricity prices in the mainland electricity market.

(44) Regarding the lack of competition in electricity generation, Spain explains that due to the historical development of the NPT and the lack of attractiveness of the power sector in these regions, a single business group traditionally performed all energy supply functions. In relation to the Balearic Islands, Spain notes that Endesa S.A. continues to own almost 100 % of the fossil fuel generation plants, which are the main generation source in the territories at stake. As a result, according to Spain, the Balearic Islands still do not count with an effective competition at generation level, and this despite the efforts to promote competition, which have resulted in alternative renewable generators entering this territory.

(45) Spain underlines that, due to the higher costs of producing electricity and the lack of effective competition, the integration of the NPT, including the Balearic Islands in the mainland (and European) electricity market would result in market distortions, and that this will be the case as long as the interconnections with mainland Spain do not suffice to cover the totality of the local demand.

(46) In addition, Spain points out to the challenges linked to the deployment of renewable energies in the NPT, including the Balearic Islands. Spain explains that most of the variable renewable power plants in an island produce under the same meteorological conditions, a phenomenon known as 'correlation'. As a result, the more renewable generation is deployed in the island systems, the more difficult it is to comply with security of supply standards. According to Spain, this situation could limit the amount of variable renewable energy deployed in the NPT.

5.2.3. *Assessment*

(47) The Commission acknowledges Spain's arguments that, due to the challenges linked to the operation of small connected systems, the very low levels of competition in the generation segment in the NPT, and the low levels of connection to Spain's mainland market, the conditions for the implementation of a fully liberalised wholesale electricity market in the Balearic Islands are not yet present.

(48) It thus seems plausible to assume that it is not possible to deploy a functioning wholesale market in the Balearic Islands without public intervention, and that, as consequence, a number of provisions regarding the forward, day-ahead, intraday and balancing markets cannot be implemented in the Balearic Islands for the time being.

(49) The Commission can conclude that the full application of Regulation (EU) 2019/943 and Directive (EU) 2019/944 to the territories subject to this derogation request would create substantial problems for the operation of the systems of the Balearic Islands.

(50) The Commission notes, however, that the situation of the Balearic Islands will change as soon as more interconnections with mainland Spain are built and become operational.

5.3. **Scope of the derogation**

5.3.1. *Article 40(4) to (7) of Directive (EU) 2019/944*

(51) According to Spain, the lack of effective competition in the generation segment prevents the establishment of undistorted electricity markets in the NPT. In particular, it prevents the transmission system operator from establishing and operating a balancing market in the Balearic Islands, including procuring market based non-frequency ancillary services.

(52) The Commission considers that the reasons in recitals 10 to 13 currently prevent the establishment of a balancing market and of a market-based procurement of non-frequency ancillary services in the Balearic Islands. Hence, the Commission considers that derogations from the obligations in Article 40(4) to (7) of Directive (EU) 2019/944 in accordance with Article 66 of the Directive are justified.

5.3.2. *Chapter II of Regulation (EU) 2019/943: General rules for the electricity market – Articles 3 and 6, Articles 7(1), 8(1) and (4), Articles 9, 10 and 11*

5.3.2.1. The Application

(53) According to Spain, the lack of effective competition between generators prevents the establishment of non-regulated electricity markets. The dispatch decisions in NPT including the Balearic Islands are based on technical and economic criteria for which it is not always possible to apply market rules. Additionally, Spain explains that price formation in the NPT is not based on the offer and demand in those territories, but on that of mainland Spain, to prevent that consumers in NPTs pay the extra costs of electricity production in those territories.

(54) Spain therefore requests a derogation from the following provisions of Article 3, first paragraph, of Regulation (EU) 2019/943:

— points (a), (b), (o), (p), since according to Spain prices in the markets at stake cannot be freely formed based on offer and demand, and there are no forward markets operating in these territories. Spain further notes that the limited interconnection capacity between the Balearic Islands and the mainland does not change this situation;

— point (c), since Spain considers that the market rules that facilitate the development of flexible generation and demand might not be applicable in the territories;

— points (e) and (k), since according to Spain generators are not responsible for selling the electricity they produce (it is instead the task of the system operator to decide which power plants should be dispatched) and cannot submit aggregated offers;

— point (j), since Spain considers that the storage strategy in these territories might require that energy storage has priority and is not on equal footing with other generation facilities;

— point (n), for which Spain notes that in principle the entry and exit of electricity generation could be based on the undertakings' assessment of the economic and financial viability of their operations, but that in practical terms it is not possible for generation companies to participate in the system without being granted a regulated payment regime by which the generation costs can be covered.

(55) Regarding Article 6, Articles 7(1), 8(1) and (4), Articles 9, 10 and 11, Spain highlights that although the electricity system in the NPT is governed by a dispatch system that operates in a way similar to the Union electricity markets, for example with daily and intraday dispatches, it constitutes a regulated system. The purchase price is based on the mainland price and not on the recognised costs incurred by generators in carrying out their electricity generation activities, including the balancing services. On this basis, Spain requests a derogation from Article 6, Articles 7(1), 8(1) and (4), and Articles 9, 10 and 11 of Regulation (EU) 2019/943, since there is no balancing market in the NPT, including the Balearic Islands, and neither is there the possibility of integration with the Union day-ahead and intraday markets due to their limited connection with mainland Spain.

(56) With regard to Article 7(1) and Article 8(1) and (4) of Regulation (EU) 2019/943, Spain notes that due to the isolated nature of the NPT, dispatches are operated independently of the mainland and Union markets – aside from the reference price for the purchase of energy being based on the mainland price – with the dispatches being based on hourly schedules.

(57) Likewise, in accordance with the above, the integration of forward markets, technical bidding limits and the value of lost load referred to in Articles 9 to 11 of Regulation (EU) 2019/943 are considered by Spain as not applying to dispatches in the NPT.

5.3.2.2. Assessment

(58) Concerning the request for derogation from Article 3, first paragraph, of Regulation (EU) 2019/943, the Commission considers that:

— the reasons set out in recitals 10 to 13 currently entail that electricity prices in the Balearic Islands are not formed following a market-based approach but via a special regulated mechanism whereby the system operator carries out the generation dispatch for each of the NPT, and a derogation from Article 3, first paragraph, points (a), (b), (e), (k), of Regulation (EU) 2019/943 is justified;

— the reasons set out in recitals 10 to 13 currently entail that there is no forward market in the Balearic Islands and the system operator's dispatch involves weekly, daily, intraday forecasting as well as deviations in real time, and a derogation from Article 3, first paragraph, points (o) and (p), of Regulation (EU) 2019/943 is also justified;

— while acknowledging that the current regulated system and particular characteristics of the Balearic Islands might render more difficult the development of more flexible generation, low carbon generation and more flexible demand, the application of the market rules is still required to incentivise their development to the extent possible. Thus, the Commission considers that a derogation from Article 3, first paragraph, point (c), of Regulation (EU) 2019/943 is not justified;

— Article 3, first paragraph, point (j), of Regulation (EU) 2019/943 does not prevent that priority is given to energy storage projects in the Balearic Islands, if for example, those projects are considered as the best option to ensure security of supply in the Balearic Islands. Thus, the Commission considers that a derogation from Article 3, first paragraph, point (j), of Regulation (EU) 2019/943 is not justified;

— in relation to Article 3, first paragraph, point (n), of Regulation (EU) 2019/943, the entry or exit of an undertaking in the market for electricity generation should depend on that undertaking's assessment of economic and financial viability, taking into account the possibility to receive the regulated remuneration mentioned in recitals 16 and 17. Hence, a derogation from Article 3, first paragraph, point (n), of Regulation (EU) 2019/943 is not justified for the Balearic Islands.

(59) With respect to the requested derogation from Article 6, Articles 7(1) and 8(1) and (4), Articles 9, 10, 11 of Regulation (EU) 2019/943, those provisions refer to requirements regarding the forward, day-ahead, intraday and balancing markets. Based on the information submitted by Spain, it appears that those markets cannot be implemented effectively in the Balearic Islands (recitals 10 to 13), considering the particularities of the electricity system in this territory. Hence, the Commission considers that a derogation from those provisions is justified.

5.3.3. *Chapter III of Regulation (EU) 2019/943: Network access and congestion management – Articles 14 to 17 and Article 19*

5.3.3.1. The Application

(60) Spain explains that the requirements set out in Articles 14 to 16 and Article 19 cannot be applied in the NPTs, because the TSO carries out the generation dispatch for each of the electricity systems in these territories and those systems do not constitute separate interconnected bidding zones. Those dispatches take into consideration the energy transferred via links between mainland Spain and the Balearic Islands. In the event of congestion in those links, the TSO reorganises the dispatch of the available generating capacity, taking into account mainly technical criteria, to ensure supply. Spain also explains that since the NPT do not constitute separate bidding zones, there is not an associated cross-zonal capacity market and thus no congestion income is generated.

5.3.3.2. Assessment

(61) The derogations from Articles 7(1) and 8(1) of Regulation (EU) 2019/943 have the effect of not including the electricity systems in the Balearic Islands in the integrated day-ahead and intraday markets. Therefore, some provisions relating to the functioning of those markets will necessarily not apply to the Balearic Islands.

(62) Articles 14 to 17 and Article 19 of Regulation (EU) 2019/943 relate to bidding zones and the management of the capacity and congestions between bidding zones. In this context, the Commission notes that even though currently the Balearic Islands constitute a single bidding zone together with mainland Spain and the other NPTs, in the future, by application of Articles 14 and 15, the situation could change. Conversely, the provisions in Article 16(3) to (13) and Articles 17 and 19 de facto do not apply to the Balearic Islands as long as this territory does not constitute a separate bidding zone. It follows that a derogation from the requirements in Articles 14 and 15, Article 16(3) to (13), Articles 17 and 19 of Regulation (EU) 2019/943 is not justified.

(63) Article 16(1) and (2) of Regulation (EU) 2019/943, which contain general principles regarding congestion management, apply to the Balearic Islands because those principles provide guarantees to market participants that the TSO is to address congestion problems with non-discriminatory market-based solutions and use transaction curtailment procedures only in emergency situations. Hence, the Commission considers that a derogation from Article 16(1) and (2) of Regulation (EU) 2019/943 is not justified.

5.3.4. *Chapter IV of Regulation (EU) 2019/943: Resource adequacy – Articles 20(3) to (8), Article 21(7) and (8), Article 22(1), points (f) and (h), Article 22(2), (3) and (5), and Article 25(2) to (4)*

5.3.4.1. The Application

(64) Spain explains that, due to the geographical isolation of the NPT resulting from the low degree or lack of connection to the mainland, the resource adequacy assessments carried out by the system operator for each of the NPT are independent, and they are not integrated into the European resource adequacy assessment or into the Spanish mainland resource adequacy assessment. Therefore, Spain considers that some of the provisions in Chapter IV are not applicable to the NPT. Spain underlines nevertheless that the current national rules aim, in so far as possible, to provide for an equal treatment between the NPT and the mainland market, for example, as regards the levels of security of supply or the methodology for carrying out resource adequacy assessments.

(65) Spain argues that adequacy in the NPT is ensured by the specific mechanism for allocating new capacity set out in Royal Decree 738/2015 as described in recitals 22 to 24. Spain considers that this mechanism should be maintained given the unique nature of the NPT, and thus requests for a derogation from Articles 20(3) to (8), Article 21(7) and (8), Article 22(1), points (f) and (h), Article 22(2), (3) and (5), and Article 25(2) to (4).

(66) Spain argues that the resource adequacy assessments in the NPT comply with the principles included in Article 20(1) and (2) of Regulation (EU) 2019/943. Spain further explains that where adequacy concerns are identified, those are tackled with a call for a competitive bidding procedure (as set out in Royal Decree 738/2015) combined with the assessment of auctions of capacity of renewable origin. These are procedures for which, according to Spain, the requirements in Article 20(3) to (8) of Regulation (EU) 2019/943 cannot be applied.

(67) Spain explains that the provisions included in Article 21(7) and (8) of Regulation (EU) 2019/943 are not compatible with the mechanism set out in Royal Decree 738/2015. It states, however, that for any future new capacity mechanisms the requirements in Article 21(7) and (8) of the Regulation will apply.

(68) Spain notes that the mechanism set out in Royal Decree 738/2015 is also incompatible with the following provisions of Regulation (EU) 2019/943:

— Article 22(1), point (f), which sets that the remuneration is to be determined through a competitive process, because according to Spain the remuneration in the existing mechanism is not based on a competitive process, but on a benchmark installation to incentivise efficiency;

— Article 22(1), point (h), which sets that capacity mechanisms must be open to the participation of all resources that can provide the required technical performance, because according to Spain the mechanism is applied only to dispatchable installations;

— Article 22(2), which sets a list of design features that strategic reserves must comply with, since according to Spain it makes reference to balancing markets that do not exist in the NPT;

— Article 22(3), which sets additional requirements to capacity mechanisms other than strategic reserves, since according to Spain the existing mechanism does not comply with those requirements: the retribution does not tend to zero when the capacity level supplied is adequate, the retribution is not only linked to the capacity and the capacity obligations are not transferable;

— Article 22(4), which incorporates CO_2 emission limit requirements on capacity mechanisms, since according to Spain the current mechanism does not include any requisite of this nature, but it does allow to set technical limitations;

— Article 22(5), which requires the adaptation of capacity mechanisms that apply on 4 July 2019.

(69) Spain explains that the reliability standards for the non-peninsular territories are not aligned with the requirements in Article 25(3) of Regulation (EU) 2019/943, since they do not take into account the cost of new entry. Spain adds that even if the standards were the same, they might evolve to stricter values at a different pace, based on which they request a derogation from Article 25(2) to (4) of Regulation (EU) 2019/943.

5.3.4.2. Assessment

(70) Article 20 of Regulation (EU) 2019/943 addresses resource adequacy in the internal market for electricity and sets out obligations for Member States on how to monitor resource adequacy and how to act when resource adequacy concerns are identified, namely by developing an implementation plan with the aim of removing regulatory distortions, ensuring market-based balancing procurement, or removing regulated prices, among others. The Commission notes that, as part of the State aid process, Spain has already developed and submitted to the Commission an implementation plan in accordance with Article 20(3) and (4) of Regulation (EU) 2019/943. In accordance with Article 20(5) of Regulation (EU) 2019/943, the Commission has issued an opinion on the Spanish implementation plan on 13 March 2024. Therefore, the Commission considers that a derogation from Article 20(3) to (8) of Regulation (EU) 2019/943 is not justified.

(71) Article 21(7) of Regulation (EU) 2019/943 was repealed by Regulation (EU) 2024/1747 of the European Parliament and of the Council ([13]). Therefore, it no longer applies to the NPT. With regards to the request to derogate from Article 21(8) ([14]) of Regulation (EU) 2019/943, the Commission notes that while this provision no longer specifies that capacity mechanisms are to be temporary, it sets out that capacity mechanisms are to be approved by the Commission for no longer than 10 years. Moreover, it is not possible to predict the evolution of the electricity system of the Balearic Islands over time. Accordingly, the duration of the regulated remuneration mechanism set out in Royal Decree 738/2015 should be limited to the period up to 31 December 2025 as approved in the case of the Balearic Islands under State aid decision in case SA.42270.

(72) Article 22 of Regulation (EU) 2019/943 sets out the design principles applicable to capacity mechanisms. The Commission considers that a derogation from Article 22(1), points (f) and (h), of Regulation (EU) 2019/943 applicable after the expiration date of the regulated remuneration mechanism set out under the State aid decision in case SA.42270 would hinder the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response as these provisions aim to allow the participation by all technologies on a competitive basis. Therefore, the Commission considers that a derogation from Article 22(1), points (f) and (h) is not justified. This should be without prejudice to commitments and contracts concluded with regards to the Balearic Islands under the remuneration mechanism in Royal Decree 738/2015 as approved under the State aid decision in case SA.42270.

([13]) Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design (OJ L, 2024/1747, 26.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1747/oj).

([14]) As amended by Regulation (EU) 2024/1747.

(73) Based on the information provided by Spain (recital 68), the Commission considers that a derogation from the requirements in Article 22(2) of Regulation (EU) 2019/943 is justified because the specific design requirements for strategic reserves are intrinsically linked to the establishment of a well-functioning balancing market. Conversely, a derogation from Article 22(3) of Regulation (EU) 2019/943 is not justified because the specific design requirements for capacity mechanisms are intended to apply independently of a sufficiently developed balancing market.

(74) With regards to the request for derogation from Article 22(5) of Regulation (EU) 2019/943, the Commission considers that a derogation is not justified given that Article 22(5) of that Regulation is not applicable to capacity mechanisms approved after 4 July 2019.

(75) Regarding Article 22(4) of Regulation (EU) 2019/943 which sets out the CO_2 emission limit requirements on capacity mechanisms, the Commission considers that the CO_2 emission limit requirements are not applicable to the current regulated remuneration mechanism approved under State aid decision in case SA.42270, in light of the small size of the electricity system of the Balearic Islands, the constraints linked to obtaining the necessary environmental permits for new generation capacity and of the higher need for dispatchable generation to ensure the integration of renewables in the Balearic Islands and guarantee security of supply. The Commission considers that a derogation from Article 22(4) of Regulation (EU) 2019/943 applicable after the expiration date of the regulated remuneration mechanism set out under the State aid decision in case SA.42270 would hinder the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response as these provisions aim to allow the participation by all technologies on a competitive basis. Therefore, the Commission considers that a derogation from Article 22(4) of Regulation (EU) 2019/943 is not justified. This should be without prejudice to commitments and contracts concluded with regards to the Balearic Islands under the remuneration mechanism in Royal Decree 738/2015 as approved under the State aid decision in case SA.42270.

(76) In the Commission's view, based on the explanations provided by Spain (see recital 69) a derogation from Article 25(2) to 25(4) of Regulation (EU) 2019/943 for the operation of the electricity systems in the Balearic Islands is not justified. This should be without prejudice to commitments and contracts concluded with regards to the Balearic Islands under the remuneration mechanism in Royal Decree 738/2015 as approved under the State aid decision in case SA.42270.

5.3.5. *Derogation from Articles 14 to 17, 19 to 27, 35 to 47 of the Regulation (EU) 2019/943 for the mechanism in Royal Decree 738/2015*

(77) In its Application, as amended by the second set of clarifications sent by Spain on 17 January 2022, Spain stated that for the existing mechanism in Royal Decree 738/2015 a derogation from Articles 14 to 17, 19 to 27, 35 to 47 of the Regulation (EU) 2019/943 is needed. The Commission deems that such an ample derogation is not necessary to ensure its application. The Commission view is that only the derogations stated in the sections above are justified.

5.4. **No obstruction to the transition towards renewable energy, increased flexibility, energy storage, electro-mobility and demand response**

(78) Pursuant to Article 64(1), fifth subparagraph, of Regulation (EU) 2019/943 and Article 66(2) of Directive (EU) 2019/944, a derogation decision is to ensure that it does not obstruct the transition towards renewable energy, increased flexibility, energy storage, electro-mobility and demand response.

(79) As regards the transition towards renewable energy and increased flexibility (including demand response) and energy storage, it is important to note that well-functioning forward, day-ahead, intraday and balancing markets, in line with the requirements set in Regulation (EU) 2019/943 and Directive (EU) 2019/944, should provide the necessary dispatch and investment signals to maximise the potential development of those technologies. By way of example, the development of demand response that can be activated in periods when the electricity system of the Balearic Islands is under stress in principle would be achieved more easily in a system where the demand prices reflect the hourly situation of generation in the Balearic Islands, instead of that of the mainland generation. This does not automatically prevent developments of demand response or other forms of flexibility in the current regulatory setting. However, it cannot be excluded that the derogation decision may have a negative impact on such potential developments.

(80) On the other hand, Article 64 of Regulation (EU) 2019/943 does not require that derogation decisions maximise the potential for flexibility or energy storage. A derogation under Article 64 of that Regulation only aims to ensure that it 'does not obstruct' such transition. In other words, the derogation must not prevent developments which, without the derogation, would occur naturally. It is unlikely that, absent the derogation, well-functioning forward, day-ahead, intraday and balancing markets would develop in each of the electricity systems in the Balearic Islands. This is due to the challenges linked to the operation of NPT, the very low levels of competition in the generation segment, and the low degree of connection to the mainland market described in section 2. It is however necessary to ensure that once the conditions for the development of functioning wholesale markets are present, the derogations are phased-out. This is why the Commission is setting out in this decision a limited derogation period and strict conditions for a prolongation of the derogation, as set out in section 5.5 below.

(81) The derogation does not appear to have noticeable impact on electromobility.

5.5. Duration of the derogation and conditions aiming to increase competition and integration with the internal market for electricity

(82) Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944 expressly set out, as regards small connected systems, that the derogation is to be limited in time and that it is to be subject to conditions aiming to increase competition and integration with the internal market for electricity.

(83) Regulation (EU) 2019/943 and Directive (EU) 2019/944 provide for a mandatory limitation for several purposes. First and foremost, they assume that the general regulatory framework can be applied to all situations in the internal market, and that such a general application is beneficial for society. While Article 64 of Regulation (EU) 2019/943 recognises that derogations may be required for specific situations, these derogations are susceptible to increase complexity of the overall system and can constitute barriers to market integration also in neighbouring areas. Furthermore, the justification of the derogation is generally based on the technical and regulatory framework at the time, and on a given network topology. All these situations are bound to change. Finally, it is important for market participants to be able to predict regulatory changes sufficiently in advance. Thus, all derogations need to be limited in time.

(84) The new cables increasing the connection between the Balearic Islands and the Spain's mainland are expected to become operational by the end of 2030. Once these cables start to operate, the regulatory framework applicable to this territory should be amended, this territory should be incorporated to the mainland electricity market and the requested derogations should be phased out. Spain argues that once that the cables are commissioned, additional time will be needed in order to incorporate these territories to mainland market rules, and to make the necessary regulatory changes and testing. Following this, Spain requests the derogations for the Balearic Islands at least until 2030.

(85) In light of the reasons put forward by Spain, the Commission considers proportionate to grant the derogations for the Balearic Islands until 12 months after the day the new cable becomes operational.

(86) To ensure the timely phase out of the requested derogations, by six months after the day the new cables between the Balearic Islands and Spain's mainland are commissioned, Spain is to provide to the Commission a clear plan detailing all the regulatory and system changes needed in order to incorporate the Balearic Islands to the mainland electricity market. The plan is to clearly identify the different actions required and include a timeline identifying the most notable milestones.

HAS ADOPTED THIS DECISION:

Article 1

A derogation is granted to the Kingdom of Spain from the provisions of Article 3, first paragraph, points (a), (b), (e), (k), (o) and (p), Article 6, Articles 7(1) and 8(1) and (4), Articles 9, 10, 11, Article 22(2) of Regulation (EU) 2019/943 and of Article 40(4) to (7) of the Directive (EU) 2019/944 as regards the Balearic Islands.

Article 2

The derogation granted under Article 1 shall apply until 12 months after the day the new electricity cable interconnecting the Balearic Islands with mainland Spain becomes operational.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 16 May 2025.

For the Commission
Dan JØRGENSEN
Member of the Commission