COMMISSION DECISION (EU) 2025/1016

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 Melilla

(notified under document C(2025) 3175)

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— the request for derogation from Article 8 of Directive (EU) 2019/944 was withdrawn for all NPT,

— the request for derogation from Article 54 of Directive (EU) 2019/944 was withdrawn for the Balearic Islands and Ceuta,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

([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 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,

— 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 Autonomous City of Melilla, 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 the Balearic Islands and the Autonomous City of Ceuta will be addressed in separate decisions.

2. **MELILLA**

The electricity system and electricity market in Melilla

(6) Spain explains that the city of Melilla is not connected with the mainland electricity system of Spain. In this regard, Spain submits that the distance to the Iberian Peninsula makes the cost of interconnection very high and technically very difficult. Thus, currently there are no plans to connect the mainland with Melilla, a condition which Spain considers a prerequisite for the effective integration of Melilla in the Iberian electricity market.

(7) Spain submits that Melilla's annual consumption was less than 3 000 GWh in 1996 (97,5 GWh). According to Spain, almost all demand in Melilla is covered mainly by thermal power generation units. In 2023, annual consumption in Melilla was 202 GWh, out of which 97,5 % is served by fossil-fuel based generation (mostly diesel generators), and 2,5 % by renewable generation ([4]).

(8) 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.

(9) Spain notes that NPTs, including Melilla, 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, and by higher fuel costs. Their historical isolation also results in a greater need for installed reserve capacity.

(10) 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 Melilla.

(11) The Endesa group ([5]) have historically generated almost 100 % of the energy produced in Melilla. This is the case still today.

(12) 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.

([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 Evolución demanda | Informes del sistema (sistemaelectrico-ree.es).

([5]) Endesa group is 70 % owned by Enel Group.

(13) Spain further explains that electricity generated in all the NPT, including Melilla, is excluded from the bidding system on the mainland market. NPT electricity systems use a mechanism of economic precedence for dispatch ([6]):

— 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 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.

(14) 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.

(15) 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.

(16) 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.

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

(18) 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.

Overview of the legal framework for the NPT

(19) 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.

(20) 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 ([7]). In particular, Article 5 of Law 17/2013 provides that the pumped hydropower storage facilities in the NPT whose main purposes are to guarantee supply, ensure system security and integrate non-dispatchable renewable energy sources, are to be owned by the system operator.

([6]) 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').

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

(21) 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.

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

(23) 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' ([8]).

3. THE REQUESTED DEROGATIONS CONCERNING MELILLA

(24) The request for derogation submitted for Melilla is based on its qualification as a small isolated system pursuant to Article 2(42) of Directive (EU) 2019/944.

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

(25) Spain requests a derogation from Article 40(4) to (7) and from Article 54 of Directive (EU) 2019/944 as regards the procurement of ancillary services by the transmission system operator ('TSO') and the prohibition of transmission system operators to own, develop, manage or operate energy storage facilities.

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

(26) Spain requests a derogation for Melilla 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.

3.2. Duration of the requested derogations

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

(28) Regarding Melilla, Spain requests that derogations be exempt from any time limits.

4. COMMENTS RECEIVED DURING THE CONSULTATION PERIOD

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

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

(30) 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.

(31) Respondents to the public consultation were against granting such derogation, as it would legitimise a project according to which Red Eléctrica de España S.A.U. ('REE'), the Spanish TSO, has been allowed to develop the Chira-Soria Project in the Canary Islands without tendering procedure ('the Chira-Soria Project') ([9]), as required by Article 54 of Directive (EU) 2019/944. Respondents noted that the fact that the derogation also covers the other NPT is not relevant because the orography of the Balearic Islands and the small size of Ceuta and Melilla would not allow for pumped hydropower storage in those territories ([10]).

(32) Respondents indicated that mere insularity is not a sufficient justification to derogate from the tendering requirement set out in Article 54 of Directive (EU) 2019/944, given that private parties had reportedly shown an interest in the Chira-Soria Project. They claimed that this interest was not considered in view of Law 17/2013.

(33) Respondents further highlighted that the Spanish regulatory authority, the Comisión Nacional de Mercados y Competencia (CNMC), and the Spanish Council of State have expressed concerns about the Royal Decree 738/2015 and the role of REE in owning pumped hydropower storage facilities and, at the same time, being the entity on which, in first instance, the administrative process of authorizing pumped hydropower storage facilities depends.

(34) Specifically, in relation to the Chira-Soria Project, respondents also raised arguments alleging that it is not economically justified that the project does not contribute to the integration of renewable energy and that the project raises environmental and social concerns ([11]).

5. ASSESSMENT OF THE DEROGATION REQUEST CONCERNING MELILLA

5.1. Small isolated system

(35) 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.

(36) 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.

([9]) The Chira-Soria Project concerns the construction of an energy storage facility (pumped storage hydroelectric power plant) of 200 MW installed capacity and 3,5 GWh energy storage capacity in the island of Gran Canaria. For more information about the project see: Central hidroeléctrica de bombeo reversible Salto de Chira | Red Eléctrica (ree.es).

([10]) Pumped hydropower storage would qualify as a storage facility pursuant to Directive (EU) 2019/944.

([11]) For further details, see Commission Decision (EU) 2024/560 of 8 December 2023, recitals 33-36.

(37) Both under Regulation (EU) 2019/943 and Directive (EU) 2019/944, in the case of small isolated 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.

(38) Article 2(42) of Directive (EU) 2019/944 defines 'small isolated system' as 'any system that had consumption of less than 3 000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems'.

(39) In its submission, Spain explains that Melilla is currently not connected to Spain's mainland (recital 6). In addition, Spain submits that Melilla's annual consumption amounted to less than 3 000 GWh in 1996 (recital 7).

(40) Based on the information provided by Spain, and in line with the Commission's decision SA.42270 'Spain Electricity production in Spanish non-peninsular territories', the city of Melilla qualifies as a small isolated system within the meaning of Article 2(42) 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*

(41) 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).

(42) 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]).

(43) 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 impact occurring outside of the system, e.g., impact on national subsidy schemes. This does not exclude the relevance of 'indirect' impact on the secure operation of the system.

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

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

— 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 derived from the geographical isolation and small size of the systems,

([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 greater need for installed reserve capacity as a result of the geographical isolation 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,

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

(45) 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.

(46) 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 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.

(47) 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. As a result, according to Spain, Melilla still does not count with an effective competition at generation level, and this despite the efforts to promote competition.

(48) In addition, Spain points out to the challenges linked to the deployment of renewable energies in the NPT, including Melilla.

5.2.3. *Assessment*

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

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

(51) 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 electricity system in Melilla.

5.3. **Scope of the derogation**

5.3.1. *Articles 54 and 66 of Directive (EU) 2019/944*

(52) Article 54(1) of Directive (EU) 2019/944 prohibits transmission system operators from owning, developing, managing or operating energy storage facilities.

(53) Article 54(2) of that Directive provides for a possibility for Member States to derogate from this rule where the facilities are fully integrated network components and the regulatory authority has granted its approval or where all the conditions set out in points (a) to (c) of that paragraph are fulfilled.

(54) As stated in recital 36 above, pursuant to Article 66(1), first subparagraph of Directive (EU) 2019/944, Member States can request a derogation from the rules in Chapter VI (including Article 54) for small isolated systems, provided they can demonstrate that there are substantial problems for their operation.

(55) Hence, in addition to applying the derogation possibility in Article 54(2) of Directive (EU) 2019/944, Spain may request a derogation to the Commission from Article 54 of that Directive, as regards Melilla, by reference to Article 66.

5.3.1.1. The Application

(56) As described in recital 20, Article 5 of Law 17/2013 provides that the pumped hydropower storage facilities in the NPT whose main purposes are to guarantee supply, ensure system security and integrate non-dispatchable renewable energy sources, are to be owned by the system operator.

(57) In the Application, Spain points out that the small size of Melilla does not make very likely the installation of hydropower storage facilities but that other types of storage could be considered instead. In this regard, Spain refers to studies carried out by the TSO pointing out that in view of the decarbonisation commitments applicable to isolated territories and as generation from renewable sources and demand-side response increase, storage facilities will be needed to ensure energy supply in compliance with established quality and safety requirements.

(58) Spain thus requests the derogation from Article 54 of the Directive (EU) 2019/944 for Melilla in accordance with Article 66 of the Directive.

5.3.1.2. Assessment

(59) As stated in recital 53, the Commission notes that Article 54 of Directive (EU) 2019/944 already includes, in its paragraph 2, a possibility for Member States to derogate from the rule in paragraph 1 of that Article, namely that transmission system operators are not to own, develop, manage or operate energy storage facilities.

(60) In view of the possibility set out in Article 54(2) of Directive (EU) 2019/944, the Commission considers that a derogation from Article 54(1) pursuant to Article 66 of the Directive, for all types of energy storage technologies, is not justified, as it would prevent the market-based development of energy storage projects.

(61) The Commission further highlights that the obligation of TSOs to own and operate energy storage facilities in non-peninsular territories set out in Law 17/2013 appears to be based on criteria that differ from those set out in Article 54 of Directive (EU) 2019/944. The present Decision merely assesses whether the requirements for a derogation pursuant to Article 66(1) of Directive (EU) 2019/944 are met and does not pre-empt the Commission's assessment of the compatibility of Law 17/2013 with the requirements set out in Directive (EU) 2019/944.

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

(62) 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 Melilla, including procuring market based non-frequency ancillary services.

(63) The Commission considers that the reasons in recitals 9 to 12 currently prevent the establishment of a balancing market and of a market-based procurement of non-frequency ancillary services in Melilla. 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.

5.3.3. *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*

5.3.3.1. The Application

(64) According to Spain, the lack of effective competition between generators prevents the establishment of non-regulated electricity markets. The dispatch decisions in NPT, including Melilla, 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.

(65) 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,

— 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.

(66) 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 Melilla, and neither is there the possibility of integration with the Union day-ahead and intraday markets due to the lack of connection with mainland Spain.

(67) 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.

(68) 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.

5.3.3.2. Assessment

(69) 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 9 to 12 currently entail that electricity prices in Melilla 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 9 to 12 currently entail that there is no forward market in Melilla 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 Melilla 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 Melilla, if for example, those projects are considered as the best option to ensure security of supply. 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 (15) and (16). Hence, a derogation from Article 3, first paragraph, point (n), of Regulation (EU) 2019/943 is not justified for Melilla.

(70) 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, those markets cannot be implemented effectively in Melilla (recitals 9 to 12). Hence, the Commission considers that a derogation from those provisions is justified.

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

5.3.4.1. The Application

(71) 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. 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.

5.3.4.2. Assessment

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

(73) 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 Melilla does not constitute a separate bidding zone and that Spain currently does not plan to build an interconnection linking Melilla with the mainland. As Articles 14 and 15 aim to optimise market-based dispatch between bidding zones, the Commission considers that a derogation from these provisions is justified. Conversely, the provisions in Article 16(3) to (13) and Articles 17 and 19 de facto do not apply to Melilla as it does not constitute a separate bidding zone. It follows that a derogation from the requirements in Article 16(3) to (13) and Articles 17 and 19 of Regulation (EU) 2019/943 is not justified.

(74) Regarding Article 16(1) and (2) of Regulation (EU) 2019/943, which contain general principles regarding congestion management, the Commission considers that, in view of the isolation and small size of the system in Melilla and the substantial problems this presents for its operation, a derogation is justified.

5.3.5. *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)*

5.3.5.1. The Application

(75) 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 non-peninsular territories and the mainland market, for example, as regards the levels of security of supply or the methodology for carrying out resource adequacy assessments.

(76) 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 21 to 23. 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).

(77) 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.

(78) 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.

(79) 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.

(80) 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.

5.3.5.2. Assessment

(81) 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 ([13]). Therefore, the Commission considers that a derogation from Article 20(3) to (8) of Regulation (EU) 2019/943 is not justified.

(82) Article 21(7) of Regulation (EU) 2019/943 was repealed by Regulation (EU) 2024/1747 of the European Parliament and of the Council ([14]). Therefore, it no longer applies to the NPT. With regard to the request to derogate from Article 21(8) ([15]) 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 Melilla 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 2029 as approved under State aid decision in case SA. 42270 in the case of Melilla.

(83) 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 could 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 Melilla under the remuneration mechanism in Royal Decree 738/2015 as approved under the State aid decision in case SA. 42270.

(84) Based on the information provided by Spain (recital 79), 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.

(85) 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.

(86) 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 Melilla, 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 Melilla 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 could hinder the transition towards renewable energy, increased flexibility, energy storage, electromobility and demand response as these provisions aim to allow

([13]) https://circabc.europa.eu/ui/group/8f5f9424-a7ef-4dbf-b914-1af1d12ff5d2/library/b8dcbe85-7324-4e83-9752-fe974fc42cad/details?download=true.

([14]) 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).

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

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 Melilla under the remuneration mechanism in Royal Decree 738/2015 as approved under the State aid decision in case SA. 42270.

(87) In the Commission's view, based on the explanations provided by Spain (see recital 80) a derogation from Article 25(2) to 25(4) of Regulation (EU) 2019/943 for the operation of the electricity systems in Melilla is justified, for the period up to 31 December 2029 as set out in the case of Melilla under State aid decision in case SA. 42270.

5.3.6. *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*

(88) 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's 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**

(89) 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.

(90) 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 Melilla is under stress in principle would be achieved more easily in a system where the demand prices reflect the hourly situation of generation in Melilla, 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.

(91) 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 highly unlikely that, absent the derogation, well-functioning forward, day-ahead, intraday and balancing markets would develop in the electricity system in Melilla. This is due to the challenges linked to the operation of NPT, the very low levels of competition in the generation segment, and the lack 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.

(92) 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**

(93) Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944 expressly set out, as regards small isolated 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.

(94) As regards small isolated and small interconnected systems, 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.

(95) Spain requests the derogations for Melilla to be exempted from any time limits, since the interconnection of Melilla with the Spanish mainland (and this with the Union continental electricity system) is unlikely to happen. While acknowledging Spain's reasons, the Commission notes that Melilla does not constitute one of the outermost regions recognised under Article 349 TFEU and the derogation must be limited in time.

(96) Given the uncertainty regarding a future interconnection between Melilla and the Spanish mainland and the substantial problems for the operation of this territory, the Commission considers proportionate to grant the derogations for Melilla for a duration which is dependent on the connection of the autonomous city with Spain's mainland, except for the derogation from Article 25(2) to 25(4) of Regulation (EU) 2019/943, which is to apply for the period up to 31 December 2029 as set out in the State aid decision in case SA. 42270,

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, 14, 15, Article 16(1) and (2), Articles 22(2) and 25(2) to (4) of Regulation (EU) 2019/943 and of Article 40(4) to (7) of the Directive (EU) 2019/944 as regards Melilla.

Article 2

The derogation granted under Article 1 for all the Articles of Regulation (EU) 2019/943 and the Directive (EU) 2019/944 listed therein shall apply until Melilla is connected with mainland Spain, except for derogation from Article 25(2) to 25(4) of Regulation (EU) 2019/943, which shall apply for the period up to 31 December 2029.

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