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Legislation

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Contents

[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

[1] Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the entry into force of the extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America

The extension of the Agreement for scientific and technological cooperation between the European Community and the Government of the United States of America, signed on 5 December 1997 ([1]) and renewed in 2004 ([2]), 2009 ([3]) and 2014 ([4]), has, in accordance with Article 12(a) thereof, entered into force on 13 of June 2014. The renewal of the Agreement for a further period of 5 years, in accordance with Article 12(b) thereof, is effective as from 14 October 2013.

([1]) OJ L 284, 22.10.1998, p. 37.
([2]) OJ L 335, 11.11.2004, p. 5.
([3]) OJ L 90, 2.4.2009, p. 20.
([4]) OJ L 128, 30.4.2014, p. 43.

COUNCIL DECISION

of 26 May 2014

on the signing and conclusion of the Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

(2014/451/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof, in conjunction with Article 218(5) and (6) of the Treaty on the Functioning of the European Union,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) Article 10(4) of Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) [1] provides that detailed arrangements regarding the participation of third States in EUBAM Libya are to be covered by agreements concluded pursuant to Article 37 of the Treaty on European Union and additional technical arrangements as necessary.

(2) Following the adoption of a Decision by the Council on 17 March 2014 authorising the opening of negotiations, the High Representative of the Union for Foreign Affairs and Security Policy negotiated a Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (the 'Participation Agreement').

(3) The Participation Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) is hereby approved on behalf of the Union.

The text of the Participation Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Participation Agreement in order to bind the Union.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 9(1) of the Participation Agreement.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 26 May 2014.

For the Council,
The President
Ch. VASILAKOS

[1] OJ L 138, 24.5.2013, p. 15.

PARTICIPATION AGREEMENT

between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

THE EUROPEAN UNION (EU or Union),

of the one part, and

THE SWISS CONFEDERATION,

of the other part,

hereinafter jointly referred to as the 'Parties',

TAKING INTO ACCOUNT:

Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) ([1]),

The letter dated 6 November 2013 from the Head of the Federal Department of Foreign Affairs (FDFA), offering a contribution to EUBAM Libya,

Political and Security Committee Decision EUBAM Libya/2/2014 ([2]) of 14 January 2014 on the acceptance of the Swiss Confederation's contribution to the European Union mission in Libya,

Political and Security Committee Decision EUBAM Libya/1/2014 of 14 January 2014 on the establishment of the Committee of Contributors for the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) ([3]),

HAVE AGREED AS FOLLOWS:

Article 1

Participation in the mission

1. The Swiss Confederation shall associate itself with Council Decision 2013/233/CFSP and with any other Decision by which the Council of the European Union decides to extend EUBAM Libya, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of the Swiss Confederation to EUBAM Libya is without prejudice to the decision-making autonomy of the Union.

3. The Swiss Confederation shall ensure that Swiss personnel participating in EUBAM Libya undertake their mission in conformity with:

— Council Decision 2013/233/CFSP and any subsequent amendments;

— the Mission Plan;

— implementing measures.

4. Personnel seconded to the mission by the Swiss Confederation shall carry out their duties and conduct themselves solely with the interest of EUBAM Libya in mind.

5. The Swiss Confederation shall inform the Head of Mission and the High Representative of the Union for Foreign Affairs and Security Policy in due time of any change to its participation in the operation.

([1]) OJ L 138, 24.5.2013. p. 15.
([2]) OJ L 14, 18.1.2014. p. 15.
([3]) OJ L 14, 18.1.2014. p. 13.

Article 2

Status of personnel

1. The status of personnel contributed to EUBAM Libya by the Swiss Confederation shall be governed by the Agreement between the European Union and Libya on the status of EUBAM Libya in Libya.

2. Without prejudice to the agreement on the status of mission referred to in paragraph 1, the Swiss Confederation shall exercise jurisdiction over its personnel participating in EUBAM Libya.

3. The Swiss Confederation shall be responsible for answering any claims linked to the participation in EUBAM Libya in Libya, from or concerning any of its personnel. The Swiss Confederation shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel, in accordance with its laws and regulations.

4. The parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss of, or destruction of assets owned/operated by either Party, arising out of the performance of their duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.

5. The Swiss Confederation undertakes to make a declaration as regards the waiver of claims against any State participating in EUBAM Libya, and to do so when signing this Agreement.

6. The Union undertakes to ensure that EU Member States make a declaration as regards the waiver of claims, for the participation of the Swiss Confederation in EUBAM Libya, and to do so when signing this Agreement.

Article 3

Classified information

The Agreement between Swiss Confederation and the European Union on the security procedures for the exchange of classified information ([1]), done at Brussels on 28 April 2008, shall apply in the context of EUBAM Libya.

Article 4

Chain of command

1. Swiss personnel participating in EUBAM Libya shall remain under the full command of their national authorities.

2. National authorities shall transfer the operational control of their personnel to the Civilian Operation Commander of the Union.

3. The Civilian Operation Commander shall assume responsibility and exercise command and control of EUBAM Libya at strategic level.

4. The Head of Mission shall assume responsibility and exercise command and control of EUBAM Libya.

5. The Head of Mission shall lead EUBAM Libya and assume its day-to-day management.

6. The Swiss Confederation shall have the same rights and obligations in terms of the day-to-day management of the operation as participating EU Member States.

7. The Head of Mission shall be responsible for disciplinary control over EUBAM Libya personnel. Where required, disciplinary action shall be taken by the Swiss national authorities.

8. A National Contingent Point of Contact ('NCP') shall be appointed by the Swiss Confederation to represent its national contingent in EUBAM Libya. The NCP shall report to the Head of Mission on national matters and shall be responsible for day-to-day contingent discipline.

9. The decision to end the mission shall be taken by the Union, following consultation with the Swiss Confederation if it is still contributing to EUBAM Libya at the date of the termination of the mission.

([1]) OJ L 181, 10.7.2008, p. 58.

Article 5

Financial aspects

1. The Swiss Confederation shall assume all the costs associated with its participation in EUBAM Libya, without prejudice to paragraph 3.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the mission is conducted, the Swiss Confederation shall, when its liability has been established, pay compensation under the conditions foreseen in the provisions on the status of forces, if available, as referred to in Article 2(1).

3. The Union shall exempt the Swiss Confederation from any financial contribution to the common costs of EUBAM Libya.

Article 6

Arrangements to implement the Agreement

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the appropriate authorities of the Union and the appropriate authorities of the Swiss Confederation.

Article 7

Non-compliance

Should one of the Parties fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

Article 8

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 9

Entry into force and termination

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

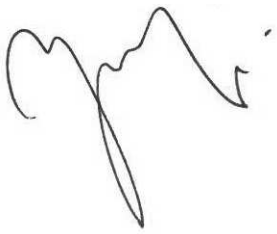
2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement shall remain in force for the duration of the Swiss Confederation's contribution to the mission.

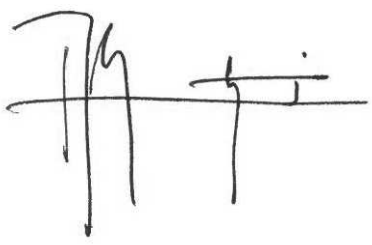
4. Each Party can terminate this Agreement by written notification to the other Party. The termination becomes effective three months after the date of such notification.

Done at Brussels, on the fourth day of July in the year two thousand and fourteen, in the English language, in two copies.

For the European Union



For the Swiss Confederation



Declaration by the EU Member States

'The EU Member States applying Council Decision 2013/233/CFSP of 22 May 2013 on a European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) will endeavour, in so far as their internal legal systems so permit, to waive, as far as possible, claims against the Swiss Confederation for injury to or death of their personnel, or damage to or loss of any assets owned by themselves and used by EUBAM Libya if such injury, death, damage or loss:

— was caused by personnel from the Swiss Confederation in the execution of their duties in connection with EUBAM Libya, except in case of gross negligence or wilful misconduct; or

— arose from the use of any assets owned by the Swiss Confederation, provided that the assets were used in connection with the mission and except in the case of gross negligence or wilful misconduct of EU mission personnel from the Swiss Confederation using those assets.'.

Declaration by the Swiss Confederation

'The Swiss Confederation applying Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) will endeavour, in so far as its internal legal system so permits, to waive, as far as possible, claims against any other State participating in EUBAM Libya for injury to or death of its personnel, or damage to or loss of any assets owned by itself and used by the EU mission if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with EUBAM Libya, except in case of gross negligence or wilful misconduct; or

— arose from the use of any assets owned by States participating in the EU mission, provided that the assets were used in connection with the mission and except in case of gross negligence or wilful misconduct of EU mission personnel using those assets.'.

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 753/2014

of 11 July 2014

implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [1], and in particular Article 14(1) thereof,

Whereas:

(1) On17 March 2014, the Council adopted Regulation (EU) No 269/2014.

(2) In view of the gravity of the situation in Ukraine, the Council considers that additional persons should be added to the list of natural and legal persons, entities and bodies subject to restrictive measures as set out in Annex I to Regulation (EU) No 269/2014.

(3) Annex I to Regulation (EU) No 269/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The persons listed in the Annex to this Regulation shall be added to the list set out in Annex I to Regulation (EU) No 269/2014.

Article 2

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 July 2014.

For the Council
The President
S. GOZI

[1] OJ L 78, 17.3.2014, p. 6.

ANNEX

LIST OF PERSONS REFERRED TO IN ARTICLE 1

	Name	Identifying information	Reasons	Date of listing
1.	Aleksandr Yurevich BORODAI (Александр Юрьевич Бородай)	DOB: 25.7.1972 in Moscow	So called 'Prime Minister of People's Republic of Donetsk'. Responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People' s Republic' (e.g. on 8 July stated 'our military is conducting a special operation against the Ukrainian "fascists"'), Signatory of the Memorandum of Understanding on 'Novorossiya union'	12.7.2014
2.	Alexander KHODAKOVSKY (Александр Сергеевич Ходаковский)		So called 'Minister of Security of People's Republic of Donetsk'. Responsible for the separatist security activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
3.	Alexandr Aleksandrovich KALYUSSKY, (Александр Александрович Калюсский)		So called 'de facto Deputy Prime Minister for Social Affairs of DPR'. Responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
4.	Alexander KHRYAKOV		So called 'Information and Mass Communications Minister of DPR'. Responsible for the pro-separatist propaganda activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
5.	Marat BASHIROV		So called 'Prime Minister of the Council of Ministers of the People' s Republic of Luhansk, confirmed on 8 Jul'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
6.	Vasyl NIKITIN		So called 'Vice Prime Minister of the Council of Ministers of the People' s Republic of Luhansk', (used to be the so called 'Prime Minister of the People' s Republic of Luhansk', and former spokesman of the 'Army of the Southeast'). Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk' Responsible for the statement of the Army of the Southeast that the Ukrainian presidential elections in the 'People's Republic of Luhansk' cannot take place due to the 'new' status of the region.	12.7.2014

	Name	Identifying information	Reasons	Date of listing
7.	Aleksey KARYAKIN (Алексей Карякин)	1979	So called 'Supreme Council Chair of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the 'Supreme Council', responsible for asking the Russian Federation to recognize the independence of 'People' s Republic of Luhansk' Signatory of the Memorandum of Understanding on the 'Novorossiya union'	12.7.2014
8.	Yurij IVAKIN (Юрий Ивакин)		So called 'Minister of Internal Affairs of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
9.	Igor PLOTNITSKY		So called 'Defence Minister of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
10.	Nikolay KOZITSYN	June 20, 1956 in Donetsk region	Commander of Cossack forces. Responsible for commanding separatists in Eastern Ukraine fighting against the Ukrainian government forces	12.7.2014
11.	Oleksiy MOZGOVY (Олексій Мозговий)		One of the leaders of armed groups in Eastern Ukraine. Responsible for training separatists to fight against the Ukrainian government forces	12.7.2014

COMMISSION IMPLEMENTING REGULATION (EU) No 754/2014

of 11 July 2014

concerning the denial of authorisation of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) as feed additives

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting or denying such authorisation. Article 10(7) of Regulation (EC) No 1831/2003 in conjunction with Article 10(1) to (4) thereof sets out specific provisions for the evaluation of products used in the Union as silage additives at the date that Regulation became applicable.

(2) In accordance with Article 10(7) of Regulation (EC) No 1831/2003, *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044), formerly *Lactococcus lactis* (NCIMB 30044), were entered in the Register of Feed Additives as silage additives for all animal species.

(3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, applications were submitted for the authorisation of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) as feed additives for all animal species, with the request to classify them in the category 'technological additives' and in the functional group 'silage additives'. Those applications were accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(4) The European Food Safety Authority ('the Authority') concluded in its opinions of 6 March 2014 ([2]) that *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) are resistant to tetracycline, an antibiotic used in human and veterinary medicine.

(5) The information available does not permit the risk to be excluded that *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) may spread to other micro-organisms resistance to that antibiotic. Consequently, it has not been established that *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) do not have an adverse effect on animal health, human health or the environment, when used as feed additives under the proposed conditions.

(6) The conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are therefore not satisfied. Accordingly, the authorisation of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) as feed additives should be denied.

(7) Since further use of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) as feed additives may cause a risk to human and animal health, those feed additives should be withdrawn from the market as soon as possible. Taking into account practical reasons, it is, however, necessary to provide interested parties with a time period during which existing stocks of silage produced with those feed additives may be used up.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

([1]) OJ L 268, 18.10.2003, p. 29.
([2]) *EFSA Journal 2014*; 12(3):3609 and *EFSA Journal 2014*; 12(3):3610.

HAS ADOPTED THIS REGULATION:

Article 1

Denial of authorisation

Authorisation of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) as additives in animal nutrition is denied.

Article 2

Transitional measures

1. Existing stocks of *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) and premixtures containing them shall be withdrawn from the market as soon as possible and at the latest by 30 September 2014.

2. Silage produced with *Pediococcus pentosaceus* (NCIMB 30068) and *Pediococcus pentosaceus* (NCIMB 30044) or with premixtures containing them before 1 August 2014 may be used up until stocks are exhausted.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation is binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 July 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 755/2014

of 10 July 2014

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]),

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 July 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	53,5
	MK	97,3
	TR	53,3
	XS	47,9
	ZZ	63,0
0707 00 05	AL	74,4
	MK	27,7
	TR	76,0
	ZZ	59,4
0709 93 10	TR	97,2
	ZZ	97,2
0805 50 10	AR	92,8
	TR	148,4
	UY	122,9
	ZA	112,0
	ZZ	119,0
0808 10 80	AR	106,9
	BR	111,7
	CL	103,6
	NZ	132,2
	ZA	120,0
	ZZ	114,9
0808 30 90	AR	76,3
	CL	99,3
	NZ	184,8
	ZA	98,2
	ZZ	114,7
0809 10 00	BA	82,8
	MK	85,8
	TR	242,4
	XS	59,5
	ZZ	117,6
0809 29 00	TR	236,1
	ZZ	236,1
0809 30	MK	60,6
	TR	138,6
	ZZ	99,6
0809 40 05	BA	70,3
	ZZ	70,3

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

REGULATION (EU) No 756/2014 OF THE EUROPEAN CENTRAL BANK

of 8 July 2014

amending Regulation (EU) No 1072/2013 (ECB/2013/34) concerning statistics on interest rates applied by monetary financial institutions

(ECB/2014/30)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ([1]), and in particular Articles 5(1) and 6(4) thereof,

Whereas:

(1) Regulation (EU) No 1072/2013 of the European Central Bank (ECB/2013/34) ([2]) entered into force on 27 November 2013 and will apply to the reporting of monetary financial institution (MFI) interest rate data from 1 January 2015.

(2) Regulation (EU) No 1072/2013 (ECB/2013/34) requires the separate reporting of data relating to new business volumes of renegotiated loans and, in parallel, paragraph 4 of Part 13 of Annex II to Guideline ECB/2014/15 ([3]) also requires the provision of data on the interest rates applicable to renegotiated loans.

(3) It is necessary to align the scope of renegotiated loans in Regulation (EU) No 1072/2013 (ECB/2013/34) with Guideline ECB/2014/15, thereby ensuring the appropriate recording of loan renegotiations that occur within the reporting period during which the loan was granted as well as the accurate reporting of new business volumes of renegotiated loans in the case of loans that are not yet fully drawn, i.e. loans taken out in tranches,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment

In Section VI of Part 2 of Annex I to Regulation (EU) No 1072/2013 (ECB/2013/34), point 22 is replaced by the following:

'22. For the separate reporting of new business volumes of renegotiated loans to households and non-financial corporations in MFI interest rate statistics renegotiated loans comprise all new business loans, other than revolving loans and overdrafts and credit card debt, which have been granted but not yet repaid at the time they are renegotiated.'

Article 2

Final provisions

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 8 July 2014.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

([1]) OJ L 318, 27.11.1998, p. 8.
([2]) Regulation (EU) No 1072/2013 of the European Central Bank of 24 September 2013 concerning statistics on interest rates applied by monetary financial institutions (ECB/2013/34) (OJ L 297, 7.11.2013, p. 51).
([3]) Guideline ECB/2014/15 of 4 April 2014 on monetary and financial statistics (adopted on 4 April 2014 and available on the ECB's website at www.ecb.europa.eu). Not yet published in the Official Journal.

DECISIONS

COUNCIL DECISION

of 8 July 2014

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(2014/452/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 19(2), 21(2), 114, 168, 169 and 197 in conjunction with Article 218(9) thereof.

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ([1]), and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area ([2]) ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement.

(3) Protocol 31 to the EEA Agreement contains provisions and arrangements concerning cooperation in specific fields outside the four freedoms.

(4) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1381/2013 of the European Parliament and of the Council ([3]).

(5) Protocol 31 to the EEA Agreement should therefore be amended accordingly, in order to allow for this extended cooperation to take place from 1 January 2014.

(6) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 (OJ L 354, 28.12.2013, p. 62).

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 8 July 2014.

For the Council
The President
P. C. PADOAN

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No …/2014

of

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

(1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 ([1]).

(2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

Article 5 of Protocol 31 shall be amended as follows:

1. In paragraph 5, the words ', in the programme referred to in the fourteenth indent as from 1 January 2014' are inserted after the words 'in the programme referred to in the thirteenth indent as from 1 January 2012'.
2. The following indent is added in paragraph 8:

'— **32013 R 1381**: Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 (OJ L 354, 28.12.2013, p. 62).

Liechtenstein shall only participate in the activities which may result from budget lines 33 01 04 01 Support expenditure for Rights and Citizenship and 33 02 02 Promoting non-discrimination and equality.

Norway shall be exempted from the participation in, and the financial contribution to, this programme.'

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2014.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, …

For the EEA Joint Committee	*The Secretaries*
The President	*to the EEA Joint Committee*

([1]) OJ L 354, 28.12.2013, p. 62.
(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

COUNCIL DECISION

of 8 July 2014

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(2014/453/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ([1]), and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area ([2]) ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement ('Protocol 31').

(3) Protocol 31 contains provisions and arrangements concerning cooperation in specific fields outside the four freedoms.

(4) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1316/2013 of the European Parliament and of the Council ([3]).

(5) Protocol 31 to the EEA Agreement should therefore be amended accordingly, in order to allow for this extended cooperation to take place from 1 January 2014.

(6) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 8 July 2014.

For the Council
The President
P. C. PADOAN

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Regulation (EU) No 1316/2013 of the European Parliament and of the Council. of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, (OJ L 348, 20.12.2013, p. 129).

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No …/2014

of

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

(1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 [1].

(2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

The following is added in Paragraph 5 of Article 2 of Protocol 31 to the EEA Agreement:

'— **32013 R 1316:** Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

The EFTA States shall only participate in the telecommunications sector of the Connecting Europe Facility.

Liechtenstein shall be exempted from the participation in, and the financial contribution to, this programme.'

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2014.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee	*The Secretaries*
The President	*to the EEA Joint Committee*

[1] OJ L 348, 20.12.2013, p. 129.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

COUNCIL DECISION

of 8 July 2014

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex XX (Environment) to the EEA Agreement

(2014/454/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 175(1) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area [1], and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area [2] ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex XX (Environment) to the EEA Agreement.

(3) Directive 2009/128/EC of the European Parliament and of the Council [3] is to be incorporated into the EEA Agreement.

(4) Annex XX (Environment) to the EEA Agreement should therefore be amended accordingly.

(5) The position of the Union within EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex XX (Enviroment) to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 8 July 2014.

For the Council
The President
P. C. PADOAN

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[1] OJ L 305, 30.11.1994, p. 6.
[2] OJ L 1, 3.1.1994, p. 3.
[3] Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71).

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No …/2014

of

amending Annex XX (Environment) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

(1) Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides ([1]), as corrected by OJ L 161, 29.6.2010, p. 11, is to be incorporated into the EEA Agreement.

(2) Annex XX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following is inserted after point 1k (Directive 2003/35/EC of the European Parliament and of the Council) of Annex XX to the EEA Agreement:

'1l. **32009 L 0128**: Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71), as corrected by OJ L 161, 29.6.2010, p. 11.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

With regard to Norway, the words "26 November 2012" in Article 4(2) shall be replaced by the words "1 January 2016".'

Article 2

The texts of Directive 2009/128/EC, as corrected by OJ L 161, 29.6.2010, p. 11, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on […], provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*), or on the day of the entry into force of Decision of the EEA Joint Committee No …/… of … ([2]) [incorporating Regulation (EC) No 1107/2009], whichever is the later.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee	*The Secretaries*
The President	*to the EEA Joint Committee*

([1]) OJ L 309, 24.11.2009, p. 71.
(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]
([2]) OJ L …

COUNCIL DECISION 2014/455/CFSP

of 11 July 2014

amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [1], and in particular Article 3(1) thereof,

Whereas:

(1) On 17 March 2014, the Council adopted Decision 2014/145/CFSP.

(2) In view of the gravity of the situation in Ukraine, the Council considers that additional persons should be added to the list of persons, entities and bodies subject to restrictive measures as set out in the Annex to Decision 2014/145/CFSP.

(3) The Annex to Decision 2014/145/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The persons listed in the Annex to this Decision shall be added to the list set out in the Annex to Decision 2014/145/CFSP.

Article 2

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels, 11 July 2014.

For the Council
The President
S. GOZI

[1] OJ L 78, 17.3.2014, p. 16.

ANNEX

LIST OF PERSONS REFERRED TO IN ARTICLE 1

	Name	Identifying information	Reasons	Date of listing
1.	Aleksandr Yurevich BORODAI (Александр Юрьевич Бородай)	DOB: 25.7.1972 in Moscow	So called 'Prime Minister of People's Republic of Donetsk'. Responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People' s Republic' (e.g. on 8 July stated 'our military is conducting a special operation against the Ukrainian "fascists"'), Signatory of the Memorandum of Understanding on 'Novorossiya union'	12.7.2014
2.	Alexander KHODAKOVSKY (Александр Сергеевич Ходаковский)		So called 'Minister of Security of People's Republic of Donetsk'. Responsible for the separatist security activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
3.	Alexandr Aleksandrovich KALYUSSKY, (Александр Александрович Калюсский)		So called 'de facto Deputy Prime Minister for Social Affairs of DPR'. Responsible for the separatist 'governmental' activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
4.	Alexander KHRYAKOV		So called 'Information and Mass Communications Minister of DPR'. Responsible for the pro-separatist propaganda activities of the so called 'government of the Donetsk People' s Republic'	12.7.2014
5.	Marat BASHIROV		So called 'Prime Minister of the Council of Ministers of the People' s Republic of Luhansk, confirmed on 8 Jul'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
6.	Vasyl NIKITIN		So called 'Vice Prime Minister of the Council of Ministers of the People' s Republic of Luhansk', (used to be the so called 'Prime Minister of the People' s Republic of Luhansk', and former spokesman of the 'Army of the Southeast'). Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk' Responsible for the statement of the Army of the Southeast that the Ukrainian presidential elections in the 'People's Republic of Luhansk' cannot take place due to the 'new' status of the region.	12.7.2014

	Name	Identifying information	Reasons	Date of listing
7.	Aleksey KARYAKIN (Алексей Карякин)	1979	So called 'Supreme Council Chair of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the 'Supreme Council', responsible for asking the Russian Federation to recognize the independence of 'People' s Republic of Luhansk' Signatory of the Memorandum of Understanding on the 'Novorossiya union'	12.7.2014
8.	Yurij IVAKIN (Юрий Ивакин)		So called 'Minister of Internal Affairs of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
9.	Igor PLOTNITSKY		So called 'Defence Minister of the People' s Republic of Luhansk'. Responsible for the separatist 'governmental' activities of the so called 'government of the People' s Republic of Luhansk'	12.7.2014
10.	Nikolay KOZITSYN	June 20, 1956 in Donetsk region	Commander of Cossack forces. Responsible for commanding separatists in Eastern Ukraine fighting against the Ukrainian government forces	12.7.2014
11.	Oleksiy MOZGOVY (Олексій Мозговий)		One of the leaders of armed groups in Eastern Ukraine. Responsible for training separatists to fight against the Ukrainian government forces	12.7.2014

COMMISSION DECISION

of 4 February 2014

on State aid No SA.21817 (C 3/07) (ex NN 66/06) implemented by Spain

Spanish Electricity Tariffs: consumers

(notified under document C(2013) 7741)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2014/456/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 27 April 2006, the undertakings Céntrica plc and Céntrica Energía S.L.U. (hereinafter collectively referred to as 'Céntrica') filed a complaint with the Commission regarding the system of regulated electricity tariffs implemented in Spain in 2005.

(2) By letter dated 27 July 2006, the Commission asked the Spanish authorities to provide information on the above measure. The Commission received this information by letter dated 22 August 2006.

(3) On 12 October 2006, the case was registered as non-notified aid (Case NN 66/06).

(4) By letter dated 9 November 2006, the Commission asked the Spanish authorities for additional clarifications on the measure. The Spanish authorities replied by letter dated 12 December 2006.

(5) By letter dated 24 January 2007, the Commission informed the Spanish authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the measure.

(6) The Commission Decision was published in the *Official Journal of the European Union* ([2]). The Commission invited interested parties to submit their comments on the measure.

(7) The Spanish authorities submitted their observations by letter dated 26 February 2007.

(8) The Commission received comments from the following interested parties: the Regional Government of Galicia (Xunta de Galicia) (letter dated 23 March 2007), Céntrica (letters dated 26 March 2007 and 3 July 2007), ACIE — Association of Independent Energy Suppliers (letter dated 26 March 2007), Government of Asturias (letter dated 27 March 2007), AEGE — Association of Energy-Intensive Users (letter dated 2 April 2007, with a supplement of 21 November 2011), Asturiana de Zinc — AZSA (letter dated 3 April 2007), Ferroatlántica — a metal producer (letter dated 3 April 2007), Alcoa (letter dated 3 April 2007), UNESA — Spanish Electricity Industry Association (letter dated 25 April 2007), ENEL Viesgo (letter dated 26 April 2007), Iberdrola (letter dated 26 April 2007), Union Fenosa Distribución (letter dated 27 April 2007), Hidrocantábrico Distribución Electrica (letter dated 27 April 2007), Endesa Distribución Electrica (letter dated 27 April 2007).

([1]) OJ C 43, 27.2.2007, p. 9.
([2]) See footnote 1.

(9) By letters dated 15 May 2007 and 6 July 2007, the Commission forwarded the interested parties' comments to the Spanish authorities, who were given the opportunity to react; their comments were received by letter dated 2 August 2007.

(10) Further information was submitted by Céntrica by letters dated 1 June 2007, 28 August 2007, 4 February 2008 and 1 March 2008, by AEGE by letter dated 21 November 2011 and by Ferroatlántica by letter dated 5 December 2011.

(11) By letters dated 30 July 2009, 19 March 2010, 6 October 2011, 12 April 2012, 31 August 2012, 4 February 2013 and 17 July 2013, the Commission asked the Spanish authorities to provide further clarifications on the measure. The authorities replied by letters dated 5 October 2009, 26 April 2010, 7 December 2011, 12 June 2012, 18 October 2012, 11 February 2013 and 4 October 2013.

(12) On 19 April 2013 the file was split into two parts: the present case, namely Case SA.21817 (C 3/07, ex NN 66/06), which concerns aid to electricity end-users, and Case SA.36559 (C3a/07, ex NN 66/06), which concerns aid to electricity distributors. The present Decision deals only with possible aid to electricity end-users included in the scope of the procedure, that is, excluding households and small businesses.

2. **DETAILED DESCRIPTION OF THE MEASURE**

THE SPANISH ELECTRICITY SYSTEM IN 2005

(13) In the legislative framework established by Law 54/1997 of 27 November 1997 (Ley del Sector Eléctrico, hereinafter 'LSE'), applicable in 2005, the supply of electricity to end-users at regulated tariffs was categorised as a regulated activity. This task was assigned by the Law to distributors.

(14) In 2005 all end-users of electricity in the Spanish market could choose whether to negotiate supply contracts with independent suppliers or be supplied at regulated tariffs set by the State. In the regulated market, every end-user who so requested had the right to be supplied by its local distributor at the integral regulated tariff (all-inclusive price) having regard to its consumption profile and consumption volume. In the free market, customers paid a network access charge, which was also regulated, in addition to which they had to meet the costs of energy supply. Since the completion of the reform of the electricity sector in 2009, distributors no longer supply electricity at integral regulated tariffs.

(15) Integral regulated tariffs and regulated network access charges were decided *ex ante* for the whole year, normally before N – 1 year-end, but could be adjusted in the course of the year ([3]). However, annual tariff increases were subject to a maximum cap ([4]). In principle, tariffs and charges were set, on the basis of forecasts, to ensure that the regulated revenues resulting from their application would suffice to cover the electricity system's total regulated costs. These regulated costs of the system included, in 2005, the costs of energy supply at integral tariffs, the costs of purchasing energy from special schemes (renewable sources, cogeneration, etc.), transport and distribution costs, demand management measures, additional electricity generation costs in the Spanish islands, support for coal, previous years' deficits, etc. There were no rules earmarking a particular category of revenues, or a proportion thereof, for a particular category of costs or proportion thereof. As a result, revenues from network access charges, for example, were not earmarked in whole or in part to finance, for example, subsidies for electricity from renewable sources or electricity produced in the Spanish islands.

(16) In 2005 there were no fewer than 25 regulated tariffs for end-users, depending on the consumption level, the consumption profile, the intended consumer and the network connection voltage. At the same time, nine other regulated network access charges were applied to end-users in the free market, also based on connection voltage and other characteristics.

(17) On 30 December 2004, the Spanish authorities set the electricity tariffs applicable in 2005 ([5]), corresponding to the following user categories:

([3]) Article 12(2) of the LSE provided that electricity tariffs were, in principle, to be set once a year but could be adjusted during the year.
([4]) Under Article 8 of Royal Decree 1432/2002, the average tariff could not increase by more than 1,40 % (year on year), whereas individual tariffs could increase only by a percentage equivalent to the increase in the average tariff: + 0,60 % (2 % in total).
([5]) Royal Decree 2392/2004 of 30 December 2004 establishing the electricity tariff for 2005. Official State Gazette No 315, p. 42766.

INTEGRAL TARIFFS

Low voltage

1.0. Power up to 770 kW

2.0. General, power not above 15 kW

3.0. General

4.0. General, long use

B.0 Public lighting

R.0 Agricultural irrigation

High voltage

General tariffs

Short use

1.1. General, not above 36 kV

1.2. General, between 36 and 72,5 kV

1.3. General, between 72,5 and 145 kV

1.4. General, above 145 kV

Medium use

2.1. Not above 36 kV

2.2. Between 36 and 72,5 kV

2.3. Between 72,5 and 145 kV

2.4. Above 145 kV

Long use

3.1. Not above 36 kV

3.2. Between 36 and 72,5 kV

3.3. Between 72,5 and 145 kV

3.4. Above 145 kV

Traction tariffs (Tarifas de tracción)

T.1 Not above 36 kV

T.2 Between 36 and 72,5 kV

T.3 Between 72,5 kV and 145 kV

Agricultural irrigation

R.1 Not above 36 kV

R.2 Between 36 and 72,5 kV

R.3 Between 72,5 and 145 kV

G. *Tariff for large consumers (G4)*

Tariffs for sales to distributors

D.1 Not above 36 kV

D.2 Between 36 and 72,5 kV

D.3 Between 72,5 and 145 kV

D.4 Above 145 kV

ACCESS TARIFFS

Low voltage

2,0 A Ordinary low-voltage access tariff

2,0 NA Simple low-voltage access tariffs with day/night discrimination

3,0 A General low-voltage access tariff

High voltage

3.1.A Access tariff for voltages not above 36 kV (power not above 450 kW)

6.1 Access tariff for voltages not above 36 kV (power above 450 kW)

6.2 Access tariff for voltages above 36 kV and not above 72,5 kV (power above 450 kW)

6.3 Access tariff for voltages above 72 kV and not above 145 kV (power above 450 kW)

6.4 Access tariff for voltages above 145 kV (power above 450 kW)

6.5 Access tariff for international exchanges

(18) Integral regulated tariffs could be split into a component designed to cover transport, distribution and general system costs (*network access charge*) and a component reflecting the cost of procuring electricity in the wholesale market (*energy component*). Additionally, a system of discounts on integral tariffs was applied to demand management services (e.g. accepted interruptions in power supply upon notice or consumption concentrated in off-peak periods). From 2005 Spain introduced changes in the system of regulated tariffs. The last of these was made in 2013, when Spain adopted a new legislative framework for the electricity sector (Law 24/13) which included, among other measures, the reform of regulation of retail market prices. Spain announced that this new law and its implementing provisions would be drawn up in 2014. Below are some of the basic integral tariffs for the lowest tariff level of the categories referred to above (i.e. not above 145 kV) applicable from 1 January 2005:

Table 1

Basic amount integral regulated tariffs 2005

	A/Power component	B/Energy component	Integral tariff (A + B)			
	EUR/kW month	EUR/kWh	EUR/MWh			
Low voltage						
1.0 Power < 770 W	0,277110	0,062287	62,67			
3.0 General	1,430269	0,083728	85,71			
4.0 General, long use	2,284634	0,076513	79,69			
High voltage						
1.4 Short use, general > 145 kV	1,759358	0,058412	60,86			
2.4 Medium use, general > 145 kV	3,632629	0,053224	58,27			

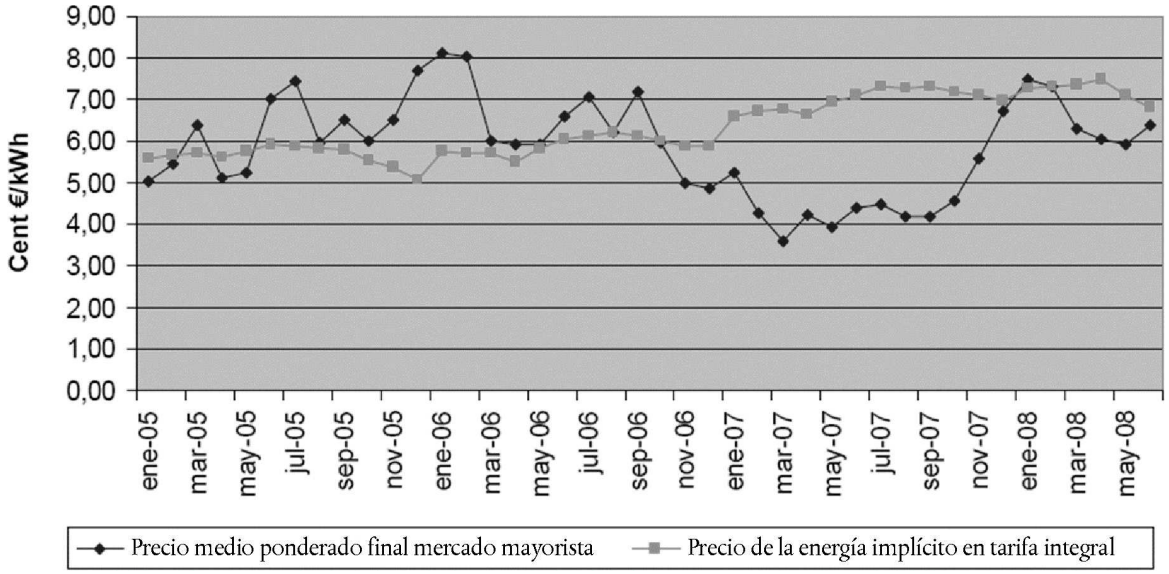
	A/Power component	B/Energy component	Integral tariff (A + B)			
	EUR/kW month	EUR/kWh	EUR/MWh			
3.4 Long use, general > 145 kV	9,511921	0,042908	56,12			
G. Large consumers G4	10,208070	0,011265	25,44			

Source: Annex I to Royal Decree 2392/2004, Commission's calculations.

(19) The Spanish National Energy Commission (*Comisión Nacional de Energía* — CNE), the Spanish regulator, has stated that, on average, integral tariffs in 2005 did not reflect all the costs of supply, in particular the cost of procuring energy in the wholesale market. In particular, as shown in the graph below, only in the five months between January and February 2005 and then again between April and June 2005 were the prices implicit in the average integral regulated tariffs below average prices in the wholesale electricity market. Conversely, between October 2006 and December 2007 the opposite occurred: during this 14-month period, average wholesale prices fell sharply below the energy prices implicit in the average integral regulated tariffs, well above the difference observed in the seven months of 2005 when wholesale prices were higher than those implicit in integral tariffs.

Graph 1

Weighted average wholesale price vs energy price implicit in integral tariff



Source: CNE — Report on development of competition in gas and electricity markets. Period 2005/2007, p. 84.

THE 2005 TARIFF DEFICIT

(20) The accounts of the electricity system, based on actual regulated revenues and costs, were settled once a year. In 2005, the level at which the regulated tariffs and the network access charges were set did not generate sufficient revenues to enable the system to recover all the regulated costs documented *ex post* for the entire year. The final settlement process for 2005, carried out by the CNE at year-end, established a deficit of EUR 3 811 million. It was not the first time that the settlement process had given rise to a deficit, although the size of the 2005 deficit was unprecedented. In 2000, 2001 and 2002 lower deficits were recorded.

(21) In particular, the government underestimated the actual costs of electricity procurement. Whereas electricity consumption by end-users in both the regulated and the free market developed in 2005 roughly as predicted in December 2004, a series of unforeseen price increases during the year set wholesale prices at EUR 62,4/MWh in 2005 compared with EUR 35,61/MWh in 2004, bringing the average wholesale price in 2005 to EUR 59,47/MWh. The causes of this increase include an unusually dry year, which reduced hydroelectric power production by 55 %, a rise in oil prices, the impact of the market price of CO_2 emission allowances received free of charge under the Emissions Trading System and an increase in the demand for energy higher than GDP growth.

(22) Another important factor which contributed to increasing the general costs of the system was the high level of aid for the production of renewable energy. In particular, renewable producers could opt for direct participation in the wholesale electricity market or 'pool'. In 2005 this option was particularly attractive and as a result, more renewable producers than expected participated in the pool, leading to higher costs for the system. In addition, direct aid to the energy costs of electricity under the special scheme (renewables, cogeneration), which were entered in the accounts as a regulated cost, amounted to EUR 2 701 million in 2005. By way of illustration, the system's transport and distribution costs amounted to EUR 4 410 million in 2005.

Mechanism adopted to pre-finance the deficit

(23) The development of the deficit did not go unnoticed. Already in March 2005, when it became clear that a tariff deficit was developing, by Article 24 of Royal Decree-Law 5/2005 ([6]) the Spanish authorities stipulated that the funds required to bridge the gap between the costs and revenues of the electricity system would be provided by Spain's five biggest 'entitled electricity utilities', which were those entitled to receive compensation for stranded costs ([7]), on the basis of the following percentages:

— Iberdrola, S.A.: 35,01 %;

— Unión Eléctrica Fenosa, S.A.: 12,84 %;

— Hidroeléctrica del Cantábrico; S.A: 6,08 %;

— Endesa, S.A.: 44,16 %;

— Elcogas, S.A.: 1,91 %

(24) Decree-Law 5/2005 laid down that the future deficit be imputed to the above five companies as a negative balance in an existing deposit account used by the CNE to pay stranded costs to these companies. This meant in practice that the utilities were required to advance the funds. The negative balance in the stranded costs account would give rise to collection rights, consisting in the right of the utilities to collect revenue from electricity consumers in the future. These rights could be securitised and sold on the market by the utilities. The collection rights assigned to these utilities yielded a minimum interest rate (3-month Euribor, calculated as the average Euribor rates for November of the previous year, without any spread).

Mechanism adopted to recover the deficit from end-users

(25) In June 2006, the Spanish authorities took a decision concerning the arrangements for recovering the 2005 deficit from electricity consumers via the regulated tariffs. By Royal Decree 809/2006 ([8]), the Spanish authorities laid down that the 2005 deficit (or, more precisely, the collection rights attributed to the utilities) would be repaid by consumers over fourteen and a half years by means of a special surcharge applied to both integral and access tariffs. The surcharge, calculated as the yearly amount required to recover linearly the net present value of the 2005 deficit over 14,5 years, was set at 1,378 % of the integral tariff, and at 3,975 % of the access tariff for 2006. The applicable interest rate was the 3-month Euribor.

([6]) Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and improve public procurement. Official State Gazette 62, 14.3.2005, p. 8832.

([7]) Stranded costs are losses sustained by incumbent electricity providers as a result of non-recoverable investments carried out before liberalisation. The Commission authorised the granting of compensatory aid to cover such losses, on the basis of the criteria outlined in the Stranded Costs Methodology (Commission Communication relating to the methodology for analysing State aid linked to stranded costs), by letter SG (2001) D/290869 of 6 August 2001. By Decision SG (2001) D/290553 of 25 July 2001 in Case NN 49/99, the Commission authorised Spain to grant compensation for stranded costs until 2008 to the companies which were asked to pre-finance the 2005 deficit.

([8]) First additional provision of Royal-Decree 809/2006 of 30 June 2006 revising the electricity tariff from 1 July 2006. Official State Gazette 156, 1.7.2006.

(26) This surcharge was regarded as a 'specifically earmarked contribution' (*cuota con destino específico*). The Spanish authorities established that the revenues from the contribution to finance the 2005 deficit would accrue in the deposit account managed by the CNE. The CNE would then transfer the funds to the owners of the collection rights, i.e. the generators that financed the deficit or the entities that had subsequently purchased the collection rights from them, according to the share of the deficit financed by each of them.

Effects of the tariff deficit on the Spanish market

(27) In 2005, 37,49 % of electricity demand in Spain was procured on the free market. This quantity corresponds to a relatively small number of consumers; only 8,5 % of consumers purchased energy on the free market, whereas 91,5 % remained on regulated tariffs (down from 97 % in 2004). High-voltage customers (above all industrial customers) were the main category present on the free market; 38,9 % of them had exercised their option and their purchases accounted for 29 % of total electricity consumption in mainland Spain in 2005. The vast majority of households and small low-voltage consumers, which could opt for the free market from 2003 ([9]), were still on regulated tariffs; however, in 2005 a significant proportion of them also opted for the free market. On 31 December 2005, over 2 million consumers were in the free market (compared with 1,3 million in 2004).

(28) However, the price advantage afforded on average by the regulated tariffs in 2005 should be considered in parallel with the return of consumers to the regulated market, albeit with a certain time lag. As shown in Table 2 below, the number of consumers supplied in the free market increased throughout 2005 but declined in 2006, bringing the percentage (8,15 %) to that reached in the first half of 2005. Likewise, the decline in the amount of energy supplied to end-users in the free market that was apparent in December 2004 continued in the first quarter of 2005. Although it halted significantly between June and September 2005, it continued in December 2005 and throughout 2006.

Table 2

Share of supply sites and energy in the free market (as a percentage of the total market) 2004-2006

Electricity	2004				2005				2006			
	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec
As a % of supply sites	1,53	2,82	4,21	5,73	7,42	9,42	10,37	10,66	10,20	9,28	8,86	8,15
As a % of energy	29,30	33,60	36,19	33,57	33,15	35,34	41,39	37,41	29,38	27,10	25,74	24,87

Source: CNE Report 'Nota Informativa sobre los suministros de electricidad y gas natural en los mercados liberalizados, actualización 31 de diciembre de 2006'.

(29) Although the impact of the losses borne by suppliers began to be felt by mid-2005, when wholesale prices started to increase considerably, supply contracts could not be terminated immediately. As a result, suppliers in the free market, particularly those which did not have generation capacity but had to procure electricity in the wholesale market, were forced to make offers under free-market conditions which matched the regulated tariff despite the possibility of incurring losses, or to charge higher prices reflecting actual procurement costs, thereby losing market share.

([9]) Spain liberalised the retail electricity market earlier than required by the 1996 and 2003 Electricity Directives, which provided for a liberalisation timetable between 1999 and 2004 for business end-users (starting with the largest) and made the liberalisation of the household segment mandatory only from 1 July 2007.

3. **DECISION TO INITIATE PROCEEDINGS UNDER ARTICLE 108(2) OF THE TFEU**

(30) The Commission decision to initiate the formal investigation compared the regulated tariffs paid by various categories of end-user with the estimated prices they would have had to pay in the free market in the absence of these tariffs. The market price estimates were calculated on the basis of the price of electricity in the wholesale market, the network access charges and an average marketing margin estimated at EUR 10/MWh, as submitted by Céntrica.

Table 3

Price comparison by consumer category

Consumer category	Regulated tariff (EUR/MWh)	Estimated market price (only wholesale price, plus access tariff) (EUR/MWh)	Estimated market price (+ EUR 10 marketing margin)
1. Large industrial consumers connected to the high-voltage network (G4 tariff)	23,9	61,17	71,17
2. Large industrial consumers with interruptible supply	27,0	73,87-76,47	83,87-86,47
3. Consumers connected to the high-voltage network	76,2	81,57	91,57
4. Households	101,2	107,75	117,75
5. Small industrial consumers or service companies connected to the low-voltage network	103,9	101,07	111,07

Source: Céntrica.

(31) This table showed a significant advantage for the first two categories (large industrial users). For the other categories of end-user, the comparison is less conclusive but a small advantage can still be observed.

(32) The decision found that this advantage had been granted selectively, since the artificially low regulated prices favoured undertakings using electricity rather than, for example, gas, as an energy source. Moreover, the existence of *de facto* and *de jure* selectivity was observed, in that the advantage was disproportionately bigger for large industrial end-users, which in certain cases benefited from all-inclusive prices that were less than half the energy component of estimated free-market prices.

(33) The opening decision indicated that, by encouraging end-users to switch back to the regulated market, the system might also have benefited distributors, who appeared to have enjoyed a guaranteed profit margin on their regulated activities.

(34) The decision also considered that the system involved a transfer of state resources, since the price surcharge used to repay the deficit constitutes a parafiscal levy, the proceeds of which transit through the Spanish Regulator CNE (a public body) before being channelled to the final beneficiaries. The decision concluded that, in the light of Court of Justice case-law on this matter, these funds should be regarded as state resources.

(35) Considering that end-users operate in markets which are generally open to competition and trade within the EU, in the opening decision the Commission came to the conclusion that all the criteria laid down in Article 107(1) were fulfilled and that the measure constituted state aid in favour of end-users.

(36) After noting that none of the derogations provided for in Article 107 TFEU seemed applicable, the opening decision assessed whether the provision of electricity at regulated tariffs could be considered a service of general economic interest (SGEI) and as such benefit from the derogation provided for in Article 106(2) TFEU. The decision stated that, in the electricity sector, Member States' margin of discretion in establishing public service obligations is limited by the provisions of Directive 2003/54/EC of the European Parliament and the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ([10]) ('The Electricity Directive'). This Directive lays down an obligation for Member States to establish a universal service obligation (including notably the right to be supplied at reasonable prices) only for household consumers and small enterprises ([11]). The decision concluded that, in the light of the Electricity Directive, the provision of electricity at regulated tariffs to medium-sized or large undertakings could not be considered an SGEI in the strict sense of the term.

(37) The Commission thus expressed serious doubts as to whether the elements of aid in the regulated tariffs that were applied to undertakings other than small enterprises could be considered compatible with the internal market.

(38) The opening decision also found that it was possible that electricity distributors received state aid. This part of the case is the subject of a separate decision (case C 3a/07).

4. COMMENTS BY INTERESTED PARTIES

(39) The Commission's invitation to submit comments on the decision to open the in-depth investigation attracted numerous submissions from large industrial consumers, distributors, independent suppliers and governments of Spain's Autonomous Communities. Only observations relevant to the alleged state aid in favour of electricity end-users will be summarised here.

COMMENTS FROM INDEPENDENT SUPPLIERS

(40) Comments were received from Céntrica and ACIE, the Association of Independent Energy Suppliers. The arguments and conclusions are largely equivalent.

Comments from Céntrica and ACIE

(41) The main focus of Céntrica's submission is the alleged advantage conferred on electricity distributors. However, the figures and arguments put forward by the company also suggest the presence of state aid for electricity end-users.

(42) According to Céntrica, the coexistence between the free and regulated markets, and in particular the possibility for end-users to switch freely between the two, meant that the regulated tariffs acted as a price reference, or a *de facto* cap, on free-market prices. Suppliers could not charge prices higher than the regulated tariff, or they would fail to attract new customers and lose existing ones.

(43) Normally, in a free market, the price paid by electricity end-users consists of two components: the network access charge and a 'supply component', which results from market mechanisms and goes to the retail supplier. In retail supply, profitability depends on whether the 'supply component' paid by customers covers the supplier's costs (i.e. energy procurement costs in the wholesale market or own generation costs in the case of a vertically integrated company) and a 'marketing margin', which includes other supply costs (marketing costs, IT systems, billing, etc.) and remuneration on the capital invested. Therefore, a free-market supplier could operate profitably in a given market segment only if there was a 'positive marketing margin', in other words a difference between the general costs incurred by the supplier in serving customers and the regulated tariff.

([10]) OJ L 176, 15.7.2003, p. 37.

([11]) Article 3(3) of the Electricity Directive states: 'Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises, (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort.'

(44) Céntrica substantiated the existence of a competitive disadvantage for free-market suppliers through calculations showing that there were no marketing margins in 2005 for any consumer category ([12]) (or that whatever margins existed at the beginning of the year were eroded during the year). This meant that the regulated tariffs were set too low for independent suppliers to compete profitably. According to Céntrica, it was not possible to compete for certain categories of end-user (notably energy-intensive users on the G4 tariff and other large industrial users) even before the emergence of a tariff deficit, since the integral tariffs never left any margin to compete. The competitive disadvantage alleged by Céntrica occurred above all in the user category comprising service undertakings and small industries connected to the low-voltage network, and in the household segment.

(45) The figures provided by Céntrica, notably the comparison between regulated tariffs and estimated market prices, are taken over in the Commission's opening decision (see recital 30 and Table 3).

(46) In Céntrica's view, the system breached the Electricity Directive, not only because of the discriminatory nature of the deficit arrangements (which compensated for the losses of distributors but not of suppliers) but also because consumers were deprived of the right to transparent prices and tariffs ([13]). Since part of the electricity price payable for 2005 was deferred to future years, the final prices charged were not transparent for consumers.

(47) Besides, Céntrica claimed that the deficit repayment mechanism was not balanced for two main reasons: firstly, the deficit would be repaid mostly by low-voltage end-users, even though the users which contributed most to its creation were large high-voltage end-users. Secondly, end-users in the free market were required to pay for a deficit to which they did not contribute.

(48) Céntrica supported the Commission's preliminary view that the Spanish deficit arrangements involved a transfer of state resources. Céntrica also held that state resources were involved in the Spanish Government's decision to allow generators to securitise their collection rights.

(49) ACIE, the Association of Independent Energy Suppliers, estimates that the energy procurement cost taken as the basis for the regulated tariffs in 2005 was 68 % below the actual cost sustained by suppliers when purchasing energy in the wholesale market. ACIE underlined the severe repercussions that the 2005 tariff deficit had on independent suppliers. According to ACIE, suppliers in the free market were subject to similar procurement costs to those of distributors. Moreover, they were *de facto* obliged to adjust to the level of the integral tariff set by the government for each customer category, since otherwise they would not have been able to attract new customers or retain existing ones. In particular, ACIE points out that, at the beginning of 2005, its members concluded contracts based on the government's forecasts of wholesale prices, and that they later had to honour such contracts even though they turned out not to be profitable. As a result, independent suppliers experienced losses. Céntrica estimates that in 2005 it suffered losses of EUR 10 million. According to ACIE, several suppliers, including Saltea Comercial, Electranorte, CYD Energia and RWE, were forced out of the market.

COMMENTS FROM ENERGY-INTENSIVE USERS

(50) Energy-intensive users took part in the procedure through their association AEGE (Asociación de Empresas con Gran Consumo de Energia). Some of them (Asturiana de Zinc, Ferroatlántica and Alcoa) also took part individually. Alcoa is an aluminium producer which operates three production facilities in Spain, located in San Ciprián, La Coruña and Avilés, which benefited from the G4 integral tariff (the interruptible tariff reserved for energy-intensive users) in 2005. Ferroatlántica is an aluminium and iron alloys producer which benefited from the 3.4 interruptible tariff. Asturiana de Zinc is a zinc producer which benefited from the G4 tariff for its plant in San Juan de Nieva.

(51) In their observations, the energy-intensive users challenge the Commission's conclusion that the industrial tariffs (G4 and other interruptible tariffs) constitute state aid, arguing that the tariffs did not confer an economic advantage, did not involve state resources and did not affect competition and trade between Member States.

([12]) Céntrica itself divided consumers into five groups. This division does not correspond to the regulated tariff structure published in the annual tariffs decree, as indicated in recital 17.

([13]) See Annex A(b) and (c) to the Electricity Directive.

No economic advantage

(52) In the opinion of energy-intensive users, the benchmark used in the opening decision to establish the presence of an advantage is incorrect. The Commission compared the industrial tariffs with the average wholesale market price (the pool price), which was considered representative of the cost these companies would have paid in the market under normal conditions. Since the industrial tariffs were found to be lower than the pool price, the opening decision concluded that the tariffs conferred an economic advantage on their beneficiaries.

(53) Energy-intensive users claim that the pool is a spot market in which electricity is traded every hour for the following day. According to the energy-intensive users, the pool suffers from certain shortcomings that affect its efficiency and competitiveness. Consequently, the pool prices do not accurately reflect marginal generation costs and therefore do not reflect a situation of perfect competition. Large end-users, which consume large volumes of electricity and have flat consumption profiles, do not purchase from the pool, but typically enter into bilateral contracts with electricity suppliers. This is confirmed by OMEL's 2005 report, which shows that only seven of eligible users, representing 5 % of traded electricity, procured electricity directly on the pool.

(54) In any event, even assuming that prices recorded on the pool could be considered a valid benchmark, it would not be correct to use the average wholesale price in 2005, as the Commission did, since this average price reflects the electricity demand of suppliers who served a varied portfolio of end-users, including households and small undertakings. According to AEGE, Ferroatlántica and Asturiana de Zinc, an appropriate benchmark would be the minimum price recorded on the pool in 2005, i.e. EUR 18,6/MWh, as this price would reflect the most competitive market conditions on the pool (where generators offer electricity at a price equivalent to their marginal costs). Large industrial consumers are not in a comparable situation to other end-users, particularly households. Therefore, the average pool price would not be the appropriate benchmark. According to Alcoa, the Commission should instead compare the contested tariffs with prices contracted bilaterally by large end-users.

(55) Alcoa provided one example of a bilateral market price and indicated that its three aluminium plants had always benefited from the G4 tariff. However, Alcoa also owns an alumina plant (Alúmina Española) for which a bilateral contract was entered into with a supplier at the end of 2004. The contract was for two years, extendible for an additional year. The three aluminium plants have the same flat consumption profile as the alumina plants. However, the latter consume considerably lower volumes of electricity (0,35 TWh as against 1,3 TWh at the Avilés and La Coruña plants, and 3,4 TWh for the San Ciprián plant). The average price agreed on the basis of this contract was EUR 34,45/MWh (including the cost of the nuclear moratorium, network access costs and other ancillary costs). This price was obtained on the basis of a competitive tender, and suppliers' bids were within EUR 5 of each other.

(56) According to Alcoa, the difference between this bilateral price (EUR 34,45/MWh) and the G4 tariff (EUR 23,9/MWh) can be explained by objective factors. In particular, users on the G4 tariff are subject to regulatory restrictions which do not apply to bilateral contracts, such as the obligation to use all the power contracted under the G4 tariff (subject to penalties), the requirement to own voltage control equipment, and the requirement to pay within 20 days (whereas bilateral contracts have better terms of payment).

(57) Alcoa thus concludes that a hypothetical market price applicable to its three aluminium plants would be well below EUR 34,45/MWh because of the higher consumption level of these plants. Furthermore, if an average marketing margin of EUR 10/MWh was considered, the net cost of supply of the alumina plant would be EUR 24,25/MWh, which is very close to the G4 integral tariff.

(58) Ferroatlántica pointed out that the opening decision misrepresented the 3,4 regulated tariff used in 2005 by wrongly including discounts in the basic tariff and comparing it with an access charge ten times higher than the one applicable (and that of very large consumers). Ferroatlántica also provided evidence that, while the monthly average market price in 2004 for forward contracts for electricity supply in 2005 was EUR 31,68/MWh, this price was EUR 31,05/MWh in December 2004. It would follow that a company would have obtained its basic electricity supply in 2005 at that price at the time when the regulated tariffs were set. After adding 'additional services' (EUR 3,92/MWh) and the relevant access tariff (EUR 1,70/MWh), an industrial user would have obtained a market price of EUR 36,67/MWh, which is below the amount of EUR 56,11/MWh of the 3,4 tariff applicable to energy-intensive users.

(59) In fact, other discounts on that tariff remunerated the capacity to provide demand management services and the acceptance of these services for the benefit of the system. In this respect, Ferroatlántica adds that the discount on the tariff reflected various services supplied, namely, hourly discrimination (with night and weekend consumption), interruptibility (acceptance of supply upon request of the network operator), seasonality (with concentration of supply in low-demand months) and management of reactive energy. It is only these discounts, which were variable and set by regulation from 1995, and not the regulated tariff level, that explain and, in the view of Ferroatlántica, justify the lower average electricity price paid in 2005.

(60) Energy-intensive users contest the statement in the opening decision that the advantage was not proportional to the volumes consumed, and tended to increase for large consumers. On this point, energy-intensive users claim, for example, that the CNE itself confirmed that the level of the G4 tariff should have been even lower. Energy-intensive users note that large consumers under the G4 or 3,4 tariff consumed several thousand times more electricity than average high-voltage consumers, while paying three times less than them.

(61) Furthermore, it would be normal for large consumers to obtain a higher unit discount on the price. On this basis, energy-intensive users claim that the conclusion that the industrial tariffs involved an advantage is debatable. They point out that in any event it is for the Commission to provide conclusive proof of the existence of such an advantage.

(62) Alcoa also indicated that the price paid by Alcoa in Spain was almost identical to the average weighted price paid by aluminium plants in the EU, and was even higher than the average weighted price paid in the EEA.

No state resources

(63) Energy-intensive users submit that it was they who paid industrial tariffs directly to distributors, without the funds coming under the control of the State, and therefore, in line with the *PreussenElektra* case law, such an arrangement did not involve state resources.

(64) Energy-intensive users argue that there was a time lapse between the setting of the tariffs, which took place at the end of 2004, and the adoption of the mechanism to recover the deficit from consumers, which did not take place until June 2006. In the opening decision, the Commission argued that state resources were involved because of the introduction of the surcharge in users' bills, which was qualified as a parafiscal charge. Energy-intensive users submit that, if this hypothesis is accepted, a measure which was not aid in 2005 would become aid (*ex-post*) in 2006. This would be contrary to fundamental principles of EU law such as legal certainty and legitimate expectation. Energy-intensive users point out that the classification of a measure as aid depends only on the circumstances existing at the time of its adoption, and cannot depend on future events, particularly when they are not reasonably predictable. They quote Advocate General Jacobs in the *Van Calster* case ([14]): 'the situation should be assessed on the date of the initial introduction of the charges, and cannot be altered retroactively'.

(65) Energy-intensive users submit that the 2005 regulated tariffs did not constitute state aid in 2005. These companies point out that, in these circumstances, the analysis of the financing mechanism is irrelevant, as the latter was introduced only in 2006. The assessment of the mode of financing would be relevant only if the measure constituted state aid from the outset. Since the tariffs did not include aid, energy-intensive users take the view that the Commission cannot rely on the surcharge to come to the opposite conclusion.

(66) Energy-intensive users further submit that, in the case of parafiscal taxes, the mode of financing of a measure is in any event only relevant to the state aid assessment where the tax is 'hypothecated to the aid', i.e. when there is a direct and immediate link between the measure and its financing ([15]). Energy-intensive users deny the existence of such a link, as the surcharge was designed to cover a deficit which arose during the settlement of regulated activities, which concerned not only the provision of electricity at regulated tariffs, but also other system costs. The surcharge was therefore not specifically allocated to cover losses arising from the supply at regulated tariffs. Secondly, there was no direct or indirect link between the level of the tariffs and the surcharge applied, since the tariff set in 2004 was unconditional (not subject to further adjustments in later years).

([14]) Advocate General's Opinion in Joined Cases C-261/01 and C-262/01 *Van Calster*, paragraph 41.
([15]) Judgment of the Court of Justice in Joined Cases C-261/01 *Van Calster*, ibid., paragraphs 49 and 50.

(67) Energy-intensive users also submit that the surcharge did not constitute a parafiscal charge or levy, because it was not of a fiscal nature under Spanish law. Fiscal measures are used to finance public expenditure, whereas in this case the aim of the surcharge was to recover a deficit that had been incurred by private operators (distributors) which carried out regulated activities within the electricity system. According to the Spanish Constitution, a new fiscal measure can only be introduced by a law (not by a Royal Decree). Furthermore, the State never owns or has discretion to dispose of the proceeds of the surcharge; these funds are transferred to a deposit account managed by the CNE, and cannot be appropriated by the State. The settlement process is fully automatic, and the CNE has no margin of discretion, autonomy or control over the destination or the amount of the funds to be settled for the various players.

(68) According to energy-intensive users, this was recognized by the Commission in its Decision on the Spanish Stranded Costs ([16]), which stated that 'the transfer of the amounts via the CNE is essentially for accounting purposes' and does not conclude that the measure involved state resources.

(69) Energy-intensive users submit that this situation is identical to the 'stranded costs' scenario, since in both cases the government introduced a surcharge aimed at compensating a permanent cost of the system. This line appeared to be confirmed also in a case involving the United Kingdom ([17]).

No impact on competition and trade

(70) Asturiana de Zinc and Alcoa contend that, due to the specific characteristics of the aluminium and zinc markets, a measure concerning the price of electricity used in the production of these metals can have no impact on EU trade, since metals are commodities and their prices are set at world level on the London Metal Exchange. In these circumstances, variations in local production costs do not translate into differences in world prices.

(71) The two companies submit that there is a growing production deficit in the EU for aluminium and zinc, while demand is increasingly being met by exports from non-EU states.

(72) If the aluminium and zinc industries disappeared in Spain, no new EU entrant would step in, as EU (aluminium) plants are already working at full capacity, and no new entrant or existing producer would have an incentive to increase capacity, given that long-term prospects are uncertain as regards future availability of affordable power. The deficit would therefore be covered by imports alone.

(73) Moreover, Alcoa claims that the interests of other European producers are not threatened by the tariffs, since they offer electricity at a price which is identical to the average price paid by other aluminium producers in EU-25.

Even if the industrial interruptible tariffs constituted aid, it would be 'existing aid'

(74) Energy-intensive users claim that the contested tariffs already existed before the accession of Spain to the EU.

(75) Even though the denomination 'G4 tariff' was formally introduced by the Ministerial Order of 6 March 1986, it existed *de facto* already before 1 January 1986, the date of Spain's accession to the EU, since it corresponds to the former 'long-use industrial tariff I' established by Ministerial Order of 14 October 1983, i.e. before Spain's accession. All electricity end-users benefiting from industrial tariff I were automatically switched to the G4 tariff, which was *de facto* the same tariff under a new name.

(76) The other interruptible tariffs are also explicitly provided for in the 1983 Ministerial Order.

(77) Furthermore, according to energy-intensive users, the measure would constitute existing aid on the basis of Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([18]), owing to the expiry of the 10-year limitation period.

([16]) Commission Decision of 25 July 2001, State Aid No 49/99 — Spain. Transitional regime for the electricity market.
([17]) Commission letter to the United Kingdom of 27 February 2002 (State aid No 661/99).
([18]) OJ L 83, 27.3.1999, p. 1.

Recovery would be precluded by legitimate expectations

(78) Energy-intensive users submit that, even assuming that the tariffs could not be deemed to constitute existing aid, recovery would be precluded by the principle of legitimate expectation. Throughout 2005, the tariffs were a direct payment between private operators. Users could not have predicted that tariffs set in December 2004 would become aid by virtue of a government measure adopted in June 2006. No economic operator, however prudent, could have expected this change in its legal situation. Therefore, users had a legitimate expectation that their tariffs did not involve state aid.

COMMENTS FROM THE REGIONAL GOVERNMENTS OF GALICIA AND ASTURIAS

(79) As regards possible aid to energy-intensive users, the Regional Government of Galicia submits that the Commission was wrong to use the pool price as a substitute for the market price, since energy-intensive users normally enter into long-term contracts on considerably better terms.

(80) Given that the liberalisation of the Spanish market has not yet been completed, and given in particular the absence of bilateral contracts between producers and large consumers, the Regional Government of Galicia considers that it would make sense to use as a benchmark the actual costs paid by producers to supply these customers. An alternative would be to obtain a benchmark price based on the technical literature (Wilson, 1993 ([19]) and Castro-Rodriguez ([20]), 1999), by considering either the cost of the most efficient technology meeting the specific needs of energy-intensive users or the average cost of electricity during the different hours of the day. The gap between a benchmark price thus obtained and the regulated tariff paid in 2005 would be much lower. The Regional Government of Galicia further argues that, in any event, all Spanish users, including energy-intensive users, will, in time, repay the deficit caused by the lower tariffs applied in 2005.

(81) Furthermore, according to the Regional Government of Galicia, the tariff system as it stood in 2005 was not legally selective, since the State did not intend to confer an advantage on end-users but merely made errors in its forecasts of market trends and prices when it set the tariffs in 2004. The Regional Government of Galicia also contests the conclusion that the system had an impact on trade within the EU.

(82) The comments from the Asturias regional government are similar to those put forward by the Spanish Government, to which they refer.

OBSERVATIONS BY SPAIN

(83) Spain maintains that the regulated tariffs system in 2005 did not involve aid, either for end-users or for distributors.

No causal link between state action and the deficit, and the deficit cannot be imputed to the State

(84) Spain contends that the deficit is not imputable to the State since it was caused by unpredictable external circumstances and not by the State's deliberate intention to subsidise certain activities.

(85) Spain submits that supply at regulated tariffs set by the State was not precluded by EU law in 2005. Therefore, state regulatory intervention was legally valid, as it was the expression of national sovereignty. One of these sovereign prerogatives consists in setting the tariffs so that expected costs match expected demand.

(86) Spain submits that the 2005 deficit was caused by a discrepancy between the government's forecasts of wholesale electricity prices and the actual prices recorded on the pool. The exceptionally high prices of 2005 were driven by unpredictable causes amounting to force majeure.

([19]) Wilson, R. (1993), *Nonlinear Pricing*, Oxford University Press.
([20]) Castro Rodriguez, F. (1999), *Wright tariffs in the Spanish electricity industry, The case of residential consumption*, Utilities Policy, pp. 17-31.

(87) Since the event generating the alleged aid was a higher-than-forecast increase in wholesale prices, the alleged advantage could not be imputable to any legal act. Even assuming that this advantage had existed (which is not the case), it would have been caused by circumstances unrelated to the State's intentions. The existence of force majeure, according to Spain, breaks the causal link between the administrative decision setting the level of the tariffs and the competitive advantage giving rise to state aid. Even assuming (which is not the case) that the objective condition of the causal link was met, the subjective condition of intentionality (imputability) on the part of the State would be absent.

No state resources

(88) Spain submits that the tariffs did not involve public funds. Firstly, Spain claims in this respect that the surcharge is not a 'charge' within the meaning of the case-law of the European Court of Justice on parafiscal levies, because it is not collected by the State and does not correspond to a fiscal levy. According to Spain, the surcharge is an integral part of the tariff and is like a tariff in nature. The tariff is thus a private price.

(89) Secondly, the funds are not collected by the State and are not paid into a fund designated by the State. The tariffs are collected by distributors, not by the State, and therefore they are private prices which ensure the equitable remuneration of the players (as laid down in the LSE). They are neither taxes nor public prices. The State does not remunerate anything, since it is the system that provided remuneration by virtue of market forces for non-regulated activities and by virtue of access tariffs set by the State as regards regulated activities. Since in such a system there is no burden for the State, no state resources would be involved, according to the *Sloman Neptune* case law ([21]). Furthermore, these funds never flow into the state coffers, are not mentioned in budgetary laws, are not subject to verification by the Court of Auditors, and cannot be recovered from debtors by means of administrative recovery procedures. Debts vis-à-vis the electricity system are not subject to the interest rate applicable to debts owed to the State.

(90) Spain reiterates that these funds are handled by the Spanish Regulator, the CNE, which acts as a mere accounting intermediary. Spain points out that in its 2001 decision on the Spanish stranded costs (SA NN 49/99) the Commission had already established that 'the transit of funds through the CNE is of an essentially accounting nature. The funds transferred to the account in the name of the CNE never became the property of this body, and were immediately paid to the beneficiaries according to a pre-determined amount which the CNE is unable to modify in any way'. On the basis of this consideration, the Commission came to the conclusion that 'it [was] not in a position to determine whether the proceeds of the levy established within the framework of the Stranded Costs scheme constitute state resources'.

No advantage

(91) Spain does not share the Commission's view that regulated tariffs confer an economic advantage on end-users (or distributors).

(92) As regards end-users, after reiterating that the deficit is the result of force majeure, Spain contends that the deficit did not benefit large consumers, because it was passed on to the tariffs for the following years with interest. Therefore, the alleged economic advantage arising from a lower electricity price is only apparent, since the difference with respect to free market prices is repaid with interest by consumers.

Supply at regulated tariffs is a service of general economic interest

(93) Spain submits that in 2005 the existence of regulated tariffs was not contrary to EU law, as the deadline for opening up the market to all consumers including households was 1 July 2007.

([21]) Judgment of the ECJ of 17 March 1993 in Joined Cases C-72/91 and C-73/91, paragraph 21: 'The system at issue does not seek, through its object and general structure, to create an advantage which would constitute an additional burden for the State'.

(94) In particular, according to the Spanish authorities, electricity supply is a service of general interest, and the State must intervene to avoid abuses of dominant positions arising from the existence of a single network (natural monopoly).

(95) The parameters for setting the tariffs were set in an objective and transparent way. The complex regulatory framework for setting the tariffs and the settlement procedure demonstrate, in Spain's view, that the tariff system was based on a thorough analysis of the costs and revenues of the system, and an analysis of electricity demand.

Undertaking from Spain

(96) As noted in recitals 25 and 26, the deficit generated in 2005 is being repaid in annual instalments, which yield an interest rate set at the Euribor rate, without any spread. Without prejudice to its comments, Spain has undertaken to retrospectively raise the interest rate charged to business users with connections of more than 1 kV. The increase will be determined in proportion to the contribution to the 2005 deficit of business users which are the subject of the current proceedings, and which were supplied at integral regulated tariffs. It will result from the application of a spread of 65 basis points over the Euribor reference, thus aligning it broadly with the rate applied to the deficit in the following years.

(97) The relevant amount will be charged to business users as follows: as regards the annual instalments of the part of the 2005 deficit which has already been repaid, a one-off increase in access tariffs will be applied; as regards the amounts still to be reimbursed, the higher interest rate will be applied directly to each annual amount, again in the form of higher access tariffs.

5. **ASSESSMENT OF THE MEASURE**

PRESENCE OF STATE AID PURSUANT TO ARTICLE 107(1) OF THE TFEU

(98) A measure constitutes state aid within the meaning of Article 107(1) of the TFEU if the following conditions are met: the measure (a) confers an economic advantage on the beneficiary; (b) is granted by the State or through state resources; (c) is selective; (d) has an impact on intra-Community trade and is liable to distort competition within the EU. Since these conditions must all be met, the Commission will confine its assessment to the existence of an economic advantage conferred on the beneficiaries.

Presence of an economic advantage

(99) Undertakings are favoured within the meaning of Article 107(1) of the TFEU if they obtain an economic advantage which they could not otherwise obtain under market conditions. In the case at hand, the assessment must establish, having regard also to the repayment of the 2005 deficit of the electricity system, whether there was any positive difference between the regulated tariffs set in 2005 and the market prices that the potential beneficiaries would have had to pay for the electricity purchased and the services supplied under their tariff regime. Any advantage with respect to market conditions must be established by reference to actual market prices. Both matters, i.e. the existence of positive differences — or the absence thereof — between electricity pool prices, market prices and regulated tariffs, and the repayment of the deficit, are examined in turn below.

Comparison with electricity pool average prices

(100) The average prices of the electricity pool provide an indication of general price levels in the wholesale market. This average reference price was EUR 59,47 MWh in 2005, for the entire year. As indicated and illustrated in recital 19 (Graph 1), in seven non-consecutive months in 2005 average wholesale prices were above the electricity prices implicit in the integral regulated tariffs applied to all end-users. Therefore, the average tariff level set by Decree 2392/2004 appears to have given rise to a positive difference in favour of all the end-users which opted for regulated tariffs, at least for the majority of months in 2005.

(101) However, in monthly periods of less than a year, this difference did not arise during the five months between January and May 2005. There was therefore no advantage for the entire regulated tariff system. Furthermore, if the comparison is made between periods of more than one year, e.g. until 30 December 2007, the possible accumulated advantage from June 2005 is more than cancelled out by the decrease in average pool prices, which fell sharply to EUR 37/MWh in March 2007, while the prices implicit in the integral regulated tariffs were around EUR 68/MWh during the same period. In fact, from October 2006 the electricity prices implicit in integral tariffs were much higher than wholesale supply prices (see Graph 1). Consequently, the benefits and economic advantages to consumers which were supplied at regulated tariffs, where pool prices are higher than the implicit cost of electricity in the regulated tariffs, may be cancelled out when pool prices are lower than the implicit cost of electricity.

(102) It follows that, both in monthly periods of less than one year in 2005 and two-year periods encompassing part of 2005, the energy prices implicit in the regulated tariffs applicable in 2005 do not appear to have provided an advantage to the group of consumers supplied at regulated tariffs, when compared with the electricity pool wholesale prices. However, the fact is that revenue from access charges and regulated tariffs paid in respect of the whole electricity system were not sufficient to cover the regulated costs of the system in 2005. It must therefore be considered whether the mechanism in place is sufficient to guarantee repayment of the deficit.

Repayment of the 2005 deficit of the electricity system

(103) As described in recitals 15 and 20-22 above, the accounts of the electricity system in 2005 encompassed all the regulated costs and regulated revenues of the system without assigning specific revenues to specific costs. For instance, transport and distribution costs (EUR 4 410 million) or cogeneration and renewable energy support costs (EUR 2 701 million) were not divided between, respectively, regulated revenues from integral tariffs in the regulated market and/or revenues from regulated access charges in the free market, and were not financed differentiating between these two types of revenue. In fact, all the system users receive a profit and can be expected to cover costs of support for efficient forms of cogeneration and renewable energy, or transport and distribution services. In this system of non-cumulative costs for each tariff, it is impossible *ex post* to objectively assign the distribution of costs to free market users and users at regulated tariffs and, within the latter category, to the 25 different tariff steps applicable in 2005. It follows that it is appropriate to examine the possible advantages, or absence thereof, of the 2005 deficit for the electricity system as a whole.

(104) In this respect, Spain has put in place a mechanism for recovering the whole of the 2005 deficit. This is consistent with this universality of the accounts of the system applied during that period. The shortfall in regulated revenues of the electricity system to cover the system costs was addressed through the injection of resources collected through the 'specifically earmarked contribution' provided for by Royal Decree 809/2006. From mid-2006, recovery began through the application of a surcharge on the value of 1,378 % on integral regulated tariffs and 3,975 % on access charges and, thereafter, the surcharges needed to ensure that over 14,5 years ending in 2020, the EUR 3,8 billion plus interest is recovered (see recitals 25 and 26 above).

(105) It follows that the revenue from the special contribution earmarked for financing the 2005 deficit allows system users to pay electricity bills, with the increase needed to balance the 2005 system accounts *ex post*, with a significant time lag.

(106) Under these circumstances, the only debatable aspect of the method chosen in 2006 to repay the 2005 electricity system deficit and balance the accounts would be the low interest rate initially applied to the annual repayments, namely the Euribor reference rate without any spread. As described in more detail in recitals 96 and 97, Spain has undertaken to increase the interest rate applicable to the business users which are the subject of the present proceedings. Spain undertakes to apply a spread of 65 basis points over the reference interest rate.

(107) Application of this modification to the measure initially applied to repay the 2005 deficit, which excludes households and small businesses that have paid the highest regulated tariffs under the correction mechanism, cancels out any hypothetical advantage the companies may have obtained from the deferral of payments from 2006. In addition, the application of a surcharge on the tariff means that the total amount recovered is, for each company, directly proportional to its electricity consumption. The more electricity consumed, the higher the surcharge.

Comparison with electricity market prices

(108) Secondly, as noted by some interested parties, prices recorded in the electricity pool are not adequate benchmarks for comparing the electricity prices paid by large consumers under regulated tariffs with market prices. Indeed, based on the evidence in the 2005 report of the electricity market operator OMEL, only seven end-users accounting for 5 % of demand were sourcing electricity directly from the pool, compared with hundreds of industrial and large business users. Industrial and other large consumers, in particular energy-intensive consumers for whom energy accounts for a sizeable proportion of their production costs (typically 30-40 % for aluminium production) require and obtain predictable price and supply conditions. These conditions are established in contracts with longer terms than day-ahead. The prices quoted hourly on a day-ahead market such as the electricity pool are illustrative of average market prices for suppliers serving a varied portfolio of customers, including households. They are, however, not adequate benchmarks for determining the prices which energy-intensive users should pay in the free market under contracts with longer terms than day-ahead. Contrary to the opinion given in the opening decision, the investigation has shown that regulated tariffs lower than average pool prices do not necessarily imply an advantage over market conditions for industrial users, since the pool prices are not market prices for most of these users. This dispels the doubts raised in this connection.

(109) Moreover, in Spain, the option of switching to the free market was not irreversible in 2005. Consumers were constantly able to choose between the most attractive offers in the regulated and free markets, which led to a degree of price convergence. The reversibility of supply options tends necessarily to depress retail market prices in situations of wholesale price-hikes like those in Spain from April 2005, whereas the opposite incentive to increase free market prices to bring them closer to the highest regulated tariff levels appears when the situation is reversed.

(110) As confirmed by the association of independent suppliers (recitals 42-49), in 2005 suppliers in the free market had to honour their contracts or terminate them unilaterally, if this was possible, or else renegotiate their prices and adjust them upwards, taking the risk that their customers might switch to the regulated market. The operating losses that the free market suppliers claim to have incurred indicate that prices in the free market in 2005, especially for one-year contracts which were honoured, remained close to the respective regulated tariff levels, and, accordingly, that regulated tariffs did not *de facto* confer an economic advantage compared with actual prices in the free market.

(111) This implies, therefore, that two hypothetical competing industrial users, one operating under a free market-based one-year electricity supply contract from January to December 2005 and the other obtaining supplies at regulated tariffs in the same period faced, all other things being equal, similar electricity costs. In fact, the only effect that the level of the regulated tariffs had on prices in the free market in 2005 was to confer on free-market users the indirect benefit of limiting price increases, even assuming that these increases were contractually possible during the year or, in the longer term, in the whole of 2005. The actual or potential competition between industrial users obtaining electricity in the free and regulated markets could not distort regulated tariffs.

(112) Thirdly, in its opening decision, the Commission referred in particular to the low regulated tariff levels of EUR 23,9/MWh and EUR 27,0/MWh, applied in 2005 to large industrial consumers (G4 tariff) and to large industrial consumers with interruptible supply (e.g. 3,4 tariff), respectively, as shown in Table 3 in recital 30 above. As pointed out by certain third parties, the levels of regulated tariffs objected to in the opening decision are not tariffs but average prices after discounts. Without discounts, the basic tariff levels actually laid down in Decree 2392/2004 shown in Table 1 were, respectively, EUR 56,12/MWh (3,4 tariff) and EUR 25,44/MWh (G4 tariff).

(113) In this respect, the formal investigation provided evidence that the regulated tariffs applicable to industrial users mentioned in the opening decision were at the level of the market prices applicable for the whole period between January and December 2005, as is shown below:

(114) Firstly, evidence has been provided that there were bilateral market prices of EUR 34,45/MWh which were applied to energy-intensive users in the free market in 2005 (recitals 55-57). With a marketing margin lower than the average EUR 10 margin added in the decision opening the formal investigation, this market price shows a supply cost close to EUR 25,44/MWh of the lowest (G4) regulated tariff (EUR 23,9/MWh of average *ex-post* price). When account is taken of objective differences concerning supply under the regulated tariff, such as supply volumes 9,7 times higher, investment in control equipment and payment time limits, the fact that the regulated tariff was lower does not appear to have conferred any undue economic advantage on the beneficiaries.

(115) Secondly, the evidence available shows that in December 2004 one-year contracts on baseload supply, based on forward market prices of EUR 31,05/MWh, could be concluded for supply between January and December 2005. A final market price (with additional services and access tariff) of EUR 36,67/MWh, which is lower than the relevant basic tariff level (tariff 3,4), was available for interruptible industrial users with strong load modulation (see recitals 16, 18 and 58 above).

(116) Additional discounts available under regulated tariffs for demand management (e.g. load modulation, interruptibility) allowed for lower average prices in the regulated market for the users providing these services ([22]). These discounts, which were not specifically addressed in the opening decision, remunerated valuable demand-side services to the network, which required adjustments, investments or restrictions imposed in commercial or industrial processes. Load modulation requires energy-intensive industrial or commercial processes to be carried out in off-peak rather than peak periods in order to reduce consumption and voltage in the electricity network. In the same way, interruptibility services supplied to the network are economically useful since they consist, for the industrial user in question, in allowing the system operator to interrupt supply at short notice (from a few seconds to two hours) and for a long period (from one to 12 hours), as was the case with the relevant regulated tariffs in Spain.

(117) The benefits of these services in terms of guaranteeing continuity of electricity supply are recognised in EU legislation. Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment ([23]) requires Member States to take account of demand management technologies and to take measures to remove the barriers preventing the use of interruptible contracts in order to maintain the balance between supply and demand. These services supplement and may even replace other means of regulation used by the network operator to guarantee that demand for electricity from the network is in line with supply, thereby avoiding interruptions and blackouts, which are socially and economically costly and may trigger sanctions or liabilities.

(118) Specifically in the case of Spain, the absence of a significant interconnection capacity with other Member States and the significant penetration of intermittent electricity supply from renewable energy sources in 2005 make these services particularly valuable. The extent of their economic value and of the costs that may be avoided in the electricity system can be illustrated in terms of the costs borne by the Spanish network operator Red Eléctrica de España in purchasing balancing services. In 2005 Red Eléctrica de España paid, on average, EUR 65/MWh for secondary regulation services to increase energy (adding additional energy on line for between 15 seconds and 15 minutes to balance the network); for tertiary regulation of energy increase (adding additional energy on line between 15 minutes and 2 hours to restore the secondary regulation energy reserve), the average price in 2005 was EUR 78/MWh, going up to EUR 600/MWh ([24]). By flattening demand and removing it from peak times (load modulation) or providing the capacity to reduce it in critical situations (interruptible services), discounts on the relevant regulated tariffs (e.g. around EUR 32/MWh on the 3,4 tariff) appear to be economically justifiable.

(119) In the absence of such discounts for demand-management measures, regulated tariffs for users connected to the high-voltage network (1,4 and 2,4 tariffs) stood at a much higher level, between EUR 58 and 61/MWh for the basic tariff and EUR 76,2/MWh for the average actual price. When compared with forward market prices of

([22]) The main source from which the figures in the opening decision are derived is the CNE report: 'El Consumo Eléctrico en el Mercado Peninsular en el Año 2005', 25.7.2006, Section 2. For large industrial consumers (interruptible and THP), the report indicates that strong load modulation with supply in off-peak periods, which requires adjustments in production processes, allows for substantial discounts on the headline tariff.

([23]) OJ L 33, 4.2.2006, p. 22; see Articles 3(3)(c) and 5(2)(b).

([24]) *El Sistema Eléctrico Español 2005*, pp. 54 and 55, Red Eléctrica de España.

EUR 31,05/MWh available for the period between January and December 2005, it cannot be considered that the market prices are higher than the regulated tariffs applicable to the vast majority of high-consumption industrial and commercial users.

(120) It follows that, although the prices registered in the electricity pool are not an appropriate benchmark for comparison with the electricity prices paid by large industrial and commercial users, the actual market prices applicable to supplies of electricity to end-users which were supplied at regulated tariffs in 2005 were in line with the respective levels of regulated tariffs.

6. **CONCLUSIONS ON THE MEASURE**

(121) In the light of the above considerations, the Commission considers that it has been demonstrated that, firstly, the companies that received electricity at integral regulated tariffs did not obtain benefits from the level of these tariffs and, secondly, bearing in mind Spain's undertaking to amend the measure, that interest will be charged at an appropriate rate for the delay by certain companies in paying part of their electricity bills in 2005.

(122) Therefore, the measure at hand does not imply an economic advantage in favour of business users. Since the criteria of Article 107(1) TFEU are cumulative, there is no need to examine whether the other criteria are fulfilled.

(123) The Commission thus concludes that, having regard to the arrangements put in place by Spain to recover end-users' debt towards the electricity system, the system of regulated tariffs implemented in 2005 did not give rise to state aid within the meaning of Article 107(1) TFEU. This conclusion relates to the situation and time period covered by the complaint, without prejudice to any assessment that the Commission may make of measures taken by Spain after 2005,

HAS ADOPTED THIS DECISION:

Article 1

The system of regulated tariffs implemented by the Kingdom of Spain in 2005 does not constitute state aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 4 February 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION DECISION

of 4 February 2014

on Spanish electricity tariffs: distributors SA.36559 (C 3/07) (ex NN 66/06) implemented by Spain

(notified under document C(2013) 7743)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2014/457/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

PROCEDURE

(1) By letter dated 27 April 2006, the undertakings Céntrica plc and Céntrica Energía S.L.U. (hereinafter collectively referred to as 'Céntrica') filed a complaint with the Commission regarding the system of regulated electricity tariffs implemented in Spain in 2005.

(2) By letter dated 27 July 2006, the Commission asked the Spanish authorities to provide information on the above measure. The Commission received this information by letter dated 22 August 2006.

(3) On 12 October 2006, the case was registered as non-notified aid (Case NN 66/06).

(4) By letter dated 9 November 2006, the Commission asked the Spanish authorities for additional clarifications on the measure. The Spanish authorities replied by letter dated 12 December 2006.

(5) By letter dated 24 January 2007, the Commission informed the Spanish authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of the measure.

(6) The Commission decision was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the measure.

(7) Spain submitted its observations by letter dated 26 February 2007.

(8) The Commission received comments from the following interested parties: the Government of Galicia (letter dated 23 March 2007), Céntrica (letters dated 26 March and 3 July 2007), ACIE — Association of Independent Energy Suppliers (letter dated 26 March 2007), Government of Asturias (letter dated 27 March 2007), AEGE — Association of Energy-Intensive Users (letter dated 2 April 2007), Asturiana de Zinc — AZSA (letter dated 3 April 2007), Ferroatlántica — a metal producer (letter dated 3 April 2007), Alcoa (letter dated 3 April 2007), UNESA — Spanish Electricity Industry Association (letter dated 25 April 2007), ENEL Viesgo (letter dated 26 April 2007), Iberdrola (letter dated 26 April 2007), Union Fenosa Distribución (letter dated 27 April 2007), Hidrocantábrico Distribución Electrica (letter dated 27 April 2007), Endesa Distribución Electrica (letter dated 27 April 2007).

[1] OJ C 43, 27.2.2007, p. 9.
[2] See footnote 1.

(9) By letters dated 15 May and 6 July 2007, the Commission forwarded the interested parties' comments to the Spanish authorities, who were given the opportunity to react; their comments were received by letter dated 2 August 2007.

(10) Further information was submitted by Céntrica by letters dated 1 June 2007, 28 August 2007, 4 February 2008 and 1 March 2008.

(11) By letters dated 30 July 2009, 19 March 2010, 6 October 2011, 12 April 2012, 31 August 2012, 4 February 2013 and 17 July 2013, the Commission asked the Spanish authorities to provide further clarifications on the measure. The authorities replied by letters dated 5 October 2009, 26 April 2010, 7 December 2011, 12 June 2012, 18 October 2012, 11 February 2013 and 4 October 2013.

(12) On 19 April 2013 the case was split into two parts: Case SA.21817 (C 3/07 ex NN 66/06), which concerns aid to electricity end-users, and Case SA.36559 (C 3/07 ex NN 66/06), which concerns aid to electricity distributors. The present Decision deals only with aid to electricity distributors.

DETAILED DESCRIPTION OF THE MEASURE

THE SPANISH ELECTRICITY SYSTEM IN 2005

Distinction between regulated and non-regulated activities.

(13) In the legislative framework laid down by Law 54/1997 of 27 November 1997 (*Ley del sector eléctrico — LSE*) which is the cornerstone of the Spanish electricity system, a fundamental distinction is made between regulated and liberalised activities.

(14) The generation, import, export and retail supply of electricity are liberalised activities, i.e. activities which can be freely exercised by economic operators on market terms, and over which the State does not exercise strict regulatory control, for example by controlling prices and conditions of supply.

(15) By contrast, distribution, transport and the activities carried out by the Market Operator ([3]) and by the System Operator ([4]) are fully regulated by the State. These activities are normally regulated by the State in any electricity system, since the operators which perform them hold *de facto* or *de jure* monopolies and, otherwise, the operators would not face any constraints in breaching the competition rules and would be able to charge monopolistic prices above the normal market price.

Pure distribution and supply at regulated tariffs

(16) In 2005, distribution covered three types of regulated activity in the Spanish electricity system. The first was pure distribution. Pure distribution consists in the transmission of electricity to points of consumption over the distribution networks, and is a monopoly in the absence of alternative networks. The second includes certain commercial management activities closely related to distribution, such as reading meters, concluding contracts, invoicing, providing customer service, etc. The third regulated activity in 2005 was supply at the regulated tariff, and it was assigned by law to distributors in addition to their main statutory task (managing and providing access to electricity distribution networks) ([5]). After the reform completed in 2009, distributors no longer supply electricity at regulated tariffs.

(17) Distributors were required by law to purchase the electricity required to supply regulated customers in the organised wholesale market (the 'pool') at the daily price (the marginal system price or 'pool price') or directly from renewable energy producers ([6]) and then to resell the electricity to final consumers at the applicable regulated tariff.

([3]) The Market Operator (OMEL) handles purchases and sales of electricity in the wholesale market.
([4]) The System Operator (*Red Eléctrica de España*) is responsible for guaranteeing the security of electricity supply and the coordination of the production and transport system.
([5]) Article 11 of Royal Decree 281/1998 defines distribution as 'that [activity] the main objective of which is the transmission of electrical energy from the transport network to consumption points under adequate quality requirements, as well as the sale of electrical energy to users or distributors at regulated prices'.
([6]) The so-called 'special scheme' generators. The 'special scheme' is a feed-in tariff system: distributors (and the transmission system operator) are obliged to purchase the entire output of eligible cogeneration and renewable-based installations located in their area of responsibility at a cost-covering rate set by the State.

Role of distributors as financial intermediaries of the system

(18) In 2005 there were no fewer than 25 different regulated tariffs for end-users, depending on the consumption level, the consumption profile and/or use of consumption and the network connection voltage. At the same time, 9 other regulated network access charges applied to end-users in the free market, also based on connection voltage and other characteristics ([7]). In the free market, network access charges were paid by end-users to suppliers, who passed them on to distributors. In the regulated market, network access charges were embedded in the all-inclusive regulated tariff paid by end-users to distributors (they were *implicit*). Since 2005 Spain has introduced changes to the system of regulated tariffs. The latest change dates from 2013, when Spain adopted a new legislative framework for the electricity sector (Law 24/13) which includes, among other measures, the reform of the regulation of retail market prices. Spain announced that this new law and its implementing provisions would be applied during 2014.

(19) The levels of the regulated integral tariffs and the regulated network access charges were decided *ex ante* once for the whole year, normally before N-1 year end, but could be adjusted in the course of the year ([8]). However, annual tariff increases were subject to a maximum cap ([9]). In principle, all tariff and charge levels were set, on the basis of forecasts, in such a way as to ensure that the regulated revenues resulting from their application would suffice to cover the electricity system's total regulated costs. These regulated costs of the system included, in 2005, the costs of energy supply for integral tariffs, the costs of purchasing energy from special support schemes (renewable sources, cogeneration, etc.), transport and distribution costs, demand management measures, additional electricity generation costs in the Spanish islands, support for coal, previous years' deficits, etc.

(20) In the regulatory set-up in Spain, distributors were (and still are) the main financial intermediaries of the system. Distributors handled all the revenue from the regulated tariff system, i.e. the network access charges and the revenue from integral tariffs. This revenue, collectively referred to as 'payable revenue' (*ingresos liquidables*), was used to cover all the regulated costs of the system. There were no rules earmarking a particular category of revenue, or a proportion thereof, for a particular category of costs or proportion thereof. As a result, revenues from network access charges were not earmarked in whole or in part to finance the higher costs of support for electricity generated from renewable sources or the costs of generation in the Spanish islands.

(21) The clearance of accounts took place within the framework of a settlement process carried out under the direct control of the Spanish regulator, the *Comisión Nacional de Energía* (hereinafter: 'CNE'). The remuneration of distributors (for the activities related to pure distribution) was also drawn from the payable revenue, after deduction of all other costs.

Distributors v suppliers and respective prices

(22) Therefore, in 2005 two distinct categories of operator were active in the retail electricity market in Spain: distributors, who were obliged to sell at regulated tariffs, and suppliers, who sold on freely negotiated terms. For historical reasons, distributors in Spain are part of vertically integrated groups (incumbent operators) which have traditionally operated distribution networks in specific geographic areas, and which have changed only owing to past mergers and consolidations. In the regulated market, distributors charged integral tariffs which did not distinguish between the costs of energy procurement and network access costs.

(23) Suppliers can either belong to vertically integrated groups (which typically have separate generation, distribution and supply divisions) or be new market entrants. New entrants often do not own generation capacity and are active only in the retail market. Céntrica is one such new entrant. In the free market, suppliers charged prices which had to cover the network access charge (payable to distributors), energy procurement costs (energy procurement costs in the wholesale market or own-generation costs in the case of a vertically integrated company) and a 'commercialisation margin', covering other costs (commercialisation costs, IT systems, billing, etc.) as well as a return on invested capital.

([7]) Royal Decree 2392/2004, of 30 December, establishing the electricity tariff for 2005; Official State Gazette 315, p. 42766, Annex I.
([8]) Article 12(2) of the LSE provided that electricity tariffs were, in principle, set once a year but could be adjusted during the year.
([9]) Under Article 8 of Royal Decree 1432/2002, the average tariff could not increase by more than 1,40 % (year on year), whereas individual tariffs could increase only by a percentage calculated as the increase in the average tariff + 0,60 % (2 % in total).

(24) In 2005, the coexistence between the free and regulated markets, and in particular the possibility for end-users to switch freely between the two, meant that the regulated tariffs acted as a price reference (or *de facto* cap) on free-market prices. Therefore, a supplier could operate profitably in a given market segment only if there was a positive commercialisation margin, i.e. some headroom between the retail price — in this case the regulated tariff, to which the customer was entitled — and the overall costs incurred in serving customers.

The 2005 tariff deficit

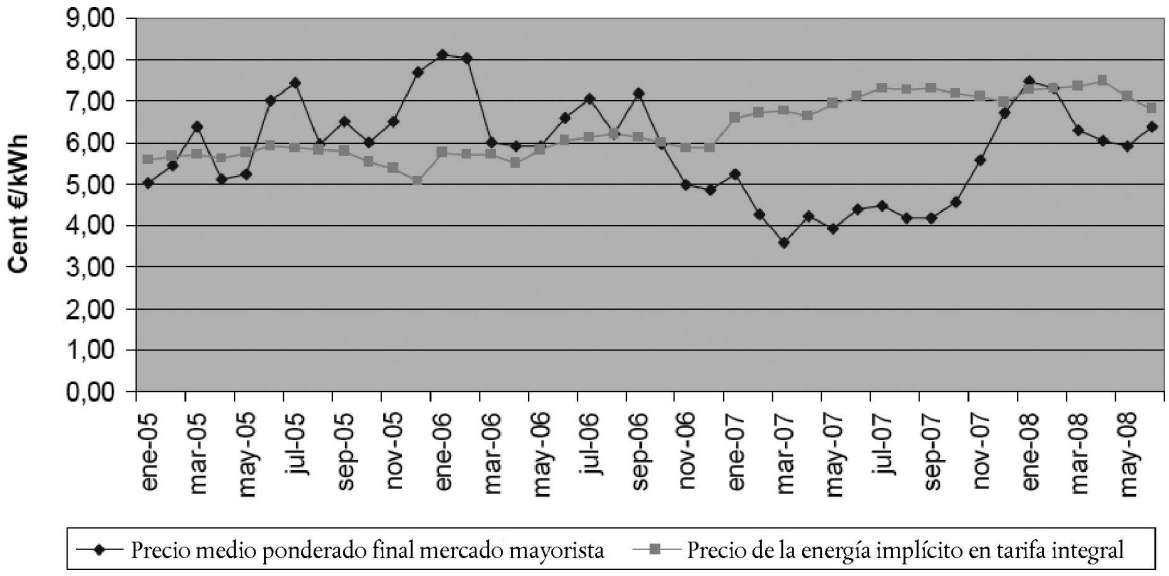
(25) In 2005, the level at which the regulated tariffs and the network access charges were set did not generate sufficient revenues to enable the system to recover all costs documented *ex post* for the entire year. The final settlement process for 2005, carried out by the CNE at year-end, established a deficit of EUR 3 811 million. It was not the first time that the settlement process had given rise to a deficit, although the size of the 2005 deficit was unprecedented. Lower deficits had already been recorded in 2000, 2001 and 2002.

(26) Among other things, the Government underestimated actual electricity procurement costs. Whereas, in general terms, electricity consumption by end-users in both the regulated and the free market developed in 2005 roughly as predicted in December 2004, the unforeseen price increases during the year set wholesale prices at EUR 62,4/MWh in 2005 compared with EUR 35,61/MWh in 2004, bringing the average wholesale price in 2005 to EUR 59,47/MWh. The causes of this increase include an unusually dry year, which reduced hydroelectric power production by 55 %, a rise in oil prices, the passing on of the market price of CO_2 emission allowances received free of charge under the Emissions Trading System and an increase in the demand for energy higher than GDP growth.

(27) The Spanish regulator, the CNE, pointed out that, in 2005, on average integral tariffs did not reflect all the costs of supply and, in particular, the cost of purchasing energy in the wholesale market In particular, as shown in the graph below, only in five months, between January and February 2005, and then again between April and June 2005, were the energy prices implicit in the average regulated integral tariffs below average prices in the wholesale electricity market. However, the opposite was true between October 2006 and December 2007: during this 14-month period, average wholesale prices fell sharply below the energy prices implicit in the average regulated integral tariffs, well in excess of the difference observed in the seven months of 2005 when wholesale prices were above those implicit in the integral tariffs.

Graph 1:

Weighted average wholesale price v energy price implicit in integral tariff



Source: CNE — Informe sobre la evolución de la competencia en los mercados de gas y electricidad. Periodo 2005/2007, p. 84.

(28) An important factor which also contributed to increasing the general costs of the system was the high level of support for the production of renewable energy. In particular, renewable producers could opt for direct participation in the 'pool'. In 2005, this option was particularly attractive and, as a result, more renewable producers than expected participated in the pool, leading to higher costs for the system. In addition, direct support for the energy costs of electricity from the special scheme (renewables, cogeneration) not sold to the pool, which was entered in the accounts as a regulated cost, amounted to EUR 2 701 million in 2005, an increase of 5,75 % over 2004. By way of illustration, the system's transport and distribution costs amounted to EUR 4 142 in 2004, EUR 4 410 million in 2005 and EUR 4 567 million in 2006.

Mechanism adopted to prefinance the deficit

(29) The development of the deficit did not go unnoticed. Already in March 2005, when it became clear that a tariff deficit was developing, by Article 24 of Royal Decree-Law 5/2005 ([10]) the Spanish authorities stipulated that the funds required to bridge the gap between the costs and revenues of the electricity system would be provided by Spain's five biggest 'entitled electricity utilities', which were those entitled to receive compensation for stranded costs ([11]), on the basis of the following percentages:

— Iberdrola, SA: 35,01 %,

— Unión Eléctrica Fenosa, SA: 12,84 %,

— Hidroeléctrica del Cantábrico SA: 6,08 %,

— Endesa, SA: 44,16 %,

— Elcogás, SA: 1,91 %

(30) The negative balance on the stranded costs account would give rise to collection rights, consisting in the right for the companies to collect revenue from electricity consumers in the future. The companies could securitise these rights and sell them in the market. These companies, with the exception of Elcogás SA, are parent companies of vertically integrated groups which usually operate in the electricity generation sector, and in the distribution sector through distribution divisions. As Article 24 of Royal Decree-Law 5/2005 lays down, the motives and criteria governing the designation of these five companies for the purposes of prefinancing the 2005 tariff deficit — and not other companies operating in the Spanish electricity market — appears to be their right to receive compensation for stranded costs and not, for example, their activity in the distribution sector. Elcogás SA was and continues to be a company solely active in electricity generation ([12]). In the same way, for the purposes of prefinancing the deficit in the electricity system in later years, Spain has designated either the parent company of the group (e.g. Endesa SA, Iberdrola SA) or its generation division (Endesa Generación SA, Iberdrola Generación SA in Royal Decree-Law 6/2009), but never the distribution division (i.e. Endesa Distribución Eléctrica, S.L., a wholly owned subsidiary responsible for distributing electricity under the system of regulated tariffs in 2005).

(31) In June 2006, the Spanish authorities took a decision concerning the arrangements for recovering the 2005 deficit from electricity consumers via the regulated tariffs. By Royal Decree 809/2006 ([13]), the Spanish authorities laid down that the 2005 deficit (or, more precisely, the collection rights granted to the five selected utilities) would be repaid by consumers over 14,5 years by means of a special surcharge applied to both integral and access tariffs. The surcharge, calculated as the yearly amount required to recover linearly the net present value of the 2005 deficit over 14,5 years, was set at 1,378 % of the integral tariff, and at 3,975 % of the access tariff for 2006. The applicable interest rate was the 3-month Euribor.

([10]) Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to promote productivity and improve public procurement. Official State Gazette 62, 14.3.2005, p. 8832.

([11]) Stranded costs are losses sustained by incumbent electricity providers as a result of non-recoverable investments carried out before liberalisation. The Commission authorised the granting of compensatory aid to cover such losses, on the basis of the criteria outlined in the Stranded Costs Methodology (Commission Communication relating to the methodology for analysing State aid linked to stranded costs), by letter SG (2001) D/290869 of 6 August 2001. By Decision SG (2001) D/290553 of 25 July 2001 in Case NN 49/99, the Commission authorised Spain to grant compensation for stranded costs until 2008 to the same companies which were asked to prefinance the 2005 deficit.

([12]) Annual Report 2005, Elcogás SA, available at http://www.elcogas.es/images/stories/3-principales-indicadores/1-datos-economico-financieros/esp2005.pdf

([13]) First additional provision of Royal Decree 809/2006 of 30 June 2006 revising the electricity tariff from 1 July 2006. Official State Gazette 156, 1.7.2006.

(32) The surcharge was regarded as a 'specifically earmarked contribution' (*cuota con destino específico*). The Spanish authorities established that the revenues from the contribution to finance the 2005 deficit would accrue in the deposit account managed by the CNE. The CNE would then transfer the funds to the owners of the collection rights, i.e. the utilities that financed the deficit or the entities that had subsequently purchased the collection rights from them, according to the share of the deficit financed by each of them.

Effects of the tariff deficit on the Spanish market

(33) In 2005, 37,49 % of electricity demand in Spain was procured in the free market. This quantity corresponds to a relatively small number of consumers; only 8,5 % of consumers purchased in the free market, whereas 91,5 % remained on regulated tariffs (down from 97 % in 2004). High-voltage customers (above all industrial customers) were the main category present in the free market; 38,9 % of them had exercised their option and their purchases accounted for 29 % of total electricity consumption in mainland Spain in 2005. The vast majority of households and small low-voltage consumers, which could opt for the free market from 2003 ([14]), were still on regulated tariffs; however, in 2005 a large number of them also opted for the free market. On 31 December 2005, over 2 million consumers were in the free market (compared with 1,3 million in 2004).

(34) However, the price advantage afforded on average by the regulated tariffs in 2005 should be considered in parallel with the return of consumers to the regulated market, albeit with a certain time lag. As shown in Table 2 below, the number of consumers supplied in the free market increased throughout 2005 but declined in 2006, bringing the percentage (8,15 %) to that reached in the first half of 2005. Likewise, the decline in the amount of energy supplied to end-users in the free market that was apparent in December 2004 continued in the first half of 2005. Although it halted significantly between June and September 2005, it continued in December 2005 and throughout 2006.

Table 2 —

Share of supply sites and energy in the free market (as a percentage of the whole market) 2004-2006

Electricity	2004				2005				2006			
	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec
As a % of supply sites	1,53	2,82	4,21	5,73	7,42	9,42	10,37	10,66	10,20	9,28	8,86	8,15
As a % of energy	29,30	33,60	36,19	33,57	33,15	35,34	41,39	37,41	29,38	27,10	25,74	24,87

Source: CNE Report 'Nota Informativa sobre los suministros de electricidad y gas natural en los mercados liberalizados, actualización 31 de diciembre de 2006'.

(35) Although the impact of the losses borne by suppliers began to be felt by mid-2005, when wholesale prices started to increase considerably, supply contracts could not be terminated immediately. As a result, suppliers in the free market, particularly those which did not have generation capacity but had to procure electricity in the wholesale market, were forced to choose between making offers under free-market conditions which matched the regulated tariff, despite the possibility of incurring losses, and charging higher prices reflecting actual procurement costs, thereby losing market share.

DECISION TO INITIATE THE PROCEDURE UNDER ARTICLE 108(2) OF THE TFEU

(36) The Commission decision to initiate the formal investigation procedure was based on the following grounds:

([14]) Spain liberalised the retail electricity market earlier than required by the 1996 and 2003 Electricity Directives, which provided for a liberalisation timetable between 1999 and 2004 for business end-users (starting with the largest) and made the liberalisation of the household segment mandatory only from 1 July 2007.

(37) The decision compared the regulated tariffs paid by the various categories of end-user with the estimated prices they would have had to pay in the free market in the absence of the tariffs, and found that there seemed to be an advantage in favour of most user categories. The alleged aid in favour of end-users is the object of a separate decision in Case SA.21817 — Regulated Electricity Tariffs: consumers.

(38) As regards distributors, the opening decision indicated that, by encouraging end-users to switch back to the regulated market, the system might have benefited distributors, who appeared to have enjoyed a guaranteed profit margin on their regulated activities. This advantage seemed to have been granted selectively to distributors, as they were the only market operators allowed to sell electricity at regulated tariffs.

(39) The decision also found that the system involved a transfer of State resources, since the price surcharge used to repay the deficit constitutes a parafiscal levy, the proceeds of which transit through the Spanish regulator CNE (a public body) before being channelled to the final beneficiaries. The decision concluded that, in the light of Court of Justice case-law on this matter, these funds should be regarded as State resources.

(40) Considering that both large end-users and distributors operate in markets which are generally open to competition and trade within the Union, in the opening decision the Commission concluded that all the criteria laid down in Article 107(1) TFEU were fulfilled and the measure constituted State aid in favour of end-users and distributors.

(41) After noting that none of the derogations provided for in Article 107 TFEU seemed applicable, the opening decision assessed whether the supply of electricity at regulated tariffs could be considered a service of general economic interest (SGEI) and as such benefit from the derogation provided for in Article 106(2) TFEU. The opening decision stated that, in the electricity sector, Member States' margin of discretion in establishing public service obligations is limited by the provisions of Directive 2003/54/EC of the European Parliament and the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ([15]) ('The Electricity Directive'). The Electricity Directive requires Member States to establish a universal service obligation (including notably the right to be supplied at reasonable prices) only for household consumers and small enterprises ([16]). The decision concluded that, in the light of the above Directive, the supply of electricity at regulated tariffs to medium-sized and large undertakings, as opposed to households and small businesses, could not be considered an SGEI in the strict sense of the term.

(42) The Commission thus expressed serious doubts as to whether the elements of aid in the regulated tariffs that were applied to undertakings other than small enterprises and to distributors could be considered compatible with the internal market.

COMMENTS BY INTERESTED PARTIES

(43) The Commission's invitation to submit comments on the decision to open the in-depth investigation attracted numerous submissions from large industrial consumers, distributors, independent suppliers and governments of Spain's Autonomous Communities. Only the observations relevant to the position of distributors will be examined here.

COMMENTS FROM INDEPENDENT SUPPLIERS

(44) Comments were received from Céntrica and ACIE, the Association of Independent Energy Suppliers. Their arguments and conclusions are largely equivalent and will be dealt with together.

(45) The main focus of Céntrica's submission is the alleged State aid granted to electricity distributors. Céntrica points out that in 2005 the average cost of buying electricity in the wholesale market was nearly 70 % higher than the forecast average procurement cost embedded in the integral tariffs set by the Government by Royal Decree 2329/2004.

([15]) OJ L 176, 15.7.2003, p. 37.

([16]) Article 3(3) of the 2003 Electricity Directive states: 'Member States shall ensure that all household customers, and, where Member States deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable and transparent prices. To ensure the provision of universal service, Member States may appoint a supplier of last resort.'

(46) As a result of this discrepancy between these forecasts and actual costs, the revenue from the system was insufficient to cover costs, mainly because the price paid by distributors to purchase electricity was higher than the regulated price at which they had to sell it. The distributors therefore recorded a deficit in their accounts. However, as a result of the mechanism adopted by the Spanish authorities to fill the revenue gap (which consisted in requiring eligible generators to prefinance the deficit against a claim for subsequent reimbursement), the distributors' accounts remained balanced, and their losses were *de facto* offset by the State.

(47) A different treatment was reserved for free-market suppliers, despite the fact that they also suffered similar losses. According to Céntrica and ACIE, suppliers in the free market were subject to similar procurement costs as distributors ([17]). Moreover, they were *de facto* bound by the level of the integral tariff set by the Government for each customer category because otherwise they would have been unlikely to attract new customers or retain existing customers. In particular, ACIE points out that, at the beginning of 2005, its members concluded contracts based on government forecasts of wholesale prices and that they later had to honour such contracts even though they turned out to be unprofitable. As a result, independent suppliers suffered losses. However, unlike distributors, independent suppliers' losses were not offset by the State. Céntrica estimates that in 2005 it suffered losses of EUR 10 million. According to ACIE, several suppliers, including Saltea Comercial, Electranorte, CYD Energia and RWE, were forced out of the market.

(48) According to ACIE and Céntrica, the compensation of distributors' losses distorted competition, created discrimination vis-à-vis independent suppliers and should be regarded as State aid. Apart from asserting that the compensation of losses constitutes an advantage per se, Céntrica argued that incumbent market players (vertically integrated undertakings) could retain their market share and avoid losses by encouraging customers to switch from their loss-making supply divisions to their distribution divisions, which would receive compensation, where appropriate.

(49) According to ACIE and Céntrica, the advantage for incumbent undertakings was 'specific' i.e. selective, since the financing and compensation mechanism specifically benefited distributors by giving them a financial and competitive advantage over free-market suppliers. Céntrica argued that the distinction between distributors and free-market suppliers was purely formal, because both categories competed in the same market (retail electricity sales), both were affected by integral tariffs (either because they had been imposed by law or because they acted *de facto* as a cap on market prices) and both procured electricity at the same price and suffered the same losses.

(50) In Céntrica's view, the preferential treatment of distributors was not justified by any reason pertaining to the logic and structure of the electricity system, nor could it be considered compensation for a service of general economic interest. Céntrica maintains that the system breached the Electricity Directive, not only because of the discriminatory nature of the deficit arrangements, but also because consumers were deprived of the right to transparent prices and tariffs ([18]). Since part of the electricity price payable for 2005 was deferred to future years, the final prices charged were not clear to consumers.

(51) Céntrica takes the view that the selective advantage afforded by the deficit arrangements benefited not only distributors, but also the vertically integrated undertakings to which they belonged. According to Céntrica, a vertically integrated group should be regarded as one undertaking for the purpose of applying the State aid rules. Céntrica alleges that the Spanish system allowed generation companies to raise prices in the wholesale market and continue to make profits. In these circumstances, the groups had a vested interest in maintaining the market share that their distribution divisions counted on. Therefore, the vertically integrated groups should also be regarded as recipients of State aid.

COMMENTS FROM DISTRIBUTORS

(52) Comments were received from UNESA (the association representing distributors), Iberdrola Distribución, Union Fenosa Distribución, Enel Viesgo Distribución and Endesa Distribución. Their observations largely overlap and will be dealt with together.

(53) Distributors (as represented by UNESA) make a distinction between pure distribution/commercial management activities, which they view as an SGEI, and supply at regulated tariffs, which according to them did not involve any State aid because it did not provide a financial advantage.

([17]) Suppliers also bought power in the wholesale market ('the pool') and even though, theoretically, they could have entered into bilateral agreements with generators, in reality there was no incentive for generators (mainly vertically integrated groups) to do so.

([18]) See Annex I, letters (b) and (c) to Directive 2003/54/EC.

(54) Distributors recall that the legal context in which suppliers and distributors carried on their activities was very different; distributors were obliged to purchase electricity for supply at regulated tariffs in specific ways (either from the pool or from 'special scheme' producers), whereas suppliers were free to negotiate their prices. Distributors could not refuse to supply regulated customers and could not acquire customers other than those opting for regulated tariffs. Distributors could not offer auxiliary services either, whereas suppliers were free to establish their supply conditions.

(55) The table below summarises the differences between free-market suppliers and distributors as regards retail sales of electricity ([19]):

	Obligation to supply	Potential market	Energy purchases
Suppliers	No	All Spanish users	Any mechanism
Distributors	Yes	Only users connected to their networks	Via the pool or from special scheme generators
	Wholesale purchase price	Sales price	Profit margin
Suppliers	Free	Free	Margin on sales
Distributors	Pool price or regulated 'special scheme' price	Regulated tariffs	No profit margin

(56) Distributors thus conclude that, given the different legal and factual context, free-market suppliers were not in competition with distributors, but rather with the regulated tariffs, which acted as the reference price in the market.

(57) Distributors submit that the activity of supplying electricity at the tariff did not bring them profits or advantages of any nature. Whereas for pure distribution and commercial management the distributors' remuneration included a profit margin to remunerate invested capital, for supply at regulated tariffs, distributors obtained only a reimbursement of their costs without any profit margin. In particular, the costs 'recognised' to a distributor were based on the average weighted price paid for electricity during the reference period. In certain circumstances, these recognised costs could be lower than the actual total costs borne by a distributor. When the regulated sales activity yielded a surplus, these funds did not stay with distributors but were allocated, during the settlement process, to the financing of other general costs of the system. The amount recognised by the State equalled the difference between the average weighted price of electricity purchases, multiplied by the quantity of energy transported by each distributor, after correction for standard losses.

(58) Distributors further contend that they did not draw any direct or indirect financial benefit from free-market customers switching back to regulated tariffs, as their remuneration for pure distribution and commercial management was entirely independent of the number of customers on regulated tariffs or the quantity of electricity sold at the tariff.

— First, as explained above, for supply at the regulated tariff there was only a reimbursement of costs.

— Second, the remuneration of pure distribution was also independent of the number of customers on regulated tariffs, as it was based on the volume of 'transported energy', which included all electricity transported by distributors on the network, irrespective of whether the energy was sold at the regulated tariffs or at free-market rates.

([19]) *Source:* observations by Iberdrola dated 26 April 2007.

— Third, the remuneration for commercial management activities was also independent of the number of customers supplied on regulated tariffs, as the law provided for payments based on the number of contracts concluded (for both access tariffs and regulated tariffs) and was therefore unrelated to the number of customers on regulated tariffs. Distributors were required in any event to manage all customers' requests, such as changes in the type of connection, contracts, invoicing of access tariffs, metering, etc., regardless of the type of supply.

(59) Distributors thus conclude that the 'compensation' they received in respect of supplies at regulated tariffs should be viewed rather as the reimbursement of sums they were required to advance in application of the law, or as compensation for loss and damage.

(60) Iberdrola specifically contends that it would be legally and economically incorrect to impute the deficit to distributors. The costs incurred in purchasing electricity for the regulated market were imputable to the electricity system, not to distributors, which merely implemented legal provisions. The proceeds of sales at regulated prices never became the property of distributors, but belonged to the electricity system as a whole, and therefore the system should be seen as the 'seller' of electricity at regulated prices. In a system as highly regulated as the Spanish one, it would be unreasonable, according to Iberdrola, to impute to distributors the financial imbalances caused by the regulatory structure or by errors in estimates of future energy costs.

(61) Iberdrola also points out that distributors did not retain the revenue from the surcharge, which, as a 'specifically earmarked contribution', was transferred immediately to the deposit account opened by the CNE and passed on to the generators who prefinanced the deficit.

COMMENTS BY THE REGIONAL GOVERNMENT OF ASTURIAS

(62) The comments by the Regional Government of Asturias are equivalent to those set out below by the Spanish Government, to which reference is made.

COMMENTS BY SPAIN

(63) Spain maintains that the regulated tariffs system in 2005 did not involve aid, either for end-users or for distributors. In particular, as regards distributors, Spain considers that the compensation they received is in line with the *Altmark* case-law of the Court of Justice and does not, therefore, constitute State aid.

EXISTENCE OF AID

NO CAUSAL LINK BETWEEN STATE ACTION AND THE DEFICIT, AND NON-IMPUTABILITY OF THE DEFICIT TO THE STATE

(64) Spain contends that the deficit was not imputable to the State, in that it was caused by unpredictable external circumstances and not by the State's deliberate intention to subsidise certain activities.

(65) Spain submits that supply at regulated tariffs set by the State was not precluded by EU law in 2005. Therefore, State regulatory intervention was legally valid, as it was the expression of national sovereignty. One of these sovereign prerogatives consists in setting the tariffs so that expected costs match expected demand.

(66) Distributors collected funds through integral and access tariffs, and then transferred part of this revenue to dedicated accounts (according to percentages set in the annual tariffs decree). Afterwards they deducted electricity purchases from the pool and from 'special scheme' generators. If the revenue from integral and access tariffs did not cover the cost of regulated activities, a tariff deficit was generated.

(67) Spain submits that the 2005 deficit was caused by a discrepancy between government forecasts of wholesale electricity prices and the actual prices recorded on the pool. The exceptionally high prices of 2005 were driven by unpredictable causes amounting to force majeure (see recital 26).

(68) Since the event generating the alleged aid was a higher-than-forecast increase in wholesale prices, the alleged advantage could not be imputable to any legal act. Even assuming that this advantage had existed, it would have been caused by circumstances unrelated to the State's intentions. The existence of force majeure, according to Spain, breaks the causal link between the administrative decision setting the level of the tariffs and the competitive advantage giving rise to State aid. Even assuming that the objective condition of the causal link was met, the subjective condition of intention (imputability) on the part of the State would be absent.

NO STATE RESOURCES

(69) Spain submits that the tariffs did not involve public funds. First, Spain claims in this respect that the surcharge is not a 'charge' within the meaning of the case-law of the European Court of Justice on parafiscal levies, because it is not collected by the State and does not correspond to a fiscal levy. According to Spain, the surcharge is an integral part of the tariff and is tariff-like in nature. The tariff is thus a private price.

(70) Second, the funds were not collected by the State and were not paid into a fund designated by the State. The tariffs were collected by distributors, not by the State, and therefore they were private prices which ensured the equitable remuneration of the players (as laid down in the LSE). They were neither taxes nor public prices. The State did not remunerate anything, since it was the system that provided remuneration by virtue of market forces for non-regulated activities and by virtue of access tariffs set by the State as regards regulated activities. Since in such a system there is no burden for the State, no State resources would be involved, according to the *Sloman Neptune* case-law ([20]). Furthermore, these funds never flowed into the State coffers, were not mentioned in budgetary laws, were not subject to verification by the Court of Auditors, and could not be recovered from debtors by means of administrative recovery procedures. Debts vis-à-vis the electricity system were not subject to the interest rate applicable to debts owed to the State.

(71) Spain insists that these funds were handled by the Spanish regulator, the CNE, acting as a mere accounting intermediary. The Spanish authorities point out that in its 2001 decision on the Spanish stranded costs (SA NN 49/99) the Commission had already established that 'the transit of funds through the CNE is of an essentially accounting nature. The funds transferred to the account in the name of the CNE never became the property of this body, and were immediately paid to the beneficiaries according to a predetermined amount which the CNE is unable to modify in any way'. On the basis of this consideration, the Commission came to the conclusion that 'it [was] not in a position to determine whether the proceeds of the levy established within the framework of the Stranded Costs scheme constitute State resources'.

(72) Third, Spain contests the Commission's conclusion that regulated sales by distributors were financed via a 'special tax' payable by all Spanish electricity end-users. According to Spain, distributors were not 'financed by the State', but received a reasonable and equitable remuneration for the performance of a statutory task which they were obliged to discharge.

(73) Besides, in selling electricity at regulated tariffs and purchasing it on the 'pool' from generators, distributors generated a deficit (which was covered by the prefinancing mechanism laid down by Royal Decree-Law 5/2005) but it was the generators, not the distributors, which would receive the revenue from the surcharge added to the tariff.

NO ADVANTAGE

(74) Spain disagrees with the Commission's preliminary conclusion that regulated tariffs conferred an economic advantage on distributors.

(75) As regards distributors, Spain contests the Commission's conclusion that the tariff systems guaranteed a minimum profit margin to distributors. Spain submits that supply at regulated tariffs by distributors was justified by the need to guarantee a service of general interest, and that the remuneration of regulated activities was intended exclusively to cover the costs of discharging the obligations linked to these activities.

([20]) Judgment of the Court of Justice in Joined Cases C-72/91 and C-73/91, paragraph 21: 'The system at issue does not seek, through its object and general structure, to create an advantage which would constitute an additional burden for the State'.

NO IMPACT ON COMPETITION AND TRADE BETWEEN MEMBER STATES

(76) According to the Spanish authorities, the regulatory provisions applicable to supply at regulated tariffs did not curtail the freedom of establishment of electricity suppliers and there was no preferential treatment of Spanish suppliers compared with suppliers from other Member States.

(77) In 2005 the Iberian Peninsula had such a low interconnection capacity that there was no real internal market for energy. The Spanish authorities take the view that, given this situation of isolation, it would be disproportionate to conclude — as the Commission does — that the tariff had an impact on competition and trade between Member States.

(78) The Spanish authorities maintain that electricity was not exported outside Spain and distributors operating in Spain could not sell Spanish energy outside the national territory. On the other hand, any eligible company could take part in the distribution business on an equal footing with Spanish undertakings and enjoy the same legal and economic treatment.

(79) Spain takes the view that suppliers, by contrast, exercised a free, non-regulated activity. They faced the corresponding risks and advantages. Taking these risks meant accepting that, under certain unpredictable conditions, their retail activity might not be profitable. Profitability would nevertheless return as soon as the tariffs allowed or the exceptional circumstances ceased to exist.

ANALYSIS IN THE LIGHT OF THE *ALTMARK* CASE-LAW

(80) Spain submits that in 2005 the existence of regulated tariffs was not contrary to Union law, given that the deadline for opening up the market to all consumers, including households, was 1 July 2007.

(81) According to Spain, the coverage of the costs incurred by distributors in supplying at regulated tariffs complied with the four criteria of the *Altmark* case-law and therefore this intervention does not fall within the scope of State aid.

(82) First, the supply of electricity is a service of general interest and the State must intervene to prevent abuses of dominant positions arising from the existence of a single network (natural monopoly). Therefore, companies which carry on regulated activities discharge public service obligations.

(83) Second, the parameters for setting the tariffs were set in an objective and transparent manner. The remuneration of regulated activities was objective and transparent. Other EU undertakings were also able to enter the distribution market.

(84) Third, payments for regulated activities covered only the costs of discharging the public service obligation. Distributors could obtain repayment only of the costs related to regulated activities.

(85) Fourth, the complex regulatory framework for setting the tariffs and the settlement procedure demonstrate that the tariff system was based on a thorough analysis of the costs and revenues of the system, and an analysis of electricity demand.

(86) On this basis Spain concludes that the tariff system did not constitute State aid because it complied with the *Altmark* case-law.

ASSESSMENT OF THE MEASURE

(87) The scope of this Decision is confined to the supply of electricity to large and medium-sized undertakings by distributors at regulated tariffs, and does not cover the other activities carried on by distributors and pertaining to pure distribution. The latter are entirely independent, both legally and financially, from the activity of selling at regulated tariffs, and in any event, fall outside the scope of the opening decision, which raised doubts only about the compatibility with the internal market of the alleged advantage granted to distributors as a result of the low level of the regulated tariffs and the measures taken to compensate and refund the deficit in 2005.

EXISTENCE OF STATE AID PURSUANT TO ARTICLE 107(1) TFEU

(88) A measure constitutes State aid within the meaning of Article 107(1) TFEU if all of the following conditions are fulfilled: the measure (a) confers an economic advantage on the beneficiary; (b) is granted by the State or through State resources; (c) is selective; (d) has an impact on intra-Community trade and is liable to distort competition within the Union. Since these conditions must be met cumulatively, the Commission will confine its assessment to the existence of an economic advantage conferred on the beneficiaries.

Existence of an economic advantage

(89) Undertakings are favoured within the meaning of Article 107(1) TFEU if they obtain an economic advantage which they would not otherwise obtain under market conditions. In this respect, the Court of Justice of the European Union has held that, in specific cases, fees for services provided in return for obligations which Member States impose, which do not exceed annual uncovered costs and which are intended to ensure that the undertakings concerned do not make losses, do not constitute aid within the meaning of Article 107(1) TFEU but rather consideration for the services performed by the undertakings concerned ([21]).

(90) More specifically in the electricity sector, nor has the Commission taken the view, in its extensive decision-making practice in application of Article 107(1) and (3)(c) TFEU regarding the obligations imposed on distributors to purchase electricity from certain energy sources at a price above the market price, that compensation covering the difference between purchase costs and market prices entailed an economic advantage benefiting distributors. In those cases, the operators in question were acting under regulatory obligations as mere intermediaries in the electricity system and were compensated for their costs, without this compensation being held to entail an economic advantage, whereas, arguably, the legislation could have merely imposed a purchase obligation without cost compensation.

(91) The same is true, more specifically in the area of the supply of electricity at regulated tariffs, as regards compensation intended to finance differences between revenues and wholesale electricity procurement costs at regulated tariffs requested by eligible consumers ([22]). It follows that compensation of the electricity purchase costs of distributors in the electricity sector does not necessarily imply an economic advantage within the meaning of Article 107(1) TFEU. The alleged compensation to Spanish distributors for the costs of supply at regulated tariffs must be examined in the light of these precedents.

(92) The preliminary conclusion of the Commission decision opening the formal investigation was that there was an economic advantage over market conditions in favour of Spanish distributors on the basis of two arguments. First, distributors allegedly obtained a guaranteed profit margin on the activity of supply at the regulated tariff. Second, by encouraging users to switch to the regulated market served by distributors, the tariffs allegedly increased the distributors' income. These two arguments can be subsumed into the single proposition that distributors' profit increased in proportion to their supplies of electricity at regulated tariffs in 2005.

(93) The available description of the Spanish electricity system and the information supplied in the course of the proceedings, which is reflected in recitals 16, 19, 20, 57 and 58, does not lend support to this proposition. Whereas, for pure distribution, the remuneration received by distributors in 2005 included a profit margin, for supply at the regulated tariff distributors received only a reimbursement ('recognition') of costs without any profit margin. Similarly, the distributors' remuneration in respect of their pure distribution activities was independent of the number of customers on regulated tariffs and the quantity of electricity sold at the tariff, and therefore their revenue would not have increased if they had served a larger number of customers on regulated tariffs.

(94) It follows that the information gathered during the proceedings does not support the assertion that sales of electricity at regulated tariffs increased the profits of Spanish distributors in 2005 because they enjoyed a guaranteed profit margin.

(95) On the question whether the recognition of supply costs and compensation thereof provided distributors with an economic advantage which they would otherwise not have obtained under market conditions, it must be stressed that the recognition of the costs incurred in the form of collection rights granted to the five undertakings

([21]) Judgment of the Court of Justice in Case C-240/83 *Procureur de la République* v *Association de défense des brûleurs d'huiles usagées (ADBHU)* [1985] ECR 531, especially pp. 543-544 and paragraph 18.

([22]) Commission Decision of 12 June 2012 on State aid SA.21918 (C 17/07) (ex NN 17/07) implemented by France — Regulated electricity tariffs in France (OJ C 398, 22.12.2012, p. 10), especially paragraphs 30 to 37 and 134 to 137.

designated by Article 24 of Royal Decree-Law 5/2005, namely Iberdrola, SA, Unión Eléctrica Fenosa, SA, Hidroeléctrica del Cantábrico SA, Endesa, SA and Elcogás, SA. was not remuneration for their distribution activity. As already explained in recitals 29 and 30, although Elcogás SA, which did not own any subsidiaries, was not operating in the distribution sector in 2005 (or in later years), the undertakings in questions were designated by virtue of their existing right to receive stranded costs, possibly taking into account their generation activity, but not their distribution activity at regulated tariffs.

(96) Second, even assuming that the collection rights that reflect the obligation for the five undertakings referred to above to prefinance the deficit in the electricity system for 2005 could be interpreted as compensation for the costs of distribution for the four undertakings that operated in the distribution sector at regulated tariffs, account should be taken of the actual conditions under which distributors were obliged to carry on this fully regulated activity. As already described in recitals 54-55, distributors could make neither profits nor losses, could not choose how to procure electricity, could not select their customers, could not determine the sales price or offer any additional services yielding a profit margin. The distributors themselves, and also the vertically integrated groups to which they belonged, had no economic interest, whether direct or indirect, in engaging in the supply of electricity at the regulated tariff. A vertically integrated group would rather have an interest in serving end-users on free-market terms, as its supply division would have made a profit on such sales, which would not be the case if users were supplied by the group's distributor at regulated tariffs.

(97) It follows that a comparison with the terms of supply under free market conditions disregards the different legal and factual situation between free-market suppliers and distributors supplying at regulated tariffs. Whereas the State can, in principle, impose purchase and selling prices and other trading conditions on distributors in an electricity system, this does not mean that the compensation of costs incurred by the latter confers on them an economic advantage which they would not otherwise obtain under market conditions. Indeed, tariff regulation further backed with an obligation to supply leaves no freedom to decide on the most fundamental drivers of supply, such as prices and output. It is not only under hypothetical market conditions, i.e. in the absence of regulatory constraints regarding such fundamental parameters, that distributors would be able to charge a much higher, cost-covering tariff to end-customers. Moreover, and even more importantly, in the Spanish electricity system in 2005, as in every electricity system, the distributor — or the operator of the high-voltage network for energy-intensive consumers — is simply an intermediary which physically connects the user to the network, as a necessary condition for the supply of electricity. Given the absence of a hypothetical alternative distribution network in Spain in 2005, the distributors in question were designated and supplied both the free market and the regulated market. Distributors play an essential role because they make the supply of electricity possible, regardless of the specific regulatory arrangements or policy, or of whether the competitive conditions governing supply are based on market mechanisms or regulation.

(98) In a regulated tariff system, such as the Spanish system in 2005, in the ordinary course of business, a shortfall of resources in the system's overall accounts one year would usually be recouped the following year through higher tariffs and/or access charges for end-users, whereas cost decreases might result in a surplus, allowing lower tariffs or charges thereafter. However, in the absence of the earmarking of specific categories of revenues to costs, the increase (decrease) in revenues and/or costs may not result in a corresponding deficit or surplus benefiting distributors. For instance, as shown in recital 27, graph 1, whereas the energy prices implicit in regulated tariffs were generally below wholesale market prices in most months of 2005, the opposite is true in the period from November 2006 to December 2007, without this being reflected in increased profits for distributors' activity of supply at regulated tariffs. This is consistent with the regulatory set-up of the system, whereby distributors would not bear the costs of imbalances in the system's costs and revenues as a whole or in part, just as they would never make a profit on this activity, and any surplus arising from sales of electricity at regulated tariffs would be used to cover other system costs.

(99) Distributors acted as financial intermediaries of the electricity system in that they centralised all the financial flows, both incoming (regulated revenues from tariffs and access charges) and outgoing (all the general costs of the system). The electricity system's regulated revenues and costs in 2005, as described in recitals 19, 20 and 28, include a wide variety of market-driven and policy-driven regulated costs, such as costs of electricity purchases, including from renewable sources, additional electricity generation costs in the Spanish islands and transport and distribution costs, etc., without the earmarking of specific revenues to certain costs. Regulated revenues never became the property of distributors, with the exception of the remuneration for pure distribution, which was retained by them after deduction of all other system costs.

(100) Any deficit in the accounts such as the one that occurred in 2005, regardless of its causes, would therefore appear in the distributors' accounts, without them having any leeway to decide either on the level of regulated revenues and costs or on the financing of specific costs with specific revenues. Indeed, as is apparent from the figures cited in recital 28, the transport and distribution costs of the electricity system in 2005 stood at EUR 4 410 million, consistent with the same cost categories in 2004 and 2006 respectively. So the level of the distributors' costs bears no relation to the amount of the deficit in 2005.

(101) Therefore, the classification of the 2005 deficit as 'distributors' losses' does not seem justified because the deficit is not imputable to action on the part of distributors, but rather to the regulatory provisions establishing the right of end-users to be supplied at regulated tariffs and, to a certain extent, to the regulatory and policy choices made to support electricity production from renewable sources and cogeneration, for instance. It follows that the financing of the deficit in the electricity system's accounts through the mechanisms described in recitals 29 to 32 is not a way to absorb the distributors' specific losses but rather the system's overall losses. Indeed, without the recognition of the EUR 3 811 million deficit in 2005 and its prefinancing by the five major electricity utilities, it would not have been possible to pay the system's transmission and distribution costs incurred for the benefit of all users, whether in the regulated or free market.

(102) The formal investigation does not establish the existence of any other elements of advantage in favour of distributors. Distributors passed on the entire benefit of low regulated tariffs to end-users, did not make any profit on sales and did not draw any benefit from users returning to the regulated market. It follows that, from a financial perspective, the position of distributors in Spain was fully comparable with that of a system intermediary. In that respect, the recognition of the costs of supplying at regulated electricity tariffs under the Spanish electricity system in 2005 is, in its principle, no different from the compensation of the costs of purchase of electricity which the Commission has not classified as State aid within the meaning of Article 107(1) TFEU, both as regards electricity from certain sources (recital 90) and wholesale electricity for supply at regulated tariffs (recital 91).

(103) Even though the opening decision does not target the vertically integrated entities to which distributors belong, with accounting and partial legal unbundling, with a view to addressing Céntrica's representations, the Commission has also assessed whether such entities may have reaped indirect advantages liable to constitute State aid. Céntrica notably submitted that integrated entities active in electricity retail sales in the free market (through a supply division) were able to avoid losses by encouraging users to switch to their own distribution division. It also maintained that there was an incentive for a generator belonging to an integrated entity to keep wholesale prices high, considering that the distribution division of the integrated entity (selling at the regulated tariff) would be shielded from losses.

(104) The Commission has not been able to establish the presence of an economic advantage arising from electricity users choosing distributors rather than suppliers. Economically, the switch from supply to distribution did not generate profits but merely avoided losses for the supply divisions of the four vertically integrated groups, Iberdrola, SA, Unión Eléctrica Fenosa, SA, Hidroeléctrica del Cantábrico SA and Endesa, SA; for its part, Elcogás operated only in the electricity generation sector. However, this cannot amount to an advantage for the other four companies in question, as the supply divisions could have avoided these losses in any event by simply terminating the supply contracts. For the supply divisions, therefore, the system did not entail an advantage but a penalty: they lost customers. The system was financially neutral for distributors too (for the reasons explained above). The generators, for their part, would have sold their electricity anyway on the wholesale market.

(105) With regard to the generators' alleged incentive to keep wholesale prices high, it should be noted that, although the market environment created by the Spanish authorities might arguably have created an incentive for generators to raise prices, the tariffs per se did not lead to higher wholesale prices. Actually raising prices would have required complex strategies and anti-competitive behaviour on the part of generators. No direct and discernible direct causal link between the tariffs and a possible artificial increase in wholesale prices is established; it remains an unproven theoretical hypothesis.

(106) The Commission has also considered the possibility that the system, by squeezing free-market competitors out of the electricity market, might have conferred an advantage on incumbent groups by increasing and 'remodelling' their market share so that it tended to coincide, broadly, with the size of each group's distribution network in the case of the four vertically integrated groups. This hypothetical advantage could not be established either, for the following reasons:

— First, it was not always possible to 'move customers around' within the same group. A customer served by Endesa's supply division in an area where the local distributor was Iberdrola could not switch to Endesa's distribution division, but only to Iberdrola's. Moreover, this switch to the regulated market resulted in a net cost to the integrated entities, since it increased the deficit that they had to finance on unfavourable terms.

— Second, the groups did not make any profit on sales made by distributors. Therefore, the potential benefit stemming from a higher market share could not translate into profits in 2005 (the year covered by the investigation) but only in later years, when the free market was viable again. For this advantage to materialise, users served by a group's distributor would have had to switch back to the group's supply division. However, at that stage, a client contemplating a new change of supplier would have been free to select among all the suppliers active in the Spanish market. Therefore, the Commission has not established the presence of a concrete advantage linked to the mere existence of a higher market share held by the groups in the period covered by the investigation.

— On the contrary, integrated groups were subjected to an objective penalty: the obligation to finance the deficit on terms which were non-remunerative, since the interest rate yielded by the collection rights was lower than an adequate market rate and, thus, the securitisation of the collection rights was carried out with a remuneration arguably lower than that obtained if a market rate had been applied.

(107) On the basis of the foregoing, the Commission has concluded that, as far as supply to business users is concerned, the regulatory system put in place by Spain in 2005 did not confer an economic advantage, whether direct or indirect, either on distributors or on the integrated groups to which they belonged.

(108) Finally, with regard to Céntrica's allegation that the system discriminated between distributors and free-market suppliers, the Commission points out that discrimination may occur when persons who are in the same factual and legal position are treated differently or, vice versa, when the same treatment is applied to persons who are in a different factual and legal position.

(109) First, the allegation is clearly without foundation in the case of Elcogás SA, which was granted collection rights even though it did not operate in the distribution sector. Second, it has not been demonstrated that the other four designated companies, Iberdrola, SA, Unión Eléctrica Fenosa, SA, Hidroeléctrica del Cantábrico, SA, and Endesa, SA, were compensated because of their activity as distributors supplying electricity at regulated tariffs, as already pointed out in recital 30. Third, and in any event, in the Spanish electricity system, distributors and free-market suppliers were not in the same factual and legal position. The obligation of supplying electricity at regulated tariffs was carried out under regulatory constraints which made distributors act as mere financial and supply intermediaries that implemented legal provisions, whereas supply on free-market terms was a fully liberalised activity. Therefore, the difference in treatment contested by Céntrica cannot amount to discrimination, notwithstanding the fact that the level of regulated tariffs may have been detrimental to the liberalisation process. However, this was not the consequence of the granting of unlawful State aid to distributors.

CONCLUSION

(110) The doubts expressed by the Commission in its opening decision were allayed in the course of the formal investigation. The Commission is satisfied that the recognition by Spain of the costs borne by electricity distributors in respect of their activity of supplying electricity at regulated tariffs to medium-sized and large business users did not confer an economic advantage on distributors within the meaning of Article 107(1) TFEU.

(111) Since the criteria set out in Article 107(1) TFEU are cumulative, there is no need to examine whether the remaining criteria are fulfilled. The Commission therefore concludes that the measure does not constitute State aid in favour of electricity distributors. This conclusion refers to the situation and period of time covered by the complaint, and is without prejudice to the possibility of the Commission examining measures taken by Spain since 2005,

HAS ADOPTED THIS DECISION:

Article 1

The recognition by the Kingdom of Spain of the costs incurred by distributors in supplying electricity to medium-sized and large business end-users at regulated tariffs during 2005 in the form of the collection rights of Iberdrola, SA, Unión Eléctrica Fenosa, SA, Hidroeléctrica del Cantábrico, SA, Endesa, SA and Elcogás, SA established in Royal Decree-Law 5/2005 does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 4 February 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION IMPLEMENTING DECISION

of 9 July 2014

on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD)

(notified under document C(2014) 4479)

(only the Czech, Danish, Dutch, English, Finnish, French, German, Hungarian, Italian, Latvian, Polish, Portuguese, Slovenian, Spanish and Swedish texts are authentic)

(2014/458/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [1], and in particular Article 7(4) thereof,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [2], and in particular Article 31 thereof,

Having consulted the Committee on the Agricultural Funds,

Whereas:

(1) Under Article 7(4) of Regulation (EC) No 1258/1999, and Article 31 of Regulation (EC) No 1290/2005, the Commission is to carry out the necessary verifications, communicate to the Member States the results of these verifications, take note of the comments of the Member States, initiate a bilateral discussion so that an agreement may be reached with the Member States in question, and formally communicate its conclusions to them.

(2) The Member States have had an opportunity to request the launch of a conciliation procedure. That opportunity has been used in some cases and the reports issued on the outcome have been examined by the Commission.

(3) Under Regulation (EC) No 1258/1999 and Regulation (EC) No 1290/2005, only agricultural expenditure which has been incurred in a way that has not infringed European Union rules may be financed.

(4) In the light of the verifications carried out, the outcome of the bilateral discussions and the conciliation procedures, part of the expenditure declared by the Member States does not fulfil this requirement and cannot, therefore, be financed under the EAGGF Guarantee Section, the EAGF and the EAFRD.

(5) The amounts that are not recognised as being chargeable to the EAGGF Guarantee Section, the EAGF and the EAFRD should be indicated. Those amounts do not relate to expenditure incurred more than twenty-four months before the Commission's written notification of the results of the verifications to the Member States.

(6) As regards the cases covered by this decision, the assessment of the amounts to be excluded on grounds of non-compliance with European Union rules was notified by the Commission to the Member States in a summary report on the subject.

(7) This Decision is without prejudice to any financial conclusions that the Commission may draw from the judgments of the Court of Justice in cases pending on 15 March 2014 and relating to its content,

[1] OJ L 160, 26 6 1999, p. 103.
[2] OJ L 209, 11 8 2005, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The expenditure itemised in the Annex hereto that has been incurred by the Member States' accredited paying agencies and declared under the EAGGF Guarantee Section, under the EAGF or under the EAFRD shall be excluded from European Union financing because it does not comply with European Union rules.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, Hungary, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 9 July 2014.

For the Commission
Dacian CIOLOȘ
Member of the Commission

ANNEX

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
BUDGET ITEM: 6701									
BE	Other Direct Aid — Bovines	2010	Payments for ineligible animals and incorrect application of sanctions	ONE– OFF		EUR	– 133 335,00	0,00	– 133 335,00
BE	Other Direct Aid — Bovines	2011	Payments for ineligible animals and incorrect application of sanctions	ONE– OFF		EUR	– 62 275,00	0,00	– 62 275,00
BE	Other Direct Aid — Bovines	2012	Payments for ineligible animals and incorrect application of sanctions	ONE– OFF		EUR	– 110 550,00	0,00	– 110 550,00
					TOTAL BE	**EUR**	**– 306 160,00**	**0,00**	**– 306 160,00**
CZ	Other Direct Aid — Article 68– 72 of Reg 73/2009	2011	Undue payments and non– application of reductions/exclusions for animals with irregularities	ONE– OFF		EUR	– 4 195,16	0,00	– 4 195,16
CZ	Other Direct Aid — Article 68– 72 of Reg 73/2009	2012	Undue payments and non– application of reductions/exclusions for animals with irregularities	ONE– OFF		EUR	– 68,74	0,00	– 68,74
					TOTAL CZ	**EUR**	**– 4 263,90**	**0,00**	**– 4 263,90**
DE	Decoupled Direct Aids	2008	lack of extrapolation in case of overdeclaration below 3 %	ONE– OFF		EUR	– 106 694,14	0,00	– 106 694,14
DE	Decoupled Direct Aids	2009	lack of extrapolation in case of overdeclaration below 3 %	ONE– OFF		EUR	– 104 776,14	0,00	– 104 776,14
DE	Decoupled Direct Aids	2009	deficiencies in the measurement tolerance	ONE– OFF		EUR	– 56 327,48	0,00	– 56 327,48

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
DE	Decoupled Direct Aids	2010	lack of extrapolation in case of overdeclaration below 3 %	ONE– OFF		EUR	– 72 254,33	0,00	– 72 254,33
DE	Decoupled Direct Aids	2010	deficiencies in the measurement tolerance	ONE– OFF		EUR	– 56 781,05	0,00	– 56 781,05
					TOTAL DE	**EUR**	**– 396 833,14**	**0,00**	**– 396 833,14**
DK	Decoupled Direct Aids	2011	On– the– spot check weaknesses	FLAT RATE	2,00 %	EUR	– 1 529 693,10	0,00	– 1 529 693,10
DK	Decoupled Direct Aids	2011	Retroactive recoveries and incorrect treatment of payment entitlements	ONE– OFF		EUR	– 69 494,00	0,00	– 69 494,00
DK	Decoupled Direct Aids	2012	On– the– spot check weaknesses	FLAT RATE	2,00 %	EUR	– 1 489 167,20	0,00	– 1 489 167,20
DK	Decoupled Direct Aids	2012	Retroactive recoveries and incorrect treatment of payment entitlements	ONE– OFF		EUR	– 3 654,00	0,00	– 3 654,00
					TOTAL DK	**EUR**	**– 3 092 008,30**	**0,00**	**– 3 092 008,30**
ES	Fishery Measures	2004	Not conclusive administrative controls, deficiencies in on– the– spot controls and external audit	FLAT RATE	5,00 %	EUR	– 185 468,74	0,00	– 185 468,74
ES	Fishery Measures	2005	Not conclusive administrative controls, deficiencies in on– the– spot controls and external audit	FLAT RATE	5,00 %	EUR	– 253 547,34	0,00	– 253 547,34
ES	Fishery Measures	2006	Not conclusive administrative controls, deficiencies in on– the– spot controls and external audit	FLAT RATE	2,00 %	EUR	– 117 708,85	0,00	– 117 708,85

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
ES	Decoupled Direct Aids	2010	Weaknesses in the administrative controls, on– the– spot checks and recoveries	ONE– OFF		EUR	– 53 541,40	0,00	– 53 541,40
ES	Decoupled Direct Aids	2011	Weaknesses in the administrative controls, on– the– spot checks and recoveries	ONE– OFF		EUR	– 368,20	0,00	– 368,20
ES	Cross Compliance	2009	Leniency of the sanctioning system, CY2008	ONE– OFF		EUR	– 191 873,53	– 383,75	– 191 489,78
ES	Cross Compliance	2009	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	– 790 454,36	– 218,52	– 790 235,84
ES	Cross Compliance	2009	Partial and ineffective check of many SMRs, CY2010	FLAT RATE	2,00 %	EUR	– 24 049,41	0,00	– 24 049,41
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	– 638,55	0,00	– 638,55
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2009	FLAT RATE	2,00 %	EUR	– 781 951,76	– 1 002,96	– 780 948,80
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2010	FLAT RATE	2,00 %	EUR	– 30,92	0,00	– 30,92
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	– 117,27	0,00	– 117,27
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2009	FLAT RATE	2,00 %	EUR	– 570,44	0,00	– 570,44
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2010	FLAT RATE	2,00 %	EUR	– 824 194,02	0,00	– 824 194,02
					TOTAL ES	**EUR**	**– 3 224 514,79**	**– 1 605,23**	**– 3 222 909,56**

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
FI	Decoupled Direct Aids	2010	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 289 992,10	0,00	– 289 992,10
FI	Decoupled Direct Aids	2011	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 961 208,71	0,00	– 961 208,71
FI	Decoupled Direct Aids	2012	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 1 384 610,18	0,00	– 1 384 610,18
					TOTAL FI	**EUR**	**– 2 635 810,99**	**0,00**	**– 2 635 810,99**
FR	Milk — Schoolmilk	2009	late on– the– spot control for School milk scheme (school year 2008– 2009)	FLAT RATE	5,00 %	EUR	– 290 282,58	0,00	– 290 282,58
FR	Milk — Schoolmilk	2010	late on– the– spot control for School milk scheme (school year 2008– 2009)	FLAT RATE	5,00 %	EUR	– 351 047,94	0,00	– 351 047,94
FR	Milk — Schoolmilk	2011	late on– the– spot control for School milk scheme (school year 2008– 2009)	FLAT RATE	5,00 %	EUR	– 1 610,58	0,00	– 1 610,58
FR	Milk — Schoolmilk	2012	late on– the– spot control for School milk scheme (school year 2008– 2009)	FLAT RATE	5,00 %	EUR	– 474,30	0,00	– 474,30
FR	Entitlements	2010	irregular allocations of the national reserve and consolidation of the forage areas	FLAT RATE	10,00%	EUR	– 5 938 076,49	0,00	– 5 938 076,49
FR	Entitlements	2010	irregular allocations of the national reserve and consolidation of the forage areas	ONE– OFF		EUR	– 2 584 040,40	0,00	– 2 584 040,40
FR	Entitlements	2011	irregular allocations of the national reserve and consolidation of the forage areas	FLAT RATE	10,00%	EUR	– 3 176 345,75	0,00	– 3 176 345,75

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
FR	Entitlements	2011	irregular allocations of the national reserve and consolidation of the forage areas	ONE– OFF		EUR	– 2 584 032,47	0,00	– 2 584 032,47
FR	Entitlements	2012	irregular allocations of the national reserve and consolidation of the forage areas	FLAT RATE	10,00%	EUR	– 3 176 345,75	0,00	– 3 176 345,75
FR	Entitlements	2012	irregular allocations of the national reserve and consolidation of the forage areas	ONE– OFF		EUR	– 2 584 031,62	0,00	– 2 584 031,62
					TOTAL FR	**EUR**	**– 20 686 287,88**	**0,00**	**– 20 686 287,88**
GB	Decoupled Direct Aids	2011	Weaknesses in LPIS and on– the– spot checks	ONE– OFF		EUR	– 2 563 473,00	0,00	– 2 563 473,00
					TOTAL GB	**EUR**	**– 2 563 473,00**	**0,00**	**– 2 563 473,00**
IT	Fruit and Vegetables — Tomato Processing	2008	Weaknesses in administrative and accounting checks; No reconciling records held by producer organisations and processors with the accounts required under national law	FLAT RATE	5,00 %	EUR	– 2 332 156,30	– 932 862,52	– 1 399 293,78
IT	Fruit and Vegetables — Tomato Processing	2010	Weaknesses in administrative and accounting checks; No reconciling records held by producer organisations and processors with the accounts required under national law	FLAT RATE	5,00 %	EUR	720,02	0,00	720,02
IT	Irregularities	2012	Lack of information on the undertaken recovery actions	ONE– OFF		EUR	– 2 362 005,73	0,00	– 2 362 005,73

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
IT	Irregularities	2012	Negligence in the recovery procedure	ONE– OFF		EUR	– 1 283 164,95	0,00	– 1 283 164,95
IT	Irregularities	2012	Non– reporting in Annex III	ONE– OFF		EUR	– 1 460 976,88	0,00	– 1 460 976,88
					TOTAL IT	**EUR**	**– 7 437 583,84**	**– 932 862,52**	**– 6 504 721,32**
LV	Decoupled Direct Aids	2011	Weaknesses following the obvious errors and in the on– the– spot checks with errors below 3 %	ONE– OFF		EUR	– 15 324,30	0,00	– 15 324,30
LV	Decoupled Direct Aids	2012	Weaknesses following the obvious errors and in the on– the– spot checks with errors below 3 %	ONE– OFF		EUR	– 3 399,21	0,00	– 3 399,21
LV	Cross Compliance	2009	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	– 254 163,51	0,00	– 254 163,51
LV	Cross Compliance	2010	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	– 181 777,79	0,00	– 181 777,79
LV	Cross Compliance	2010	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	– 179,81	0,00	– 179,81
LV	Cross Compliance	2011	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	– 100,05	0,00	– 100,05
LV	Cross Compliance	2011	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	14,86	0,00	14,86

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
LV	Cross Compliance	2011	Deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2010	ONE– OFF		EUR	– 2 230,28	0,00	– 2 230,28
LV	Cross Compliance	2012	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	– 0,19	0,00	– 0,19
					TOTAL LV	**EUR**	**– 457 160,28**	**0,00**	**– 457 160,28**
SE	Decoupled Direct Aids	2010	Weaknesses in LPIS, CY 2009	ONE– OFF		EUR	– 1 117 986,60	0,00	– 1 117 986,60
SE	Decoupled Direct Aids	2011	Weaknesses in LPIS, CY 2010	ONE– OFF		EUR	– 15 591,00	0,00	– 15 591,00
					TOTAL SE	**EUR**	**– 1 133 577,60**	**0,00**	**– 1 133 577,60**
SI	Decoupled Direct Aids	2010	Weakness in verification of small parcels to respect the definition of agricultural parcels	FLAT RATE	5,00 %	EUR	– 85 780,08	– 2 203,29	– 83 576,79
SI	Decoupled Direct Aids	2010	Non– extrapolation of control result in case of difference below 3 %	ONE– OFF		EUR	– 1 771,90	– 10,97	– 1 760,93
SI	Decoupled Direct Aids	2011	Weakness in verification of small parcels to respect the definition of agricultural parcels	FLAT RATE	5,00 %	EUR	– 115 956,46	0,00	– 115 956,46
SI	Decoupled Direct Aids	2011	Non– extrapolation of control result in case of difference below 3 %	ONE– OFF		EUR	– 6 376,67	– 7,62	– 6 369,05

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
SI	Decoupled Direct Aids	2012	Weakness in verification of small parcels to respect the definition of agricultural parcels	FLAT RATE	5,00 %	EUR	– 131 269,23	0,00	– 131 269,23
SI	Decoupled Direct Aids	2012	Non– extrapolation of control result in case of difference below 3 %	ONE– OFF		EUR	– 6 506,76	– 7,78	– 6 498,98
					TOTAL SI	**EUR**	**– 347 661,10**	**– 2 229,66**	**– 345 431,44**
					TOTAL 6701	**EUR**	**– 42 285 334,82**	**– 936 697,41**	**– 41 348 637,41**
BUDGET ITEM: 6711									
DK	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2011	On– the– spot check weaknesses	FLAT RATE	2,00 %	EUR	– 138 216,28	0,00	– 138 216,28
DK	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2012	On– the– spot check weaknesses	FLAT RATE	2,00 %	EUR	– 114 814,02	0,00	– 114 814,02
					TOTAL DK	**EUR**	**– 253 030,30**	**0,00**	**– 253 030,30**
ES	Cross Compliance	2009	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	– 25 382,59	0,00	– 25 382,59
ES	Cross Compliance	2009	Partial and ineffective check of many SMRs, CY2009	FLAT RATE	2,00 %	EUR	– 1 341,72	0,00	– 1 341,72
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	18,14	0,00	18,14
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2009	FLAT RATE	2,00 %	EUR	– 34 511,04	0,00	– 34 511,04

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
ES	Cross Compliance	2010	Partial and ineffective check of many SMRs, CY2010	FLAT RATE	2,00 %	EUR	– 317,20	0,00	– 317,20
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2008	FLAT RATE	2,00 %	EUR	– 36,65	0,00	– 36,65
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2009	FLAT RATE	2,00 %	EUR	– 69,84	0,00	– 69,84
ES	Cross Compliance	2011	Partial and ineffective check of many SMRs, CY2010	FLAT RATE	2,00 %	EUR	– 39 292,14	0,00	– 39 292,14
					TOTAL ES	**EUR**	**– 100 933,04**	**0,00**	**– 100 933,04**
FI	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2010	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 132 350,41	0,00	– 132 350,41
FI	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2011	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 449 325,95	0,00	– 449 325,95
FI	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2012	Weaknesses in LPIS, on– the– spot checks and calculation of reductions	ONE– OFF		EUR	– 558 189,31	0,00	– 558 189,31
					TOTAL FI	**EUR**	**– 1 139 865,67**	**0,00**	**– 1 139 865,67**
GB	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2011	Weaknesses in LPIS and on– the– spot checks	ONE– OFF		EUR	– 614 769,00	0,00	– 614 769,00
					TOTAL GB	**EUR**	**– 614 769,00**	**0,00**	**– 614 769,00**

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
HU	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2009	inadequate key control — support paid to ineligible beneficiaries (compulsory training not attended)	FLAT RATE	10,00%	EUR	– 131 333,83	0,00	– 131 333,83
HU	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2010	inadequate key control — support paid to ineligible beneficiaries (compulsory training not attended)	FLAT RATE	10,00%	EUR	– 149 391,75	0,00	– 149 391,75
HU	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2011	inadequate key control — support paid to ineligible beneficiaries (compulsory training not attended)	FLAT RATE	10,00%	EUR	– 42 101,65	0,00	– 42 101,65
HU	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2012	inadequate key control — support paid to ineligible beneficiaries (compulsory training not attended)	FLAT RATE	10,00%	EUR	– 60 885,25	0,00	– 60 885,25
					TOTAL HU	**EUR**	**– 383 712,48**	**0,00**	**– 383 712,48**
LV	Cross Compliance	2009	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	– 212 566,45	0,00	– 212 566,45
LV	Cross Compliance	2010	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	– 92 731,87	0,00	– 92 731,87
LV	Cross Compliance	2010	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	1 146,35	0,00	1 146,35
LV	Cross Compliance	2011	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	249,48	0,00	249,48

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
LV	Cross Compliance	2011	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	425,78	0,00	425,78
LV	Cross Compliance	2012	2 GAEC not defined, deficiencies in checks for SMR4 and tolerance applied for SMR7, CY 2009	FLAT RATE	2,00 %	EUR	106,22	0,00	106,22
LV	Cross Compliance	2012	4 GAEC not defined, incorrect calculation of sanction, CY 2008	FLAT RATE	5,00 %	EUR	183,03	0,00	183,03
					TOTAL LV	**EUR**	**– 303 187,46**	**0,00**	**– 303 187,46**
PL	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2009	Lack of selection criteria	FLAT RATE	5,00 %	EUR	– 16 237,92	0,00	– 16 237,92
PL	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2010	Lack of selection criteria	FLAT RATE	5,00 %	EUR	– 2 189 601,12	0,00	– 2 189 601,12
PL	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2011	Lack of selection criteria	FLAT RATE	5,00 %	EUR	– 2 290 180,19	0,00	– 2 290 180,19
PL	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2012	Lack of selection criteria	FLAT RATE	5,00 %	EUR	– 1 175 231,69	0,00	– 1 175 231,69
PL	Rural Development EAFRD Axis 1+3 — Investment orientated measures (2007–2013)	2013	Lack of selection criteria	FLAT RATE	5,00 %	EUR	– 172 311,40	0,00	– 172 311,40
					TOTAL PL	**EUR**	**– 5 843 562,32**	**0,00**	**– 5 843 562,32**

MS	Measure	Financial Year	Reason	Type	%	Currency	Amount	Deductions	Financial impact
PT	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2008	late on– the– spot checks	FLAT RATE	5,00 %	EUR	– 81 992,88	– 81 992,88	0,00
PT	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2009	late on– the– spot checks	FLAT RATE	5,00 %	EUR	– 3 374 908,49	– 2 911 944,67	– 462 963,82
PT	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2009	late on– the– spot checks	FLAT RATE	2,00 %	EUR	– 353 974,42	0,00	– 353 974,42
PT	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2010	late on– the– spot checks	FLAT RATE	2,00 %	EUR	– 213 427,37	0,00	– 213 427,37
PT	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2010	late on– the– spot checks	FLAT RATE	5,00 %	EUR	– 1 682 133,84	– 1 446 076,06	– 236 057,78
					TOTAL PT	**EUR**	**– 5 706 437,00**	**– 4 440 013,61**	**– 1 266 423,39**
SE	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2010	Weaknesses in LPIS, CY 2009	ONE– OFF		EUR	– 190 380,00	0,00	– 190 380,00
SE	Rural Development EAFRD Axis 2 (2007– 2013, area related measures)	2011	Weaknesses in LPIS, CY 2010	ONE– OFF		EUR	– 143 719,00	0,00	– 143 719,00
					TOTAL SE	**EUR**	**– 334 099,00**	**0,00**	**– 334 099,00**
					TOTAL 6711	**EUR**	**– 14 679 596,27**	**– 4 440 013,61**	**– 10 239 582,66**

COMMISSION DECISION

of 10 July 2014

concerning the placing on the market for essential use of biocidal products containing copper

(notified under document C(2014) 4611)

(Only the Croatian, English, Greek and Spanish texts are authentic)

(2014/459/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ([1]), and in particular Article 5(3) thereof,

Whereas:

(1) Pursuant to Article 4 of Commission Regulation (EC) No 1896/2000 ([2]), copper was notified for use in product-type 11, as defined in Annex V to Directive 98/8/EC of the European Parliament and of the Council ([3]).

(2) No complete dossier was submitted in support of the inclusion of copper in Annex I, IA or IB to Directive 98/8/EC within any of the relevant deadlines. Pursuant to Commission Decision 2012/78/EU ([4]) read in combination with Article 4(2) of Regulation (EC) No 1451/2007, copper is no longer to be placed on the market for use in product-type 11 as of 1 February 2013.

(3) Pursuant to Article 5 of Regulation (EC) No 1451/2007, Croatia, Spain, Ireland and Greece have submitted separate applications to the Commission for permission to allow the placing on the market of biocidal products containing copper for a number of uses.

(4) The Commission made the applications publicly available by electronic means.

(5) It follows from some of the applications that biocidal products containing copper are used to prevent biofouling in the main water inlet for offshore oil and gas platforms as well as other marine and coastal installations, where that use is essential to avoid blocking the inlet of water used for, inter alia, processing, drinking water and bathing water production, and fire fighting, since blocking that inlet could be fatal for the health and safety of the staff at the installation.

(6) Furthermore, it follows from some of the applications that biocidal products containing copper are used to prevent biofouling in the main water inlet of ships, where that use is essential to avoid blocking the inlet of water used throughout the entire pipework and waterway system of a ship. This includes the internals of all pipework, such as the fire-suppression system, vital to the safe operation of the ship.

(7) No comments were received during the public consultation on those applications. The Member States having submitted the applications have argued that, in their territories, it is necessary to have an adequate range of technically and economically feasible alternatives available to prevent biofouling in order to reduce the risk of blocking the main water inlet for offshore installations, other marine and coastal installations, or of ships.

(8) It therefore appears likely that not allowing the use of copper for preventing biofouling in the water inlet for offshore oil and gas platforms, other marine and coastal installations, or on ships, in those Member States would currently pose a serious risk for public health. In addition, the cost, logistical and practical feasibility of turning off or substituting current copper-based systems on ships may be prohibitive in many cases. If feasible, the substitution may take some time. The requested derogations for essential use are therefore currently necessary.

([1]) OJ L 325, 11.12.2007, p. 3.
([2]) Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ L 228, 8.9.2000, p. 6).
([3]) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).
([4]) Commission Decision 2012/78/EU of 9 February 2012 concerning the non-inclusion of certain substances in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 38, 11.2.2012, p. 48).

(9) However, unless a complete application for approval of copper for use in product-type 11 is submitted without undue delay, users of biocidal products containing copper should implement alternative methods for the prevention of biofouling. It is therefore appropriate to require that, in such a case, users in those Member States are actively informed in due time to allow them to ensure that those alternative methods are effective before the biocidal products containing copper have to be withdrawn from the market,

HAS ADOPTED THIS DECISION:

Article 1

1. Subject to the conditions provided for by Article 5(3) of Regulation (EC) No 1451/2007, Croatia, Spain, Ireland and Greece may allow the placing on the market of biocidal products containing copper (EC No 231-159-6; CAS No 7440-50-8) for the uses indicated in the Annex to this Decision.

2. If dossiers for the approval of copper for product-type 11 relevant to those uses have been submitted and validated as complete by the evaluating Member State by 31 December 2014 at the latest, Croatia, Spain, Ireland and Greece may continue allowing that placing on the market until the deadlines provided for in Article 89 of Regulation (EU) No 528/2012 of the European Parliament and of the Council [1] for cases where a substance is or is not approved.

3. In other cases than those referred to in paragraph 2, Croatia, Spain, Ireland and Greece may continue allowing that placing on the market until 31 December 2017 provided that those Member States ensure, as of 1 January 2015, that users are actively informed about the immediate need to effectively implement alternative methods for the relevant purposes.

Article 2

This Decision is addressed to Ireland, the Hellenic Republic, the Kingdom of Spain and the Republic of Croatia.

Done at Brussels, 10 July 2014.

For the Commission
Janez POTOČNIK
Member of the Commission

[1] Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

ANNEX

USES WHICH THE MEMBER STATES LISTED HEREUNDER MAY ALLOW, SUBJECT TO COMPLIANCE WITH THE CONDITIONS OF ARTICLE 1

No	Member State	Product-type 11
1	Croatia	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
2	Spain	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and coastal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
3	Ireland	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and coastal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
4	Greece	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.

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