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AYUDA ESTATAL — España

Ayuda estatal SA. 102404 (2022/NN) — España — Laudo arbitral a JGC Holdings Corporation (asunto CIADI n.º ARB/15/27)

Invitación a presentar observaciones en aplicación del artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea

(Texto pertinente a efectos del EEE)

(C/2026/4920)

Mediante carta de 4 de agosto de 2026, reproducida en la versión lingüística auténtica en las páginas siguientes al presente resumen, la Comisión notificó a España su decisión de incoar el procedimiento previsto en el artículo 108, apartado 2, del Tratado de Funcionamiento de la Unión Europea en relación con la medida antes citada.

Las partes interesadas podrán presentar sus observaciones sobre la medida respecto de la cual la Comisión ha incoado el procedimiento en un plazo de un mes a partir de la fecha de publicación del presente resumen y de la carta siguiente, enviándolas a:

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Dichas observaciones se comunicarán a España. Las partes interesadas que presenten observaciones podrán solicitar, mediante escrito motivado, que su identidad o parte de las observaciones presentadas se traten de forma confidencial.

RESUMEN DE LA DECISIÓN

El 25 de marzo de 2022, España notificó a la Comisión el laudo arbitral dictado el 9 de noviembre de 2021 por el Tribunal Arbitral creado bajo los auspicios del Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (CIADI), en el procedimiento arbitral JGC Holdings Corporation (anteriormente JGC Corporation) contra el Reino de España (asunto CIADI n.º ARB/15/27). El laudo arbitral («laudo») ordenó a España a pagar a JGC Holdings Corporation («JGC») una indemnización de 23,51 millones EUR, más intereses y una contribución a las costas del procedimiento arbitral, con motivo de la infracción del Tratado sobre la Carta de la Energía («TCE») cometida por España.

JGC, demandante en el procedimiento arbitral JGC Holdings Corporation (anteriormente JGC Corporation) contra el Reino de España que dio lugar al laudo, es una sociedad de cartera de ingeniería constituida con arreglo al Derecho japonés. En 2010, JGC invirtió en dos entidades con fines especiales a efectos de la titularidad y la explotación de dos centrales de energía solar de concentración en España.

Cuando JGC realizó la inversión, estas centrales se acogían al régimen de primas en vigor («régimen de 2007»). Este régimen tenía por objetivo fomentar la producción de electricidad a partir de fuentes de energía renovables y se regía por los Reales Decretos 661/2007, 1578/2008 y 6/2009. El régimen de 2007 no se notificó ni se aprobó con arreglo a las normas sobre ayudas estatales.

España modificó el régimen de 2007 por medio de una serie de normas, a saber, el Real Decreto-ley 9/2013, la Ley 24/2013, el Real Decreto 413/2014 y las Órdenes IET/1045/2014 e IET/1459/2014 («régimen de 2013»). El régimen de 2013 aplica un método diferente al del régimen de 2007 para el cálculo de la remuneración de las instalaciones con fuentes de energía renovables. En 2017, la Comisión evaluó y aprobó el régimen de 2013 como compatible con el mercado interior con arreglo a las Directrices sobre ayudas estatales en materia de protección del medio ambiente y energía 2014-2020 ⁽¹⁾ (véase SA.40348, «Decisión de la Comisión de 2017»). En dicha Decisión, la evaluación tuvo en cuenta los pagos recibidos por las centrales existentes al amparo del régimen de 2007.

⁽¹⁾ Comunicación de la Comisión — Directrices sobre ayudas estatales en materia de protección del medio ambiente y energía 2014-2020 (DO C 200 de 28.6.2014, p. 1).

En 2018, JGC inició un procedimiento de arbitraje contra España ante el tribunal arbitral del CIADI, alegando que los cambios introducidos por España en 2013 en el régimen de 2007, en virtud del cual había realizado la inversión JGC, habían causado perjuicio a su inversión en España y eran contrarios a las obligaciones de España en virtud del TCE.

El tribunal arbitral resolvió que España había vulnerado el principio de trato justo y equitativo en virtud del artículo 10, apartado 1, del TCE y condenó a España a pagar una indemnización a JGC, junto con los intereses y una parte de las costas procesales del arbitraje, por razón de los cambios normativos introducidos en el régimen retributivo vigente en el momento de la inversión de JGC mediante actos jurídicos adoptados por España desde julio de 2013.

El 4 de junio de 2025, con el fin de evitar una ejecución forzosa de activos españoles situados en los Estados Unidos, se liberó un importe de 32 954 296 EUR a Blasket, sucesora de JGC en lo relativo a los derechos del laudo.

La Comisión considera en este momento que se cumplen los criterios acumulativos para la existencia de ayuda estatal y que la medida, a saber, el laudo y, en cualquier caso, su aplicación, pago o ejecución (en conjunto, «ejecución») constituyen ayuda estatal. A este respecto, la Comisión se remite a la evaluación realizada en el considerando 165 de la Decisión de la Comisión de 2017, en la que se señala que toda indemnización que un tribunal arbitral otorgue a una inversión basándose en que España modificó el régimen de 2007 con el régimen 2013 constituye *per se* una ayuda estatal. Sin embargo, los tribunales arbitrales no tienen competencia para autorizar la concesión de ayudas estatales, al ser esta una competencia exclusiva de la Comisión. Por lo tanto, la indemnización correspondiente es una ayuda estatal sujeta a notificación en virtud del artículo 108, apartado 3, del TFUE y a obligación de suspensión.

Dado que la ayuda en virtud del laudo se concedió el 9 de noviembre de 2021 y se abonó a Blasket antes de su aprobación por la Comisión, la Comisión considera que la ayuda derivada del laudo es ilegal y que se ejecutó infringiendo el artículo 108, apartado 3, del TFUE.

España no ha presentado argumentos que pudieran justificar la compatibilidad de la medida con arreglo al artículo 107, apartado 2 y/o apartado 3, del TFUE. En esta fase del procedimiento, la Comisión expresa sus dudas preliminares sobre la compatibilidad de la medida con el mercado interior y, en particular, sobre i) una posible infracción de los Tratados de la UE, ya que la Comisión considera que el laudo en este asunto también puede ser incompatible con el artículo 19, apartado 1, del TUE, los artículos 267 y 344 del TFUE, así como con el principio general de autonomía del ordenamiento jurídico de la UE, y el laudo podría constituir una discriminación contraria al artículo 18 del TFUE, y ii) el incumplimiento de la medida de los criterios de compatibilidad con arreglo a las Directrices sobre ayudas estatales aplicables, a saber, las Directrices sobre ayudas estatales en materia de protección del medio ambiente y energía.

La Comisión recuerda que el momento de concesión de la ayuda es importante para determinar cuáles son las directrices sobre ayudas estatales en que debe basarse la evaluación de la ayuda. La Comisión evaluará la compatibilidad de la medida con arreglo a los criterios de compatibilidad de las directrices aplicables a las ayudas a la energía procedente de fuentes renovables, teniendo en cuenta que la ayuda en cuestión se concedió en la fecha en que se dictó el laudo (9 de noviembre de 2021) y la actividad de producción de electricidad a partir de fuentes renovables (energía solar en este caso) es la actividad en el origen del procedimiento de arbitraje que dio lugar al laudo.

Según la información que obra en su poder, la Comisión alberga dudas acerca del efecto incentivador de la medida y de si es necesaria para desarrollar una actividad económica, concretamente la de producción de electricidad a partir de fuentes de energía renovables, sin infringir las normas de la UE pertinentes. La Comisión también alberga dudas sobre la necesidad y la idoneidad de la medida. Además, como las centrales de JGC reciben ayudas al amparo del régimen de 2013, la indemnización otorgada por el laudo aumentaría la tasa de rentabilidad por encima del nivel que la Comisión consideró que era proporcionado para las centrales existentes en su Decisión de 2017. A ello se añade que la indemnización contemplada en el laudo podría falsear indebidamente la competencia al otorgarse tan solo a uno de los beneficiarios del régimen.

De conformidad con el artículo 16 del Reglamento (UE) 2015/1589 del Consejo, toda ayuda ilegal podrá ser recuperada de su beneficiario.

TEXTO DE LA CARTA

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU").

1. PROCEDURE

- (1) On 25 March 2022, Spain notified to the Commission, pursuant to Article 108(3) TFEU, the arbitration award rendered on 9 November 2021 by the Arbitration Tribunal (the 'Tribunal'), established under the auspices of the International Centre for Settlement of Investment Disputes ('ICSID'), in the arbitration proceedings *JGC Holdings Corporation (formerly JGC Corporation) v. Kingdom of Spain* ⁽¹⁾. On 21 May 2021, the Tribunal issued its Decision on Jurisdiction, Liability, and Certain Issues of Quantum, establishing its jurisdiction and finding a breach of the Energy Charter Treaty (the 'ECT') by Spain ⁽²⁾. The award rendered on 9 November 2021 in conclusion of those proceedings orders Spain to pay JGC Holdings Corporation ('JGC') compensation of EUR 23.51 million, together with interest on this sum and a contribution towards the costs of the arbitration proceedings, due to Spain's breach of the ECT ⁽³⁾ (the 'Award').
- (2) By notifying the Award, Spain acted in accordance with its obligation pursuant to Article 108(3) TFEU, which is also recalled in the Commission Decision of 10 November 2017 in case SA.40348 ⁽⁴⁾ (the '2017 Commission Decision').
- (3) Subsequently, a number of exchanges took place between the Commission services and the Spanish authorities.
- (4) On 17 July 2026, the Spanish authorities exceptionally agreed to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Council Regulation No 1/1958 ⁽⁵⁾, and to have this Decision adopted and notified in English.

2. BACKGROUND IN CONNECTION WITH THE EU'S WITHDRAWAL FROM THE ECT AND THE INVESTOR-STATE ARBITRATION CLAUSE

- (5) The ECT was concluded by the Union by Council and Commission Decision 98/181/EC, ECSC, Euratom ⁽⁶⁾, and entered into force on 16 April 1998. In the absence of any substantial update of the ECT since the 1990s, the ECT became increasingly outdated.

⁽¹⁾ Tribunal's award dated 9 November 2021 in ICSID Case No. ARB/15/27. Details available here: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/27>.

⁽²⁾ Decision of the Tribunal on Jurisdiction, Liability, and Certain Issues of Quantum of 21 May 2021 ('Decision on Jurisdiction').

⁽³⁾ The ECT is an international agreement applicable to the energy sector. It was signed in December 1994, among others, by the European Union ('Union'), and entered into force in April 1998, see Council and Commission Decision 98/181/EC/ECSC/Euratom of 23 September 1997 (OJ L 69, 9.3.1998, p. 1). The ECT provisions include the protection of investment, trade in energy materials and products, transit and dispute settlement. The Union withdrew from the ECT in June 2024, see Council decision 2024/1638 of 30 May 2024 (OJ L, 2024/1638, 5.6.2024).

⁽⁴⁾ Commission Decision C(2017) 7384 final of 10 November 2017 in State aid SA.40348 (2015/NN) – Spain - Support for electricity generation from renewable energy sources, cogeneration and waste (OJ 2017/C 442/01), recital (165).

⁽⁵⁾ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

⁽⁶⁾ Council and Commission Decision 98/181/EC, ECSC, Euratom of 23 September 1997 on the conclusion, by the European Communities, of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects (OJ L 69, 9.3.1998, p. 1).

- (6) On 27 June 2024, the Union and Euratom notified their respective withdrawals from the ECT to the depositary of the ECT ⁽⁷⁾, since it was found that in the absence of any substantial modifications, the ECT is no longer compatible with the principles of the Paris Agreement, the requirements of sustainable development and the fight against climate change, as well as with modern standards of investment protection. The withdrawals took effect on 28 June 2025.

3. BACKGROUND ON SPANISH RENEWABLES SUPPORT MEASURES

- (7) In this section, the Commission provides, by way of background, a short description of the Spanish renewables schemes that led to the arbitration proceedings and, finally, the Award.
- (8) In 2007, Spain put in place a premium economic scheme aimed at fostering electricity production from renewable energy sources ('RES'), which was governed by Royal Decrees 661/2007, and 1578/2008 as well as Royal Decree - Law 6/2009 (the '2007 Scheme') in order to transpose Directive 2001/77/EC of the European Parliament and of the Council ⁽⁸⁾, the first Union renewable energy Directive. Spain did not notify this scheme to the Commission, despite the explicit reminder in recital 12 of that Directive that Articles 87 and 88 EC (now Articles 107 and 108 TFEU) apply to support schemes which Member States put in place to transpose the Directive. As a result, the 2007 Scheme was never authorised by the Commission under State aid rules.
- (9) In 2012 and 2013, Spain amended the 2007 Scheme, within the framework of the second Union renewable energy Directive 2009/28/EC of the European Parliament and of the Council ⁽⁹⁾. Article 3(3) of that Directive recalled the obligation to notify support schemes as State aid measures. First, Law 15/2012 eliminated the remuneration for electricity generated with natural gas. In 2013, Spain adopted further amendments. The scheme amended in 2013 is governed by Royal Decree - Law 9/2013, Law 24/2013, Royal Decree 413/2014 and Orders IET/1045/2014 and IET/1459/2014 (the '2013 Scheme'). The 2013 Scheme maintains the essential characteristics of the 2007 Scheme and applies a different methodology for the calculation of the remuneration to renewables installations compared to the 2007 Scheme. Pursuant to its obligations under Article 108 TFEU, although in a belated fashion, Spain notified the 2013 Scheme to the Commission on 22 December 2014. In the 2017 Commission Decision, the Commission concluded that the 2013 Scheme complied with the guidelines on State aid for environmental protection and energy 2014-2020 ('EEAG') ⁽¹⁰⁾ and was therefore compatible with the internal market. That decision also assessed payments made under the 2007 Scheme to plants that continued to receive support under the 2013 Scheme.

⁽⁷⁾ See, to this effect, Council Decision (EU) 2024/1638 of 30 May 2024 on the withdrawal of the Union from the Energy Charter Treaty (OJ L, 2024/1638, 5.6.2024), and Council Decision (EU) 2024/1677 of 30 May 2024 on the approval of the withdrawal of the European Atomic Energy Community from the Energy Charter Treaty (OJ L, 2024/1677, 13.6.2024). Besides the Union and the Euratom, some Member States have already withdrawn. Italy unilaterally withdrew in 2015. France withdrew from the ECT with effect from 8 December 2023, Germany with effect from 20 December 2023, Poland with effect from 29 December 2023, Luxembourg with effect from 17 June 2024, Spain with effect from 16 April 2024, Slovenia with effect from 14 October 2024, Portugal with effect from 2 February 2025, the Netherlands with effect from 28 June 2025, Denmark with effect from 4 September 2025, Lithuania with effect from 8 August 2026, Ireland with effect from 28 April 2027 and Romania with effect from 23 May 2027. On 30 January 2026, the Commission decided to send letters of formal notice to 16 Member States that remained contracting parties to the ECT after the Union and Euratom withdrew from the ECT. The ECT organises trade and investment relations in the energy sector between its contracting parties. In accordance with the Treaties, trade and investment fall within the exclusive competence of the Union, and Member States may exercise this competence only if the Union empowers them to do so. Following the withdrawal of the Union and Euratom from the ECT, the following Member States concerned had not received such empowerment, nor had they taken any steps to withdraw from the ECT: Belgium (INFR(2026)2222), Bulgaria (INFR(2026)2223), Czechia (INFR(2025)2225), Estonia (INFR(2025)2226), Ireland (INFR(2025)2231), Greece (INFR(2025)2227), Croatia (INFR(2025)2229), Cyprus (INFR(2025)2224), Latvia (INFR(2025)2232), Hungary (INFR(2025)2230), Malta (INFR(2025)2233), Austria (INFR(2025)2221), Romania (INFR(2025)2234), Slovakia (INFR(2025)2236), Finland (INFR(2025)2228) and Sweden (INFR(2025)2235). Subsequently, Romania deposited a written notification to withdraw on 22 May 2026, which shall take effect on 23 May 2027.

⁽⁸⁾ Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ L 283, 27.10.2001, p. 33).

⁽⁹⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16–62).

⁽¹⁰⁾ Communication from the Commission - Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1–55).

3.1. The 2007 Scheme

- (10) In 2007, 2008 and 2009, Spain adopted Royal Decrees 661/2007, 1578/2008, and Royal Decree - Law 6/2009, which put in place the 2007 Scheme. Operators of RES generators could choose between two options to benefit from support under the 2007 Scheme. The first option consisted in receiving a fixed tariff per kWh of energy produced (feed-in-tariff option), updated annually by reference to the consumer price index. The second option consisted in selling electricity on the market and receiving a premium per kWh of electricity sold on top of the market price (premium option).
- (11) Both the tariff under the feed-in-tariff option and the premium under the premium option were calculated on the basis of typical costs and revenues of standard renewables installations. The Spanish authorities estimated both the initial investment costs and the operating and maintenance costs of the standard installations, as well as the market price.
- (12) The profitability for solar-thermoelectric was set to up to 8 % for facilities that chose tariffs and between a 7 % and 11 % return for those participating in the wholesale market and getting a premium ⁽¹¹⁾.
- (13) Furthermore, concentrated solar power ("CSP") installations were entitled to receive the tariff / premium under the 2007 Scheme also for the electricity generated from fossil fuels/natural gas, when used in combination with RES in order to ensure stable production and supply, as long as the share of such electricity did not exceed 12 % of the total electricity produced in case of the tariff and 15 % of the total electricity produced in case of the premium ⁽¹²⁾.
- (14) In order to obtain the support under the 2007 Scheme, potential beneficiaries had to submit an application to the Spanish Directorate General of Energy Policy and Mining.
- (15) The scheme was financed through network access charges imposed on electricity consumers and network users by the Electricity Sector Law 54/1997 (amended in 2013 by Law 24/2013) and Royal Decree 2017/1997. The Spanish authorities submit that payment of the network access charges was mandatory for consumers and network users. They also submit that the 2007 Scheme constituted State aid within the meaning of Article 107(1) TFEU, and refer, in particular, to recital 158 of the 2017 Commission Decision.
- (16) In particular, Article 17, paragraphs (1) and (3) of the Electricity Sector Law 54/1997 provided that the Spanish government was to adopt the provisions necessary for the implementation of the system of network access charges. The charges are fixed based on the costs of the system's regulated activities. These include the permanent costs of the electricity system and the costs of diversification and security of supply. The Spanish government was to establish the methodology for the calculation of the charges. Article 4.g.1 of Royal Decree 2017/1997 includes among the costs of diversification and security of supply those arising from the 2007 Scheme.
- (17) Royal Decree 2017/1997 entrusted the Comisión Nacional de Energía (National Energy Commission), a State body which has been incorporated into the National Commission of Markets and Competition ("CNMC") with the transfer to the relevant beneficiaries, by means of subsequent settlements, of the funds collected for the purposes of covering the permanent costs of the electricity system and the costs of diversification and security of supply. The annexes to the decree also defined the beneficiaries of the settlements, the applicable mathematic formulas and regulated the settlement procedure itself, according to predetermined objective parameters.
- (18) The legal framework of the financing mechanism of the 2007 Scheme is the same as the one assessed by the Court in the *Elcogás* case ⁽¹³⁾.

⁽¹¹⁾ See paragraph 904 of the arbitral tribunal's Decision on jurisdiction, liability, and certain issues of quantum on ICSID Case No. ARB/15/27, dispatched to the parties on 21 May 2021.

⁽¹²⁾ See Article 2 (1) of Royal Decree 661/2007.

⁽¹³⁾ Order of the Court of 22 October 2014, *Elcogás SA v Administración del Estado and Iberdrola SA*, Case C-275/13, EU:C:2014:2314. At paragraph 23 of this order, the Court found that the compensation mechanism at issue was imputable to the State since it was established and regulated by Law 54/1997 and Royal Decree 2017/1997. Relying on the same legal basis, the Court also concluded that the compensation mechanism for extra costs was financed through State resources. In particular, the Court observed that a Ministerial Decree fixed annually the amount of the network access charges, that the latter were imposed on all domestic final consumers and network users. Moreover, the National Energy Commission, a State body, administered the funds thus collected and did not enjoy any discretion in that regard. The financing mechanism of the 2007 Scheme is essentially the same as the one examined by the Court.

3.2. The 2013 Scheme

- (19) As mentioned in recital (9), as of 2012, Spain introduced several legal acts that amended the 2007 Scheme.
- (20) Royal Decree Law 2/2013 of 1 February 2013, among other things, cancelled the mechanism for updating the feed-in tariffs in accordance with the consumer price index, replacing it with a lower index.
- (21) Subsequently, Spain adopted the following legal acts that established the 2013 Scheme⁽¹⁴⁾: Royal Decree-Law 9/2013 of 12 July 2013, Law 24/2013 of 26 December 2013 on the electricity sector, Royal Decree 413/2014 of 6 June 2014 and Orders IET/1045/2014 and IET/1459/2014.
- (22) The 2013 Scheme is organised in six-year regulatory periods. The first regulatory period ran from 14 July 2013 to 31 December 2019. The second started on 1 January 2020.
- (23) The 2013 Scheme provided support to (i) co-generation installations, (ii) renewables installations, and (iii) other installations using at least 70 % waste to energy sources and black liquor⁽¹⁵⁾.
- (24) The following two types of facilities are eligible for support under the 2013 Scheme:
- (a) facilities that are awarded aid under this scheme following the entry into force of Royal Decree 413/2014 on 11 June 2014 ('newly supported facilities');
 - (b) facilities that were already entitled to or were already receiving support under the 2007 Scheme when Royal Decree-Law 9/2013 entered into force on 14 July 2013 ('previously supported facilities').
- (25) The aid under the 2013 Scheme is granted in the form of a premium in addition to income generated from the market. It aims to help the supported technologies to compete on an equal footing with other technologies on the market at a reasonable rate of return, which was calculated at 7.398 % for previously supported facilities⁽¹⁶⁾ and 7.503 % for newly supported facilities. The premium is made up of two components: compensation for investments and, if applicable, compensation for operations.
- (26) In order to determine the amount of aid to be paid, facilities are classified under one of the various types of standard facilities on the basis of their individual characteristics. The compensation benchmarks applicable to each standard facility are established by ministerial order and include: type of technology, power generation capacity, start date of operation, lifetime, electricity system/location of the facility, standard revenue generated by selling the electricity in the market, standard operating costs required to carry out the activity and hours of operation (with a minimum and maximum value). The compensation to which an individual facility is entitled is calculated on the basis of the standard facility's compensation benchmarks and the features of the individual facility itself (such as the real number of running hours).
- (27) The 2013 Scheme is partly financed from the general State budget and partly from the network access tariffs and charges imposed on electricity consumers, also called 'electricity system revenues'. This financing mechanism was introduced by Laws 15/2012, 17/2012, and 24/2013.

⁽¹⁴⁾ For an exhaustive list of the 2013 Scheme's legal basis, see Section 2.1 of the 2017 Commission Decision.

⁽¹⁵⁾ For details on the eligible technologies, see recital 14 of the 2017 Commission Decision.

⁽¹⁶⁾ This rate was applicable to the first regulatory period (2014 to 2019). From the second regulatory period onwards, the rate is 7.09 %, if no use is made of the second additional provision of Royal Decree-Law 17/2019, to maintain the profitability of the previous period.

- (28) The main differences between the 2007 Scheme and the 2013 Scheme can be summarised as follows:
- (a) under the 2013 Scheme, renewable energy producers are entitled to obtain a premium in addition to the market price of the electricity produced by them, rather than being able to choose between a feed-in tariff or a premium as was the case under the 2007 Scheme;
 - (b) the 2013 Scheme abolished support for electricity produced using fossil fuels/natural gas, starting as of 1 January 2013 ⁽¹⁷⁾;
 - (c) the 2013 Scheme foresees a higher number of standard facilities than the 2007 Scheme. Only one standard facility (Caso Tipo ('CT')) was provided for in Royal Decree 661/2007 (i.e. in the 2007 Scheme) versus 20 standard facilities (Instalaciones Tipo ('IT')) identified by Royal Decree 413/2014 (i.e. in the 2013 Scheme). Unlike the 2007 Scheme, the 2013 Scheme takes into account the differences between various technologies as well the year in which the plants started to operate, as described in recital (26);
 - (d) under the 2013 Scheme, any of the compensation parameters described in recital (26) may be reviewed every six years (each regulatory period), including the reasonable return for the remaining lifetime of the standard facilities, whereas under the 2007 Scheme once set, the compensation parameters remained fixed other than the fact of being linked to the consumer price index;
 - (e) under both the 2007 Scheme and the 2013 Scheme, the support is proportionate to the amount of electricity generated. However, while under the 2007 Scheme the support is directly and exclusively proportionate to the amount of electricity generated, the 2013 Scheme establishes a number of equivalent operating hours according to the capacity of the installation. Only those hours are remunerated.

3.3. The 2017 Commission Decision

- (29) As mentioned in recital (9), in the 2017 Commission Decision, the Commission approved the 2013 Scheme as compatible with the internal market.
- (30) All facilities that originally benefitted from the 2007 Scheme could automatically benefit from the 2013 Scheme. When assessing the compatibility of the 2013 Scheme in the 2017 Commission Decision, the Commission took into account the sum of payments made by previously supported facilities under the 2007 Scheme and the 2013 Scheme in order to verify the absence of overcompensation ⁽¹⁸⁾.
- (31) More specifically, the Commission assessed the proportionality of the aid granted to previously supported facilities under paragraph 131(a) of the EEAG based on the cash flow calculations of 21 standard facilities, which were representative of the various technologies and installation types supported by the 2013 Scheme (see recital 120 of the 2017 Commission Decision). Those include past sales income (including those deriving from the 2007 Scheme for previously supported facilities), the expected future sales income, the initial investment costs, the operating costs and the compensation to be granted to each facility both for operations and for investments. For all examples provided, the Commission verified that the aid did not exceed what is required to recover the initial investment costs and the relevant operational costs, plus a margin of reasonable return, based on the past and estimated costs and market prices (7.503 % before tax for newly supported facilities and 7.398 % for previously supported facilities). In the 2017 Commission Decision, the Commission found that those rates of return appeared to be in line with those applicable to similar measures (renewable energy and high efficiency cogeneration projects) the Commission had approved and did not lead to overcompensation. The Commission reached the same conclusion concerning future revision of the compensation parameters as future payments would be calculated to keep the net present value of the investment at zero ⁽¹⁹⁾.

⁽¹⁷⁾ See paragraph 1017 of the arbitral tribunal's Decision on jurisdiction, liability, and certain issues of quantum on ICSID Case No. ARB/15/27, dispatched to the parties on 21 May 2021.

⁽¹⁸⁾ See recitals 4 and 156 of the 2017 Commission Decision.

⁽¹⁹⁾ See recital 120 of the 2017 Commission Decision.

4. JGC AND ITS INVESTMENT

4.1. JGC Holdings Corporation

- (32) JGC is the claimant in the arbitration proceedings *JGC Holdings Corporation (formerly JGC Corporation) v. Kingdom of Spain*. JGC is an engineering holding company incorporated under the laws of Japan since 25 October 1928 ⁽²⁰⁾. JGC specialises in the engineering, procurement and construction ('EPC') services for energy and industrial infrastructure projects, and functional materials manufacturing to customers in Japan and over 80 countries around the world ⁽²¹⁾. As of October 2019, the former JGC Corporation became a corporate group with a holding company structure, under the name JGC Holdings Corporation. According to publicly available information ⁽²²⁾, JGC's share capital is held by institutional investors. The majority of its shares is held by the Master Trust Bank of Japan, Ltd. (Trust Account) (18.29 %) and the Custody Bank of Japan, Ltd. (Trust Account) (12.15 %). The subsidiaries of JGC include: JGC Corporate Solutions Co., Ltd., JGC Corporation, JGC Japan Corporation, JGC Catalysts and Chemicals Ltd., Japan Fine Ceramics Co., Ltd. (all fully owned by JGC) and JAPAN NUS CO., LTD (88.88 % owned by JGC) ⁽²³⁾.

4.2. JGC's investment in the Solacor plants

- (33) The Solacor 1 and Solacor 2 plants are two CSP installations, each with a capacity of 50 MW, located in Andalusia, southern Spain (together, the 'Solacor plants'). They are owned and operated by two special purpose vehicle companies, i.e. Solacor Electricidad Uno, S.A. and Solacor Electricidad Dos, S.A. respectively (together, the 'Solacor SPVs').
- (34) In 2010, JGC invested in the Solacor SPVs. More specifically, JGC acquired 26 % of the shareholding in each of the Solacor SPVs. According to information provided by Spain, on 7 January 2016, JGC sold half of its shares in each of the Solacor plants to Atlantica Yield (previously Abengoa Yield), which thus holds 87 % of the shares in each plant. Therefore, as of the date of the issuance of the Award, JGC had 13 % of shareholding in each of the Solacor SPVs ⁽²⁴⁾.
- (35) According to information provided by Spain, the construction phase for the Solacor plants started in September 2010. Solacor 1 plant received an administrative authorisation on 8 August 2008. On 9 July 2009, the Spanish authorities issued a resolution approving the project. On 13 December 2011, the Spanish authorities granted it an authorisation for its placement in provisional service for tests. Its final commissioning certificate and registration in the administrative register of electricity production facilities took place on 19 January 2012. The Solacor 2 plant received an administrative authorisation on 8 August 2008. On 9 July 2009, the Spanish authorities issued a resolution approving the project. On 19 January 2012, the Spanish authorities granted it an authorisation for its placement in provisional service for tests. Its commissioning certificate and registration in the administrative register took place on 21 February 2012 ⁽²⁵⁾.
- (36) The Solacor plants benefitted from support under the 2007 Scheme. According to data provided by Spain, the Solacor plants received support in the form of a feed-in tariff from their launch until 13 July 2013, according to the option provided to plant operators under article 24 of Royal Decree 661/2007 to choose between tariff or premium.
- (37) The Solacor plants were also equipped with gas-burning equipment to maintain the temperature of the heat transfer fluid in order to compensate for any lack of solar radiation that might affect the expected electricity production. According to the 2007 Scheme (article 2 of the Royal Decree 661/2007), the Solacor plants could initially benefit from feed-in tariffs even for the electricity produced by gas, provided that the electricity production from this fuel did not exceed, on an annual basis, 12 % of the total electricity production in case the installation benefits from the

⁽²⁰⁾ Award, paragraph 2.

⁽²¹⁾ <https://www.jgc.com/en/about/glance.html>.

⁽²²⁾ According to the integrated report of the company for 2025, available at: https://www.jgc.com/en/ir/ir-library/annual-reports/pdf/JGCReport2025_e_A4.pdf. See especially page 121 of the report.

⁽²³⁾ See: <https://www.jgc.com/en/about/related-companies/>.

⁽²⁴⁾ See paragraph 279 of the Decision on jurisdiction.

⁽²⁵⁾ The dates of receipt of the commissioning certificate and registration in the administrative are also mentioned in paragraphs 348 and 349 of the Decision on jurisdiction.

tariff option (see also recital (13)). This was the case with the Solacor plants. However, Law 15/2012, established that electricity attributable to the use of a fuel in a generation facility that utilises one of the non-consumable renewable energy sources as its primary energy source (as it is the case for the Solacor plants) shall not be subject to the preferential tariff scheme, except for certain hybrid plants using consumable and non-consumable renewable sources. Following the adoption of the 2013 Scheme, Order IET/1882/2014 of 14 October was adopted, setting out the methodology for calculating the electrical energy attributable to the use of fuels in thermal power stations. With the Solacor plants included within the scope of this order, a formula was established to calculate the electrical energy attributable to back-up fuels. This formula takes into account the annual primary energy derived from back-up fuels used for technically essential purposes that do not generate electrical energy either directly or indirectly and is set at 300 thermal MWh per installed electrical MW for each year. Consequently, the Solacor plants benefitted from feed-in tariffs in relation to electricity production with the use of back-up fuel from February 2012 and March 2012, respectively, until 31 December 2012.

- (38) According to the information submitted by Spain, the Solacor plants have continued to produce electricity and to receive support under the 2013 Scheme. The Solacor plants were automatically registered under the 2013 Scheme as previously supported facilities, as happened with all facilities that originally benefitted from the 2007 Scheme (see recitals (24) and (30)). The aid granted to the Solacor plants under the 2013 Scheme was based on the standard installation IT-00604 from 14 July 2013 until 31 December 2019 (with a reasonable rate of return of 7,398 %) and on the standard installation IT-20604 from 1 January 2020 to the present day (with a reasonable rate of return of 7,09 %), for both plants ⁽²⁶⁾. Spain provided a calculation of the gross income, based on the actual production of the Solacor plants between 2014 and 2025 according to the CNMC, that the Solacor plants would have received as support under the 2007 Scheme, had it continued unchanged, and compared it with the support received by the Solacor plants between 2014 and 2025 under the 2013 Scheme. Tables 1 and 2 show the differences in revenue additional to market revenues between the 2007 Scheme and the 2013 Scheme. The positive values reflect higher income under Royal Decree 413/2014 (that is to say, under the 2013 Scheme) than the income that would have been obtained under Royal Decree 661/2007 (that is to say, under the 2007 Scheme).

Table 1

Difference in revenue additional to market revenues between the 2007 Scheme and the 2013 Scheme

	RD 413 - RD 661	SOLACOR 1	SOLACOR 2
Difference in revenue additional to market revenues between the 2007 Scheme and the 2013 Scheme (EUR)	2014	[...] (*)	[...]
	2015	[...]	[...]
	2016	[...]	[...]
	2017	[...]	[...]
	2018	[...]	[...]
	2019	[...]	[...]

⁽²⁶⁾ This change is related to the entry into force of Royal Decree-Law 17/2019 of 22 November, adopting urgent measures for the necessary adaptation of remuneration parameters affecting the electricity system and responding to the process of cessation of activity of thermal generation plants. The sole article of the Royal Decree-Law 17/2019 provided that the reasonable rate of return for installations for the production of electricity from renewable energy sources, cogeneration and waste, will be 7.09 % for the second regulatory period, i.e. 2020-2025. According to the third bis final provision, installations generating electricity from renewable energy sources, high-efficiency cogeneration and waste which were entitled to support at the date of entry into force of Royal Decree-Law 9/2013 of 12 July 2013, the value of the reasonable rate of return established for the first regulatory period shall not be subject to revision during the two consecutive regulatory periods commencing on 1 January 2020. However, this exception does not apply when arbitration or judicial proceedings are initiated or have previously been initiated on the profitability of these installations based on the modification of the special remuneration regime operated after Royal Decree 661/2007 of 25 May, including those arising from the entry into force of Royal Decree-Law 9/2013, of 12 July, and its implementing regulations. Consequently, the aid granted to the Solacor plants under the 2013 Scheme was based on the standard installation IT-20604 from 1 January 2020 with a reasonable rate of return of 7,09 %.

	RD 413 - RD 661	SOLACOR 1	SOLACOR 2
	2020	[...]	[...]
	2021	[...]	[...]
	2022	[...]	[...]
	2023	[...]	[...]
	2024	[...]	[...]
	2025	[...]	[...]
	TOTAL	[...]	[...]

Source: Spanish authorities

(*) Confidential information

Table 2

Difference in revenue additional to market revenues between the 2007 Scheme and the 2013 Scheme (as percentages)

	RD 413 - RD 661	SOLACOR 1	SOLACOR 2
Difference in revenue additional to the market revenues (%)	2014	[...]%	[...]%
	2015	[...]%	[...]%
	2016	[...]%	[...]%
	2017	[...]%	[...]%
	2018	[...]%	[...]%
	2019	[...]%	[...]%
	2020	[...]%	[...]%
	2021	[...]%	[...]%
	2022	[...]%	[...]%
	2023	[...]%	[...]%
	2024	[...]%	[...]%
	2025	[...]%	[...]%
	TOTAL	[...]%	[...]%

Source: Spanish authorities

- (39) Table 1 shows that, in the period from 2014 to 2025, the Solacor 1 plant received EUR [...] more than it would have obtained under the 2007 Scheme, and the Solacor 2 plant received EUR [...] more than it would have obtained under the 2007 Scheme.

- (40) Spain submitted that the Solacor plants are operating with a volume of energy in line with their historical production activity. Table 3 sets out the energy generation data for both plants, between 2012 and 2026 ⁽²⁷⁾, as submitted by Spain:

Table 3

Annual energy discharged from the Solacor 1 and Solacor 2 plants

Year	Solacor 1 (MWh)	Solacor 2 (MWh)
2012	[...]	[...]
2013	[...]	[...]
2014	[...]	[...]
2015	[...]	[...]
2016	[...]	[...]
2017	[...]	[...]
2018	[...]	[...]
2019	[...]	[...]
2020	[...]	[...]
2021	[...]	[...]
2022	[...]	[...]
2023	[...]	[...]
2024	[...]	[...]
2025	[...]	[...]
2026	[...]	[...]

Source: Spanish authorities based on information from the CNMC

5. DESCRIPTION OF THE MEASURE**5.1. Initiation of arbitration proceedings**

- (41) The Award notified by Spain was rendered by the Tribunal following a dispute brought to arbitration by JGC on 8 June 2018, against Spain.
- (42) In initiating the proceedings under the ECT, JGC claimed that it invested in the Solacor plants because of the 2007 Scheme and Spain's promises and assurances of stability the scheme ⁽²⁸⁾ and that by modifying its regulatory and economic framework of energy projects, Spain had breached its obligations under Article 10 ECT ⁽²⁹⁾.
- (43) In particular, JGC submitted that it had invested in the Solacor plants with legitimate expectations of the application of the 2007 Scheme, in place at the time of its investment, for the entire useful life of the Solacor plants ⁽³⁰⁾. JGC claimed that the 2013 Scheme drastically altered the remuneration scheme it had relied upon and changed its essential characteristics, resulting in significant harmful effects on the plants and JGC's investment ⁽³¹⁾.

⁽²⁷⁾ Data available until April 2026.

⁽²⁸⁾ See paragraph 545 of the Decision on Jurisdiction.

⁽²⁹⁾ See paragraph 468 of the Decision on Jurisdiction.

⁽³⁰⁾ See paragraph 466 of the Decision on Jurisdiction.

⁽³¹⁾ See paragraphs 467 and 1055 of the Decision on Jurisdiction.

- (44) In the arbitration proceedings, Spain opposed JGC's claims on multiple grounds. It notably claimed that the 2007 Scheme was based on the principle of 'reasonable rate of return', and guaranteed investments made in renewable energy installations would obtain reasonable profitability throughout their existence, but did not imply the persistence of a given remuneration throughout the installation's lifetime ⁽³²⁾. Spain argued that JGC was aware of the objective of ensuring access to electricity for all consumers at the lowest possible cost, while also considering the protection of the environment ⁽³³⁾.
- (45) According to Spain, JGC also knew or had to have known at the time of its investment that the Spanish Government might adopt changes to the remuneration regime aimed at ensuring the technical and economic sustainability of the Spanish electricity system and correcting situations of overcompensation ⁽³⁴⁾.
- (46) Spain also referred to the 2017 Commission decision and argued, based on an analysis of State aid law, that the investors could not have legitimate expectation of receiving a specific level of State aid ⁽³⁵⁾.
- (47) On 15 May 2019, the Commission filed an application to intervene in the arbitration proceedings as a non-disputing party. On 4 June 2019, the Tribunal issued its decision not to accede to the Commission's application, after considering, inter alia, the advanced stage reached by the proceedings ⁽³⁶⁾.

5.2. The Tribunal's findings in the arbitration proceedings

- (48) On 21 May 2021, the Tribunal issued the Decision on Jurisdiction, in which it established its jurisdiction, concluded that the regulatory changes introduced by Spain constituted a breach of its obligations of under Article 10(1) ECT ⁽³⁷⁾ and reserved its decision on damages. The Tribunal considered that JGC could reasonably and legitimately expect that the regulated tariffs, premiums, the upper and lower limit and the essential elements of the remuneration regime under the 2007 Scheme would continue to apply to its investment during its operational lifetime ⁽³⁸⁾. The Tribunal concluded that the regulatory changes overturned the remuneration regime on which JGC relied at the time of its investment into the Solacor plants in 2010, in effect eliminating the essential characteristics of the remuneration regime ⁽³⁹⁾. The full text of the Decision on Jurisdiction is an integral part of the Award ⁽⁴⁰⁾.
- (49) On 9 November 2021, the Tribunal issued the Award and ordered Spain to pay compensation of EUR 23.51 million to JGC, together with pre-award interest on that amount at the rate of 2.748 %, compounded monthly, from 21 June 2014 until the date of the Award ⁽⁴¹⁾.
- (50) In addition, the Tribunal also held that Spain shall pay to JGC (i), 25 % of the total cost of arbitration, representing USD 333,737.08; (ii) 40 % of JGC's legal costs and related disbursements, representing EUR 1 579 314,53; JPY 25 260 284,4; and USD 290 000,00 ⁽⁴²⁾.
- (51) Finally, the Tribunal ordered the payment by Spain of interest at the rate of 1.6 %, compounded monthly, on the amounts to be paid to JGC, as from the date of the Award until the date of payment ⁽⁴³⁾.

⁽³²⁾ See paragraph 470 of the Decision on Jurisdiction.

⁽³³⁾ See paragraph 471 of the Decision on Jurisdiction.

⁽³⁴⁾ See paragraph 471 of the Decision on Jurisdiction.

⁽³⁵⁾ See paragraphs 661-664 of the Decision on Jurisdiction.

⁽³⁶⁾ See paragraphs 87-89 of the Decision on Jurisdiction.

⁽³⁷⁾ See paragraph 1348 of the Decision on Jurisdiction.

⁽³⁸⁾ See paragraph 937 of the Decision on Jurisdiction.

⁽³⁹⁾ See paragraph 1053 of the Decision on Jurisdiction.

⁽⁴⁰⁾ See Award, paragraphs 6 and 73.

⁽⁴¹⁾ See Award, paragraph 73 (ii).

⁽⁴²⁾ See Award, paragraphs 73 (iii) and (iv).

⁽⁴³⁾ See Award, paragraph 73 (v).

- (52) Regarding the calculation of the compensation, JGC requested that it is entitled to be put in the position it would have been in “but for” the multiple breaches of the ECT committed by Spain by having implemented the disputed regulatory changes ⁽⁴⁴⁾. JGC’s economic consultants calculated the compensation by applying the discounted cash flow (‘DCF’) valuation methodology. The consultants calculated the difference between two scenarios: the ‘But For’ scenario, in which the 2013 Scheme was never implemented, and the ‘Actual’ scenario, which took into account the actual value of their investments as a result of the application of the 2013 Scheme. On this basis, JGC claimed an amount of EUR 105.2 million ⁽⁴⁵⁾.
- (53) The Tribunal accepted in principle JGC’s compensation claim framework seeking the difference between the fair market value of its equity in the Solacor plants under the But-For scenario and the actual value of those investment as a result of the disputed regulatory measures (actual scenario) by using the DCF valuation methodology proposed by JGC (recital (52)) ⁽⁴⁶⁾. However, it did not accept all of the assumptions underpinning JGC’s valuation and made some corrections ⁽⁴⁷⁾. For example, concerning the operational life of the Solacor plants, the Tribunal deemed that, for the purposes of the calculation of damages, the useful life of the Solacor plants would not exceed 25 years ⁽⁴⁸⁾. On the basis of those elements, the Tribunal awarded JGC a compensation of EUR 23.51 million.

5.3. JGC’s transfer of the rights of the Award to Blasket Renewables Investment

- (54) On 6 February 2024, Blasket Renewables Investment (‘Blasket’), a litigation fund registered in the US, was assigned the rights to the Award from JGC.
- (55) Blasket was incorporated in Delaware in the US on 14 July 2022. According to a corporate disclosure statement ⁽⁴⁹⁾, Blasket has the following two direct shareholders based in Dublin, Ireland: Trinity Investments DAC which is the managing member of the fund holding 60 %, and Blasket Investments DAC holding 40 %. According to publicly available information, Blasket acts as an investor, acquiring the rights to awards from other companies that originally won them through international arbitration and enforces them. It has acquired the rights to at least ten arbitration awards that have been issued to the original awardees back in 2019-2021 against Spain.

5.4. Attempts to enforce the Award and Spain’s opposition

- (56) JGC and Blasket have tried to enforce the Award in the US, the Netherlands and Belgium.

United States

- (57) In the US, on 15 September 2023, JGC filed an action seeking recognition and enforcement of the Award against Spain before the US District Court for the District of Columbia (Civil Action No. 1:23-cv-02701-RC). The application was formally served on Spain on 15 November 2023.
- (58) Spain filed a motion to dismiss on 13 February 2024. During these proceedings, on 26 March 2024, Spain was notified of the assignment of JGC’s rights under the Award to Blasket, concluded on 6 February 2024.
- (59) On 26 September 2024, the US District Court granted recognition and enforcement of the Award and denied Spain’s motion to dismiss. By final judgment dated 15 November 2024, the US District Court ordered enforcement of the Award and ordered Spain to pay USD 36 099 289,31 (ca. EUR 34 million ⁽⁵⁰⁾), together with post-judgment interest from the date of judgment until payment in full.

⁽⁴⁴⁾ See paragraph 1081 of the Decision on Jurisdiction.

⁽⁴⁵⁾ See paragraphs 378 and 1085 of the Decision on Jurisdiction.

⁽⁴⁶⁾ See paragraph 1116 of the Decision on Jurisdiction.

⁽⁴⁷⁾ See Award, paragraph 7.

⁽⁴⁸⁾ See paragraph 1253 of the Decision on Jurisdiction.

⁽⁴⁹⁾ See the corporate disclosure statement issued to the Supreme Court of the United States within the scope of Case No. 24–1130 Kingdom of Spain vs. Blasket Renewable Investments LLC20.

⁽⁵⁰⁾ Monthly Average Reference Rate of November 2024: 1 USD = 0.9402 EUR.

- (60) Spain submitted appeals on 25 October 2024 and 27 November 2024. As a result of the non-suspensive nature of the appeal lodged against the judgment recognising the Award, discovery proceedings were initiated in December 2024 aimed at identifying Spanish assets in order to execute them. On 16 December 2024, Spain received discovery requests concerning both the Kingdom of Spain and any political subdivision, agency or entity of Spain, as well as any other persons acting in the name or on behalf of Spain. On 19 December 2024 and 7 March 2025, Spain received a series of third-party subpoenas directed to banks, , seeking information concerning Spanish assets and related documentation.
- (61) On 12 March 2025, Blasket filed an application for a declaratory order confirming that sufficient time had elapsed to commence enforcement proceedings in respect of the Award and an application to register the Award in the other judicial districts of the United States for the purposes of its enforcement.
- (62) On 4 June 2025, in order to avoid a forced execution upon Spanish assets located in the US, a sum of EUR 32 954 296 that was deposited by Spain in an escrow account in the context of the Belgian proceedings was released to Blasket (see recital (68) below). As a result, as stated in the Notice of Satisfaction of Judgment of 4 June 2025, Blasket notified the US District Court that the above judgment of 15 November 2024 had been fully satisfied. Following the filing of a joint letter of withdrawal on 5 June 2025, the Court of Appeal, by order dated 6 June 2025, terminated the appellate proceedings on the ground that they had become devoid of purpose.

Belgium

- (63) In Belgium, Blasket requested a declaration of enforceability of the Award on 22 February 2024. The Belgian Ministry of Justice confirmed the authenticity of the Award on 13 March 2024, and the Chief Clerk of the Brussels Court of Appeals confirmed enforceability of the Award on 6 May 2024, and of the decision of the ICSID *ad hoc* committee denying annulment of the Award on 16 May 2024.
- (64) On 31 May 2024, Blasket filed an *ex parte* petition with the Brussels Court of First Instance in Belgium, seeking authorisation to attach funds held by the European Organization for the Safety of Air Navigation ("Eurocontrol") owed to Enaire E.P.E., Spain's national air navigation service provider. Blasket's application was initially rejected in a decision of 6 June 2024 by the Brussels Court of First Instance, but it was appealed to the Brussels Court of Appeal. On 18 June 2024, the Brussels Court of Appeal authorized *ex parte* the attachment of the funds in the hands of Eurocontrol in aid of enforcing the Award, in the amount of EUR 30 370 513,08 plus interest calculated monthly at an annual rate of 1.6 % as of the date of the award until payment, plus EUR 387,292.68 (the "Authorisation Decision"). On 9 July 2024, Blasket executed the attachment order by serving it on Eurocontrol.
- (65) Once Spain was notified of the attachment order and the Authorization Decision on 15 July 2024, it filed two challenges to the attachment: (a) an opposition proceeding ("Opposition Proceeding") with the Brussels Court of First Instance, which stays enforcement of the attachment, and (b) a third party opposition proceeding ("Third Party Proceeding") with the Court of Appeal against the Authorization Decision, which does not stay the enforcement of this decision by itself but can be grounds for the attachment judge to grant a stay. The substantive arguments invoked by Spain in these proceedings include amongst others that the enforcement of the Award violates EU law as it implements unlawful State aid.
- (66) On 7 February 2025, the judge in the Opposition Proceeding decided that Spain's opposition was inadmissible on procedural grounds and hence did not rule on the merits of Spain's objections against the enforcement of the Award. The judge made this finding because the arguments raised by Spain were also raised in the Third Party Proceeding and did not include arguments solely related to the procedural regularity of the attachment. Spain appealed this decision on 17 February 2025.

- (67) On 13 August 2024, in order to terminate the freezing of an increasing amount of funds held by Eurocontrol as a result of Blasket's attachment, Spain deposited with the bailiff appointed by Blasket the amount of EUR 32 954 296, corresponding to the amount allegedly due by Spain to Blasket in respect of principal, interest and costs. This sum was held in an escrow account outside Spain's control and under the authority of the bailiff for the exclusive benefit of Blasket as full satisfaction of the Award for as long as Spain's appeals of the attachment and Authorization Decision were pending.
- (68) A withdrawal petition of the Opposition Proceeding and the Third Party Proceeding accepted by Blasket was filed on 23 May 2025. As a consequence of the withdrawal, the sum of EUR 32 954 296 in the escrow account was released to Blasket on 4 June 2025, enabling the full satisfaction of the award under US law and the end of discovery proceedings in the US. The withdrawal was accepted in both the Opposition Proceeding and Third Party Proceeding by decisions of 17 June 2025 and 21 October 2025.
- (69) For the sake of completeness, it is worth noting that, on 11 December 2025, the Commission sent a letter of formal notice to Belgium because of the recognition of the Award, as well as of other intra-EU and extra-EU awards in Belgium, before the Commission concludes its assessment of the respective notifications under State aid law by Spain that are pending with the Commission. The Commission considers that Belgium created an imminent risk for Spain to be forced to pay the compensation in breach of the standstill obligation of Article 108(3) TFEU and the 2017 Commission Decision. The requests for recognition constitute an attempt to circumvent the State aid rules that Belgium should have opposed under the principle of sincere cooperation, as laid down in Article 4(3) of the TEU, read in conjunction with Article 108(3) of the TFEU, the 2017 Commission Decision and the case law of the Court of Justice on investment arbitration. In its reply to the letter of formal notice, Belgium provided several explanations that are not sufficient to revert the Commission assessment. The Commission therefore sent a reasoned opinion to Belgium on 29 April 2026 (INFR(2025)2199).

Netherlands

- (70) In the Netherlands, the provisional relief judge of the District Court of the Hague granted an *ex parte* leave for the enforcement of the Award on 24 September 2024. Spain was formally notified of the leave for enforcement on 15 January 2025. According to the Spanish authorities, there was no enforcement attempts following the leave for enforcement.

5.5. Beneficiary of the measure

- (71) In its notification, Spain submitted that the beneficiary of the notified measure is JGC, since that party was the claimant in the arbitration proceedings that led to the Award and thus the party entitled to compensation set out therein ⁽⁷¹⁾. At the time the Award was issued, JGC had 13 % of shareholding in each of the SPVs (recital (34)).
- (72) During the enforcement proceedings in the US, Spain was notified that Blasket acquired the right to the Award on 6 February 2024 and is thus also a beneficiary of the measure (section 5.3). Blasket is also the company that has pursued the enforcement proceedings in the US and Belgium and received the amount of EUR 32 954 296 under the Award (section 5.4).

5.6. Legal basis of the measure

- (73) Spain indicated that the legal basis for the notified measure is the Award, the ECT and the ICSID Convention, as well as the 'Instrument of ratification of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, done in Lisbon on 17 December 1994' which was published in the Official State Gazette of 17 March 1998 ⁽⁷²⁾.

⁽⁷¹⁾ Award, paragraphs 2 and 73.

⁽⁷²⁾ Spain signed the ECT on 17 December 1994, ratified it on 11 December 1997, and the ECT entered into force with respect to Spain on 16 April 1998. Spain also explained that in accordance with Article 96(1) of the Spanish Constitution, 'International treaties validly concluded, once officially published in Spain, shall form part of the internal legal order'.

5.7. Objective of the measure

- (74) According to Spain, the objective of the notified measure is to compensate JGC for the regulatory changes made by Spain to the support scheme for renewable installations that were brought about by legal acts that Spain adopted and that amended the 2007 Scheme and put in place the 2013 Scheme (see recital (48)).

5.8. Form of support, budget and financing of the measure

- (75) The form of support consists in the payment of the compensation calculated by the Tribunal in the Award, the pre-award interests, as well as the post-award interests.
- (76) On 4 June 2025, the sum of EUR 32 954 296 that was held in an escrow account in the context of the Belgian enforcement proceedings was released to Blasket, to avoid a forced execution upon Spanish assets located in the US (recitals (67) - (68)). The Spanish authorities explained that the release of the amount from the escrow account was financed from the general budget of the Spanish State and that it was not directly charged to the costs of the electricity system and therefore did not fall directly on the electricity end-consumers through their electricity bill.

5.9. Cumulation

- (77) Spain submitted that the Solacor plants continue to receive support under the 2013 Scheme. In fact, Spain calculated the possible impact that the Award would have on the profitability achieved by JGC's investment in the Andasol plants, as shown in Table 4. Spain took into account the following parameters and assumptions:
- (a) JGC owned 26 % of each of the two plants in question. Consequently, the calculations are made taking into account the proportion of the specific remuneration scheme that would be due to JGC on the basis of its participation in each of the plants. Spain assumed that they maintained those percentages rather than reducing their share in 2016.
 - (b) The data on the settlement of remuneration schemes are actual data submitted by the CNMC, for the years 2012 to 2025. From 2026 onwards, the estimates have been made using the order of parameters which defines the compensation for investments and the compensation for operations for period 2026-2031.
 - (c) Market revenues are estimated taking into account the actual energy produced and the market price pointed out for solar thermoelectric technology from 2012 to 2025. The estimates used for the order of parameters in 2026 are now used.
 - (d) The CAPEX and OPEX data correspond to those recognised in the current remuneration framework for the standard installation IT-20604 for the two Solacor plants.
 - (e) For solar thermoelectric technology, the regulatory lifetime is 25 years.

Table 4

Impact of the Award on 26 % of the Solacor plants

TIR	Investment JGC 26%	With the Award	With the Award without interest	With the Award and interest
	EUR	TIR	TIR	TIR
SOLACOR 1	[...]	[...]%	[...]%	[...]%
SOLACOR 2	[...]	[...]%	[...]%	[...]%

6. ASSESSMENT OF THE MEASURE

6.1. Existence of aid

- (78) Article 107(1) TFEU provides that '*aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*'.
- (79) A measure constitutes State aid within the meaning of Article 107(1) TFEU, if it fulfils four cumulative conditions. First, the measure must be imputable to the State and financed through State resources. Second, the measure must confer an advantage to a beneficiary. Third, the measure must favour certain undertakings or economic activities (that is the advantage must be selective). Fourth, the measure must have the potential to affect trade between Member States and to distort, or threaten to distort, competition in the internal market.
- (80) The Commission will assess whether the Award and, in any event, the implementation, payment, or execution (described below as the 'Implementation') of the Award (and together, the 'Measure') constitutes State aid within the meaning of Article 107(1) TFEU.

6.1.1. Imputability and State resources

Imputability

- (81) According to the case-law of the Court of Justice, for a selective advantage to constitute aid within the meaning of Article 107(1) TFEU, it must, *inter alia*, be imputable to the State ⁽³³⁾. It must also be noted that, where an advantage is granted by a public authority, that advantage is, by definition, attributable to the State ⁽³⁴⁾.
- (82) Spain signed the ECT on 17 December 1994, ratified it on 11 December 1997, and the ECT entered into force with respect to Spain on 16 April 1998. As also explained by Spain, in accordance with Article 96(1) of the Spanish Constitution, international treaties that are validly concluded become part of the internal legal order, once officially published in Spain. Spain's ratification of the ECT was published in the Spanish Official State Gazette on 17 March 1998 ('*Instrument of ratification of the Energy Charter Treaty and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects, done in Lisbon on 17 December 1994*', see recital (73)). Spain signed the ICSID Convention on 21 March 1994 and ratified it on 17 September 1994. Spain's ratification of the ICSID Convention was published in the Spanish Official State Gazette on 13 September 1994 ('*Instrument of Ratification of the Convention on the settlement of investment disputes between States and Nationals of other States, adopted in Washington on March 18, 1965*').
- (83) The Tribunal issued the Award on the basis of its interpretation of those treaties, that Spain had signed and ratified, and that had thus become part of the Spanish legal order from the date of their publication in the Spanish Official State Gazette. Spain voluntarily decided to sign and ratify the ECT and the ICSID Convention, and to incorporate them into Spanish national law (see section 5.6). The issuance of the Award has therefore been rendered possible by Spain's decision to sign and ratify the ECT and the ICSID Convention and is for this reason imputable to Spain.
- (84) In addition, the Commission notes that the Implementation of the Award is imputable to Spain also for the reasons below.

⁽³³⁾ Judgment of the General Court of 5 April 2006, *Deutsche Bahn AG v Commission*, T-351/02, EU:T:2006:104, paragraph 101.

⁽³⁴⁾ Judgment of 15 December 2021, *Oltchim v Commission*, T-565/19, EU:T:2021:904, paragraph 160. Judgment of the General Court of 2 October 2024, Cases T-624/15 RENV and T-694/15 RENV, *European Food SA and Others v European Commission*, EU:T:2024:659, paragraph 206.

- (85) The Implementation would directly involve an autonomous decision of the Spanish authorities. That holds true if Spain voluntarily pays out on the Award, and if Spain would attempt initially to oppose the recognition and execution of the Award before a court of a Member State or a third country, and either fails to prevent seizure of assets or takes the decision to pay the Award in order to prevent measures of asset discovery and ultimately seizure of assets not protected by sovereign immunity ⁽⁵⁵⁾. The Commission also notes, for the sake of completeness, that the recognition or execution of the Award by a Spanish Court would be attributable to Spain for an additional reason given that the acts of all State organs, including the national courts, are imputable to the State.
- (86) As explained in recitals (67) and (68), Spain deposited an amount to an escrow account and decided to withdraw from the pending proceedings in Belgium in order to avoid forced execution of Spanish assets in the US. These were autonomous decisions of the Spanish authorities. As a result, the sum held in the escrow account was released to Blasket in full satisfaction of the Award (recital (62)). The Implementation of the Award is also an action imputable to Spain.

State resources

- (87) According to settled case-law, only advantages granted directly or indirectly through State resources can constitute State aid within the meaning of Article 107(1) TFEU ⁽⁵⁶⁾.
- (88) In this case, the Award contains an obligation for Spain to pay compensation of EUR 23.51 million plus interest for Spain's breach of the ECT.
- (89) Spain explained that the payment of this amount would be financed from State resources, and more specifically the general budget of Spain (see recital (76)). Therefore, the State resources criterion is met.
- (90) The Commission notes that, as explained in recital (76), the Award has already been paid to Blasket, despite Spain having opposed the recognition and execution of the Award before US and Union courts. As set out in recital (89), this payment has to be regarded as being made through State resources.

Conclusion on imputability and State resources

- (91) Based on the foregoing, the Commission preliminarily considers that the Measure is imputable to the Spanish State and is financed through State resources within the meaning of Article 107(1) TFEU.

6.1.2. Advantage and selectivity

Advantage

- (92) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say in the absence of the State intervention ⁽⁵⁷⁾. The precise form of the measure is irrelevant in establishing whether it confers an economic advantage on the undertaking ⁽⁵⁸⁾.

⁽⁵⁵⁾ Judgment of the General Court of 2 October 2024, Cases T-624/15 RENV and T-694/15 RENV, *European Food SA and Others v European Commission*, EU:T:2024:659, paragraphs 201 to 221.

⁽⁵⁶⁾ Judgment of the Court of Justice of 24 January 1978, *Van Tiggele*, 82/77, EU:C:1978:10, paragraphs 25 and 26; Judgment of the General Court of 12 December 1996, *Air France v Commission*, T-358/94, EU:T:1996:194, paragraph 63.

⁽⁵⁷⁾ Judgment of the Court of Justice of 11 July 1996, Case C-39/94, *SFEI and Others*, EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Case C-342/96, *Spain v Commission*, EU:C:1999:210, paragraph 41.

⁽⁵⁸⁾ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415, paragraph 84.

- (93) In that regard, in order to assess whether a Member State has conferred an advantage on a given undertaking, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been taken ⁽⁵⁹⁾. There is therefore an advantage where, as a result of the measure and without that being justified by the nature or general scheme of the system concerned, the net financial situation of the beneficiary is improved ⁽⁶⁰⁾.
- (94) Moreover, the concept of ‘advantage’, which is intrinsic to the classification of a measure as State aid, is an objective one, irrespective of the motives of the persons responsible for the measure in question. Accordingly, the nature of the objectives pursued by State measures and their grounds of justification have no bearing whatsoever on whether such measures are to be classified as State aid. Article 107(1) TFEU does not distinguish between the causes or the objectives of State aid but defines them in relation to their effects ⁽⁶¹⁾.
- (95) In this case, firstly, as explained in recital (52), the compensation awarded to JGC by virtue of the Award is calculated as the present value of all the cash flows that JGC would have received during the estimated lifetime of the plant, had the 2007 Scheme not been modified by Spain. The Award therefore has the effect of compensating JGC for the modification of the 2007 Scheme. In other words, the Award has the economic effect of re-establishing the situation JGC would have found himself in if the 2007 Scheme, which constitutes unlawful State aid (see recital (96) below), had remained in place.
- (96) The 2007 Scheme constitutes State aid within the meaning of Article 107(1) TFEU, for the following reasons:
- (a) Beneficiaries of the 2007 Scheme are compensated at a rate exceeding the returns that they would normally have received from the market in the absence of the 2007 Scheme. The scheme therefore provides an advantage. In fact, the profitability for solar-thermoelectric was set to up to 8 % for facilities that chose tariffs and between a 7 % and 11 % return for those participating in the wholesale market and getting a premium (recital (12)). The 2007 Scheme thus increases profitability of such investments above market returns, hence to provide an advantage. The 2007 Scheme therefore provided an advantage within the meaning of Article 107(1) TFEU.
 - (b) The 2007 Scheme favoured only the generation of electricity from renewable sources, high efficiency cogeneration and waste by the selected beneficiaries ⁽⁶²⁾. The advantage granted by the 2007 Scheme was therefore selective.
 - (c) Support under the 2007 Scheme was imputable to the State as it was established by law and implementing decrees (see recital (10)).
 - (d) The financing mechanism of the 2007 Scheme (see recitals (15) to (18)) involves State resources. As Spain noted, the financing mechanism of the 2007 Scheme is essentially the same as the one assessed by the Court of Justice in the *Elcogás* order, relating to the costs of the electricity system in Spain, and found to be financed by State resources ⁽⁶³⁾. Therefore, the same considerations as put forward in the *Elcogás* order apply to the present case. It is the State that adopts the necessary provisions for the implementation of the system of the network access charges and that sets the methodology for the calculation of the charges, which are borne – as mandatory costs – by all electricity consumers and network users. In addition, the charges system is managed by a State body, the Spanish regulator CNMC. The State also defines the beneficiaries of the settlements, as well as the applicable mathematical formulas, and regulates the settlement procedure itself, according to predetermined objective parameters. In addition, since the *Elcogás* order, the Court of Justice

⁽⁵⁹⁾ See, to that effect, judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, 173/73, EU:C:1974:71, paragraph 13.

⁽⁶⁰⁾ Case C-212/19, *Compagnie des pêches de Saint-Malo*, EU:C:2020:726, paragraph 40.

⁽⁶¹⁾ See, to that effect, judgment of the Court (Grand Chamber) of 25 January 2022, Case C-638/19 P, *European Commission v European Food SA and Others*, EU:C:2022:50, paragraph 122 and cited case-law.

⁽⁶²⁾ See article 2 of Royal Decree 661/2007 of 25 May 2007 regulating the production of electricity under the special regime. Boletín Oficial del Estado (BOE) 126 of 26 May 2007, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-10556>.

⁽⁶³⁾ Order of the Court of 22 October 2014, *Elcogás SA v Administración del Estado and Iberdrola SA*, Case C-275/13, EU:C:2014:2314, see notably paragraphs 24-33.

has held that funds financed through compulsory charges imposed by the legislation of the Member State, managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU even if they are managed by entities separate from the public authorities ⁽⁶⁴⁾. The Court has held that a decisive criterion for classifying a tariff supplement as a levy constituting State resources was that that price supplement constituted a charge unilaterally imposed by law which the consumers were required to pay. Spain has confirmed (see recital (15)) that consumers were required by law to finance the costs of the 2007 Scheme. Thus, the 2007 Scheme was financed by State resources.

- (e) Electricity has been a sector open to competition and widely traded between Member States. The 2007 Scheme was therefore likely to distort competition on the electricity market and affect trade between Member States ⁽⁶⁵⁾.

(97) In addition, the mere fact that those sums are awarded by a judicial or arbitral tribunal and are formally characterised as compensation does not, in itself, preclude their classification as State aid. In accordance with the case-law of the Union Courts, where national legislation has established 'State aid' within the meaning of Article 107(1) TFEU, the payment of a sum claimed before the courts in accordance with that legislation also constitutes such aid ⁽⁶⁶⁾. While the case-law considers that a distinction must be drawn between claims for compensation for damage resulting from unlawfulness of State action and claims for the payment of amounts duly due under national legislation, where sums claimed before the courts, even formally as compensation, correspond to the payment of an advantage which the applicant is seeking pursuant to legislation, the action does not seek compensation for harm distinct from that consisting of the complete non-payment of the advantage to which the applicant considered he or she was entitled under that legislation ⁽⁶⁷⁾. The recipient of aid cannot circumvent the effective application of the rules on State aid by obtaining, without relying on Union law on State aid, a judgment granting compensation whose effect would enable it, definitively, to continue to implement the aid in question over a number of years ⁽⁶⁸⁾.

(98) In the case at hand, it is clear that the Award, and in any event its Implementation, does not constitute compensation for damage resulting from unlawfulness of State action. As the 2013 Scheme abolished the 2007 Scheme, companies admitted into the 2007 Scheme do not have any legal basis in Spanish law to request payments on the basis of the 2007 Scheme after its abolition. The Spanish courts have confirmed in a series of judgments the legality of the abolition of the 2007 Scheme and its replacement by the 2013 Scheme, finding in particular that Spain did not violate the general principle of legitimate expectations ⁽⁶⁹⁾. Therefore, the Commission also considers that the Award does not merely compensate for any unlawful action by Spain.

(99) On the contrary, the Award, and in any event its Implementation, has the economic effect of re-establishing the situation JGC would have found himself in if the 2007 Scheme, which constitutes unlawful State aid (see recital (95) above), had remained in place. For this reason, it cannot be considered that the Award grants compensation for damages, distinct from the compensation which JGC seeks to obtain under the national legislation governing the abolished 2007 Scheme.

⁽⁶⁴⁾ Judgment of the Court of 28 March 2019, *Federal Republic of Germany v European Commission*, Case C-405/16 P, EU:C:2019:268, paragraph 58 with further references.

⁽⁶⁵⁾ See also Commission Decision (EU) 2025/1235 of 24 March 2025 on the measure State aid SA.54155 (2021/NN) implemented by Spain – Arbitration award to Antin, recital 214.

⁽⁶⁶⁾ See, to that effect, judgment of the Court of Justice of 12 January 2023, *DOBELES HES*, C-702/20 and C-17/21, EU:C:2023:1, paragraph 65; and the judgment of the General Court of 2 October 2024, cases T-624/15 RENV and T-694/15 RENV, *European Food SA and Others v European Commission*, EU:T:2024:659, paragraph 174.

⁽⁶⁷⁾ See, to that effect, judgment of 12 January 2023, *DOBELES HES*, C-702/20 and C-17/21, EU:C:2023:1, paragraphs 61 and 62) See also the judgment of the General Court of 2 October 2024, cases T-624/15 RENV and T-694/15 RENV, *European Food SA and Others v European Commission*, EU:T:2024:659, paragraph 173.

⁽⁶⁸⁾ See, to that effect and by analogy, judgment of 11 November 2015, *Klausner Holz Niedersachsen*, C-505/14, EU:C:2015:742, paragraphs 42 to 44 and the judgment of the General Court of 2 October 2024, cases T-624/15 RENV and T-694/15 RENV, *European Food SA and Others v European Commission*, EU:T:2024:659, paragraph 175.

⁽⁶⁹⁾ Judgments of the Spanish Supreme Court of 1 June 2016 n°1281/2016 (ES:TS:2016:2648), n°1271/2016 (ES:TS:2016:2559) and n°1265/2016 (ES:TS:2016:2426).

- (100) Moreover, the Award, and in any event its Implementation, improves the financial situation of the recipient of the compensation compared to its financial situation without it. More specifically, the Tribunal awarded JGC EUR 23.51 million as compensation plus interests (recital (49)). The Award granted to JGC a right which JGC would not have obtained in the absence of the Award (see recitals (98) and (101)), and which has financial value. This financial value could also be transferred to other beneficiaries, against suitable payment. In particular, the rights to the Award were transferred to Blasket, which was not a party in the arbitration proceedings, and which was the successor in title of the Award (recital (71)).
- (101) In the absence of the Award, JGC would not have been entitled to any compensation such as that obtained as a result of the Award, there would be no title on the basis of which to seek implementation ⁽⁷⁰⁾ and JGC would have only continued to receive aid under the 2013 Scheme. JGC would not be entitled to any compensation if the claim would be brought before the Spanish courts. The Award has the effect of going beyond what an undertaking could have obtained under the applicable national law. In addition, the Award confers a right which other investors in the same situation would not have obtained following a lawful procedure in Spain (see recital (98)).
- (102) The Commission therefore considers that the Measure confers an economic advantage to JGC that was afterwards transferred by JGC to Blasket.

Economic advantage granted to an undertaking

- (103) The Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ⁽⁷¹⁾. The classification of a particular entity as an undertaking thus depends entirely on the nature of its activities and more specifically whether these are economic. Moreover, the Court of Justice has consistently held that any activity consisting in offering goods and services on a market is an economic activity ⁽⁷²⁾.
- (104) The Award and, in any event its Implementation, granted an advantage to JGC, which is an undertaking that exercises an economic activity within the meaning of Article 107(1) TFEU. In this case, JGC is a company established in Japan and offers EPC services for energy and industrial infrastructure projects, and functional materials manufacturing (recital (32)). Therefore, it must be considered that it has been offering services on a market and therefore engaging in an economic activity. It is thus an undertaking within the meaning of Article 107(1) TFEU.
- (105) In addition, as explained in recital (72), on the basis of public information, Blasket acts as an investor, acquiring the rights to awards from other companies that originally won them through international arbitration and enforces them. Blasket has acquired the rights to at least ten arbitration awards that have been issued against Spain, including the Award, for a financial value (recital (55)). It is thus an undertaking within the meaning of Article 107(1) TFEU.

Selectivity

- (106) To fall within the scope of Article 107(1) TFEU, a State measure must favour 'certain undertakings or the production of certain goods'. Hence, not all measures that grant an undertaking an economic advantage fall under the notion of State aid, but only those which confer an economic advantage in a selective way upon certain undertakings or categories of undertakings or to certain economic sectors.

⁽⁷⁰⁾ Judgment of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415, paragraph 84.

⁽⁷¹⁾ Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, EU:C:2006:8, paragraph 107. See also the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.

⁽⁷²⁾ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, EU:C:1987:283, paragraph 7; Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 75.

- (107) According to settled case-law, where an individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective. This is so, regardless of whether there are operators on the relevant markets that are in a comparable situation ⁽⁷³⁾.
- (108) In this case, the Award is an individual aid constituting a separate legal act that grants a right to compensation only to JGC (that was afterwards transferred by JGC to Blasket). Therefore, the Commission considers that the advantage granted by the Award is selective, since it is awarded specifically to JGC (that transferred the Award to Blasket), while other undertakings in a comparable legal and factual situation within that sector or other sectors are not eligible for aid and thus will not receive the same advantage.

Conclusion on advantage and selectivity

- (109) Based on the above, the Commission preliminarily considers that the Award and, in any event, the Implementation of the Award, confers a selective advantage to JGC and Blasket within the meaning of Article 107(1) TFEU.

6.1.3. *Distortion of competition and effect on trade*

- (110) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ⁽⁷⁴⁾. A distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽⁷⁵⁾. An advantage granted to an undertaking that distorts competition will normally also be liable to affect trade between Member States. Trade between Member States is affected where a measure strengthens the competitive position of the beneficiary undertaking as compared with other undertakings competing in intra-Union trade ⁽⁷⁶⁾.
- (111) In this case, the beneficiary of the Award, and, in any event, its Implementation, is JGC, which is considered as an undertaking (an economic unit) and exercises an economic activity consisting of investing in infrastructure and energy in the Union (recitals (32) and (34)). The energy and investment sectors are liberalised sectors where there is intra-EU competition. Thus, any advantage granted to JGC, and its shareholders is liable to distort competition and to strengthen the competitive position of JGC and its shareholders as compared with other undertakings competing in intra-Union trade.
- (112) Since acquiring the rights to the Award, Blasket is also a beneficiary, which is considered as an undertaking and exercises an economic activity through acquiring the rights to awards from other companies that originally won them through international arbitration and enforces them. It is active in the internal market, as its two direct shareholders are based in Dublin, Ireland: Trinity Investments DAC which is the managing member of the fund holding 60 %, and Blasket Investments DAC holding 40 % (recital (55)).
- (113) Consequently, the Commission preliminarily considers that the Award and, in any event its Implementation are liable to affect trade between Member States and to distort, or threaten to distort, competition in the internal market.

6.1.4. *Conclusion on existence of aid*

- (114) In view of the above, the Commission preliminarily considers that the Measure constitutes State aid under the meaning of Article 107(1) TFEU.

⁽⁷³⁾ Judgment of 4 June 2015, *Commission v MOL*, C-15/14 P, EU:C:2015:362, paragraph 60.

⁽⁷⁴⁾ Judgment of 17 September 1980, *Philip Morris*, 730/79, EU:C:1980:209, paragraph 11; judgment of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraph 80.

⁽⁷⁵⁾ Judgment of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., EU:T:2000:151, paragraphs 141 to 147; judgment of 24 July 2003, *Altmark Trans*, C-280/00, EU:C:2003:415.

⁽⁷⁶⁾ Judgment of 15 May 2019, *Achema AB and Others v Valstybinė kainų ir energetikos kontrolės komisija (VKEKK)*, C-706/17, EU:C:2019:407, paragraph 92 and the case-law cited.

6.2. Regarding the lawfulness of the aid

- (115) Article 108(3) TFEU requires that the Member State concerned shall not put its proposed measure into effect until the Commission procedure has resulted in a final decision.
- (116) According to well-established case-law, the decisive factor for establishing the date on which the right to receive State aid was conferred on its beneficiaries by a particular measure is the acquisition by those beneficiaries of a definitive right to receive that aid and to the corresponding commitment, by the State, to grant that aid. It is at that date that such a measure is liable to distort competition and affect trade between Member States, within the meaning of Article 107(1) TFEU ⁽⁷⁷⁾.
- (117) In this case, the Award was delivered on 9 November 2021 and ordered Spain to pay to JGC compensation of EUR 23.51 million plus interests. JGC was conferred the right to receive the compensation ordered in the Award on that date (9 November 2021). Based on the Tribunal's finding that the ECT applied to the dispute at hand, Article 26, paragraph (8) ECT means that Spain is bound by the outcome of the arbitration proceedings and the right for JGC to receive the compensation under the Award was therefore conferred on 9 November 2021 and the aid was thus granted under the Award on this same date (that is to say, on 9 November 2021).
- (118) Spain notified the Award on 25 March 2022. Since the aid was granted on 9 November 2021 before being approved by the Commission, the Commission therefore considers that the aid resulting from the Award is unlawful and has been put into effect in violation of Article 108(3) TFEU.
- (119) In addition, Spain made a payment of EUR 32 954 296 in an escrow account and that amount was released to Basket (recital (68)) for full satisfaction of the Award. The Commission considers that this payment, before the approval of the Commission, constitutes unlawful aid put into effect in violation of Article 108(3) TFEU.

6.3. Compatibility of aid

- (120) Given that the Award, and in any event its Implementation, constitutes State aid within the meaning of Article 107(1) TFEU, such measure shall be prohibited unless it can be deemed compatible with the internal market pursuant to Article 107(2) or Article 107(3) TFEU.
- (121) At the outset, the Commission recalls that when assessing the compatibility of a measure with the internal market under Articles 107(2) and 107(3) TFEU, the burden of proof is the principal responsibility of the Member State ⁽⁷⁸⁾. In this case, Spain has not presented any arguments that could justify the measure under Article 107(2) or Article 107(3) TFEU.
- (122) In its notification, Spain submitted that the Award breaches Union law, and more specifically the principle of autonomy of the Union legal order, the exclusive competence of the Commission to authorise State aid, and the principle of non-discrimination. Spain argued that while all investors in the Union benefit from the same protection thanks to the Union rules, however, some investors that benefitted from the 2007 Scheme (e.g. Spanish investors) do not have access to international arbitration to claim damages under the ECT, as JGC did.
- (123) In any event, for the sake of completeness, the Commission has preliminary doubts as to whether the measure could be compatible with the internal market and these doubts relate to (i) a possible breach of EU Treaties by the aid measure, and (ii) the non-compliance of the aid measure with the compatibility criteria under the State aid guidelines applicable to operating aid to energy from renewable sources. The Commission considers that no other basis of compatibility under the Treaty seems to be applicable in this case and would have doubts that any compatibility can be established under the Treaty.

⁽⁷⁷⁾ Judgment of the Court (Grand Chamber) of 25 January 2022, Case C-638/19 P, *European Commission v European Food SA and Others*, EU:C:2022:50, paragraph 123.

⁽⁷⁸⁾ Judgment of the Court of First Instance of 12 September 2007, Case T-68/03, *Olympiaki Aeroporoi Ypiresies v Commission*, EU:T:2007:253, paragraph 34.

6.3.1. Possible breach of Union law

- (124) According to settled case-law of the Court of Justice, ‘State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market [...]. Indeed, where the modalities of an aid measure are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 108 TFEU’ ⁽⁷⁹⁾.
- (125) As indicated in recital (122), Spain submitted that the Award breaches Union law, and more specifically the principle of autonomy of the Union legal order, the exclusive competence of the European Commission to authorise State aid, and the principle of non-discrimination. More specifically on equality of treatment, Spain argues that while all investors in the Union benefit from the same protection thanks to the Union rules, however, some investors that benefitted from the 2007 scheme (e.g. Spanish investors) do not have access to international arbitration to claim damages under the ECT, as JGC did. Therefore, the Award would introduce a discrimination - based on nationality - among the 2007 scheme investors based on their ability to access international arbitration or not, in breach of Article 18 TFEU.
- (126) At the outset, the Commission notes that in the present case, the Award concerns a dispute between a Member State and an investor of a third country and was adopted in the context of proceedings initiated on the basis of the investor-State arbitration mechanism laid down in Article 26 of the ECT. Therefore, the principles established in the *Achmea* and *Komstroy* judgments according to which Article 19 TEU and Articles 267 and 344 TFEU as well as the general principle of the autonomy of the EU legal order preclude a provision contained in an international agreement under which an investor of one Member States party to that agreement may, in the event of a dispute concerning investments in another Member State party to that agreement, bring proceedings against the latter Member State before an arbitral tribunal, the jurisdiction of which that Member State has undertaken to accept ⁽⁸⁰⁾ cannot be presumed to be applicable.
- (127) Nevertheless, the Commission recalls that, according to settled case-law of the Union courts, an international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the Union legal system, observance of which is ensured by the Court ⁽⁸¹⁾. That principle is enshrined in particular in Article 344 TFEU, by virtue of which the Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of dispute settlement other than those provided for in the Treaties ⁽⁸²⁾.
- (128) In so far as the Award corresponds, in substance, to aid that was not notified to the Commission ⁽⁸³⁾ and that the Commission has not found compatible with the internal market ⁽⁸⁴⁾, that award necessarily infringes Articles 107 and 108 TFEU. The Commission preliminarily considers that, therefore, the Award cannot be regarded as compatible with the constitutional framework of the Union. Under Article 108(3) TFEU, the Commission enjoys exclusive competence to assess the compatibility of State aid measures with the internal market, whilst national courts are required to safeguard the rights of individuals by drawing all necessary consequences from an

⁽⁷⁹⁾ Judgment of the Court of Justice of 31 January 2023, Case C-284/21 P, *Commission v Anthony Braesch and others*, EU:C:2023:58, paragraphs 96 and 97 (see also the referenced case-law), Judgment of the Court of Justice of 11 September 2025, Case C-59/23 P, *Austria v Commission*, EU:C:2025:686, paragraphs 52 and following.

⁽⁸⁰⁾ See the *Achmea* judgment and the *Komstroy* judgment; Order of the Court of 21 September 2022, *Romatsa and Others*, C-333/19, EU:C:2022:749.

⁽⁸¹⁾ See the *Achmea* judgment, paragraph 32 and case-law cited. See also the *Komstroy* judgment, paragraph 42.

⁽⁸²⁾ See the *Achmea* judgment, paragraph 32. See also paragraph 42 of the *Komstroy* judgment.

⁽⁸³⁾ See Section 6.1 above where the Commission concluded that it preliminarily considers that the Award and, in any event, the implementation constitutes State aid under the meaning of Article 107(1) TFEU.

⁽⁸⁴⁾ See Section 6.2 above where the Commission concluded that it preliminarily considers that the State aid measure at issue had been granted in breach of the standstill obligation.

infringement of the standstill obligation, including by preventing the implementation, payment or enforcement of unlawful aid⁽⁸⁵⁾. If in an arbitral award the arbitral tribunal, in substance, applied Union law, and thereby substituted its own assessment to that of the Commission or of Union Courts, that award would be in breach of the principle of autonomy of EU law. Therefore, the Commission should investigate further during the in-depth investigation the serious doubts whether the award under consideration breaches Union law and more specifically the principle of autonomy of the Union legal order.

- (129) In addition, based on the evidence on file, the Commission has not been able to conclude whether or not the Award constitute a discrimination in breach of Article 18 TFEU. The Commission will therefore investigate this question further during the in-depth investigation.
- (130) In view of the above, the preliminary investigation did not enable the Commission to dispel its doubts as to the compatibility of the aid measure with Union law, and in particular Article 19(1) TEU, and Articles 267 and 344 TFEU, as well as the general principle of the autonomy of the EU legal order, and Article 18 TFEU. Moreover, the Commission preliminarily considers that, should the Award, or in any event its Implementation be incompatible with Union law for the aforementioned reasons, it could not have any effect and could not be enforced in order to receive payment of the compensation awarded⁽⁸⁶⁾.

6.3.2. Compatibility with the relevant State aid guidelines

6.3.2.1. Legal basis for assessment

- (131) The granting moment of the aid is relevant in order to establish under which State aid guidelines the aid has to be assessed. According to settled case law, State aid must be considered to be granted at the time when the right to receive it is conferred on the beneficiary under the applicable national rules, taking into account all the conditions laid down by national law for obtaining such aid.⁽⁸⁷⁾
- (132) As regards the granting date of arbitration awards, the Court of justice held in the *Micula* case that the right to compensation was granted by the arbitral award, as it is only upon the conclusion of the arbitral proceedings that the arbitration applicants were able to obtain actual payment of that compensation⁽⁸⁸⁾.
- (133) In the present case, the aid at issue was granted on 9 November 2021, which corresponds to the date on which the Award was rendered (see recital (117)). The compatibility of the Award and in any event its Implementation has therefore to be examined against the relevant State aid guidelines that were applicable at the time, namely, the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG").
- (134) The Award, and in any event its Implementation falls under the definition of individual aid in point 19(19) of the EEAG, since it is granted on an ad hoc basis. As explained in recital (108), the Award constitutes a separate legal act that grants a right to compensation only to JGC (that was afterwards transferred by JGC to Blasket). It is thus subject to the compatibility provisions established therein for individually notifiable aid.

⁽⁸⁵⁾ See, in this regard, judgment of the Court of 11 July 1996,

Syndicat français de l'Express international (SFEI) and others v La Poste and others, C-39/94, EU:C:1996:285, paragraphs 41-53, and judgment of the Court of 12 February 2008, *Centre d'exportation du livre français (CELF) and Ministre de la Culture et de la Communication v Société internationale de diffusion et d'édition (SIDE)*, C-199/06, EU:C:2008:79, paragraph 41.

⁽⁸⁶⁾ Order of 21 September 2022, *Romatsa and Others*, C-333/19, EU:C:2022:749, paragraphs 42-43; Declaration on the legal consequences of the judgment of the Court of Justice in *Komstroy* and common understanding on the non-applicability of Article 26 of the Energy Charter Treaty as a basis for intra-EU arbitration proceedings, OJ L, 2024/2121, 6.8.2024.

⁽⁸⁷⁾ Judgment of the Court of 19 December 2019, *Arriva Italia and Others*, Case C-385/18, EU:C:2019:1121, paragraph 36.

⁽⁸⁸⁾ Judgment of the Court (Grand Chamber) of 25 January 2022, Case C-638/19 P, *European Commission v European Food SA and Others*, EU:C:2022:50, paragraph 124.

- (135) Therefore, the Commission will assess the compatibility of individual aid to JGC with the internal market on the basis of Article 107(3)(c) TFEU and the EEAG. According to point 119 EEAG, aid to energy from renewable sources can be granted as investment or operating aid. Point 120 EEAG specifies that, for individually notified operating aid, the conditions set out in Section 3.2 apply, where relevant taking into account the modifications made by this Section for operating aid schemes. The Commission will therefore assess the compatibility of the measure under Sections 3.2 (General compatibility provisions) and 3.3.2.1 of the EEAG (Aid for electricity from renewable energy sources).

6.3.2.2. Positive condition: the aid must facilitate the development of an economic activity

6.3.2.2.1. Development of an economic activity

- (136) In accordance with Article 107(3)(c) TFEU, compatible aid under that provision of the Treaty must facilitate the development of certain economic activities ⁽⁸⁹⁾.
- (137) In the present case, as it has already been explained, the Award and in any event its Implementation has the effect of compensating the beneficiary for the modification of the 2007 Scheme (recital (95)). Spain has not demonstrated that the Award and in any event its Implementation would contribute to a change in the conduct of the beneficiary in the form of new investment or increased output of electricity production. It has therefore not been shown that the Award and in any event its Implementation would lead to the development of the economic activity of electricity production from solar energy. According to settled case-law, aid intended to maintain the *status quo* or to release an undertaking from costs which it would normally have had to bear in its day-to-day management or normal activities cannot be considered compatible with the internal market, because it does not facilitate the development of an economic activity, within the meaning of Article 107(3)(c) TFEU ⁽⁹⁰⁾.
- (138) The Commission therefore has doubts that the aid develops an economic activity, and, in particular, the economic activity of producing electricity from renewable sources.

6.3.2.2.2. Incentive effect of the aid

- (139) State aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid and if the change in behaviour would not occur without the aid. ⁽⁹¹⁾
- (140) As explained in Section 3.2.4 of the EEAG, and in particular point 49 EEAG, environmental and energy aid can only be found compatible with the internal market if it has an incentive effect. The latter occurs when the aid induces the beneficiary to change its behaviour to increase the level of environmental protection or to improve the functioning of a secure, affordable and sustainable energy market, a change which it would not have undertaken without the aid. To have an incentive effect, the aid must not subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity.
- (141) Point 50 EEAG also provides that where the beneficiary starts implementing a project before applying for aid, any aid granted in respect of that project will not be considered compatible with the internal market.
- (142) Point 51 EEAG explains that Member States must introduce and use an application form for aid and indicate the information that must be included in the application form.

⁽⁸⁹⁾ Judgment of the Court of Justice of 22 September 2020, Case C-594/18 P, *Austria v Commission (Hinkley Point C)*, ECLI:EU:C:2020:742.

⁽⁹⁰⁾ *Idem*, paragraph 112.

⁽⁹¹⁾ See in that sense points 49 and 144 of the EEAG, as well as Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

- (143) Point 52 EEAG provides that when receiving an application form, the granting authority must carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. A counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.
- (144) In case of individual aid, to have incentive effect the aid must fulfil the additional conditions of Section 3.2.4.2. of the EEAG. The Member State must fully demonstrate to the Commission the incentive effect of the aid and must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, comparing the levels of intended activity with aid and without aid. Essentially, that amounts to checking the profitability of the project in the absence of the aid, to assess whether it indeed falls short of the profit obtained by the company by implementing the alternative project.
- (145) In particular, according to point 61 EEAG, the level of profitability can be evaluated by reference to methodologies which are standard practice in the particular industry concerned, and which may include methods to evaluate the net present value ('NPV') ⁽⁹²⁾ of the project, the internal rate of return ('IRR') ⁽⁹³⁾ or the average return on capital employed ('ROCE'). The profitability of the project is to be compared with normal rates of return applied by the company in other investment projects of a similar kind. Point 63 EEAG explains that the Member States are, in particular, invited to rely on contemporary, relevant and credible evidence, and point 64 EEAG explains that for an objective assessment, the Commission may compare company-specific data with data concerning the industry in which the company is active.
- (146) The Commission notes that, at the time the Award was rendered and in any event implemented, the investment in the Solacor plants had already been completed the beneficiary had irrevocably taken the investment decision, and the plants were operational. The construction phase for the Solacor plants started in September 2010 (recital (35)) and the Award was rendered on 9 November 2021 (recital (49)). Since JGC started operating the plants before applying to the national authorities for the amount corresponding to the Award, the Award and in any event its Implementation cannot be considered compatible with the internal market according to point 50 EEAG. There is no evidence that it influenced JGC's decision to invest and the scale of the investment. The amount corresponding to the Award was not applied for through an aid application procedure for the underlying investment project, which would allow a credibility check in line with the requirements of points 51 and 52 EEAG.
- (147) As regards compliance with the conditions in Section 3.2.4.2. of the EEAG, the Commission has doubts that the Award and in any event its Implementation would have an impact on the investment decision in a way that it changes the beneficiary's behaviour in line with point 58 EEAG.
- (148) Spain has not provided any elements that would be relevant to a decision of the beneficiary to change its behaviour because of the Award and in any event its Implementation. It has not been demonstrated that payment of the Award would result in a decision to maintain the project or increase the number of full load hours, undertake additional investments or prolong operation beyond what market conditions would otherwise justify, or undertake any other environmentally beneficial activity that would not occur in the absence of the measure.
- (149) On the contrary, the data submitted by the Spanish authorities show that the Solacor plants continued to operate in the market for the production of electricity after the modification of the 2007 scheme. In fact, the amounts of electricity they produced in years 2012-2026 do not present big fluctuations (see recital (41)).

⁽⁹²⁾ The net present value ('NPV') of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital), that is to say the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind. When this benchmark is not available, the cost of capital of the company as a whole or rates of return commonly observed in the industry concerned may be used for this purpose.

⁽⁹³⁾ The internal rate of return ('IRR') is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

- (150) Therefore, the Award and in any event its Implementation does not seem to induce the beneficiary to undertake an additional activity contributing to environmental protection within the meaning of the EEAG. Rather, it compensates the beneficiary *ex post* for the financial consequences arising from the modification of the 2007 Scheme. The objective of the measure is not to incentivise new investments in renewable energy generation but to restore *ex-post*, wholly or partially, the economic position that the beneficiary would allegedly have enjoyed had the 2007 Scheme remained fully in force.
- (151) The Commission also doubts that the Solacor plants would not be sufficiently profitable without the aid.
- (152) Spain has not provided an *ex ante* business plan or any other evidence that would be credible, contemporary and relevant to a change in the behaviour of the beneficiary as a result of the Award and in any event its Implementation, as required by point 63 EEAG. In the context of the arbitration proceedings, the compensation awarded to JGC by virtue of the Award was calculated as the present value of all the cash flows that JGC would have received during the estimated lifetime of the plant, had the 2007 Scheme not been modified by Spain (see recitals (53) and (95)). This analysis is based on *ex post* data and not on contemporaneous documents produced at the time of the original investment decision.
- (153) Spain also provided IRR calculations which are based on actual post-investment data, for example actual energy produced and actual market prices (see recital (76)). However, according to this analysis conducted by the Spanish authorities, the IRR for both plants with the compensation from the Award would be [...] % for each of the plants without interest, while, if interest is also taken into account, the IRR would be [...] % for Solacor 1 and [...] % for Solacor 2 (see Table 4). This is higher than the rate of 7.398 %, which was taken into account for existing facilities (i.e. installations that already received support under the 2007 Scheme) and was assessed as reasonable in the 2017 Commission decision (see recital (120) of the 2017 Commission decision). There is no evidence that worsened market conditions would necessitate higher support rates to maintain the profitability of the project.
- (154) The Commission therefore considers that the measure merely confers an *ex post* financial advantage linked to a past investment decision made by JGC before the Award was rendered. Since the investment had already been undertaken before the Award was rendered, the payment is incapable of altering the beneficiary's behaviour in the manner required by Section 3.2.4 of the EEAG.
- (155) In light of the above, the Commission has doubts that the aid has an incentive effect and is necessary in order to develop the economic activity of producing electricity from renewable sources.

6.3.2.2.3. Compliance with relevant provisions of EU law

For the reasons explained in section 6.3.1, the Commission has doubts as to the compatibility of the aid measure with Union law, and in particular Article 19(1) TEU, and Articles 267 and 344 TFEU, as well as the general principle of the autonomy of the EU legal order, and Article 18 TFEU.

6.3.2.2.4. Conclusion

- (156) For the reasons explained in sections 6.3.2.2.1 to 6.3.2.2.3, the Commission cannot conclude, at this stage, that the Award and in any event its Implementation fulfils the first (positive) condition of the compatibility assessment i.e. that the aid facilitates the development of an economic activity without breaching relevant Union rules.

6.3.2.3. Negative condition: the aid measure cannot unduly affect trading conditions to an extent contrary to the common interest

6.3.2.3.1. Minimisation of distortions of competition and trade

- (157) Distortions of competition and trade are minimised if the aid is necessary, appropriate and proportionate, and the cumulation and transparency requirements are met.

6.3.2.3.2. Need for State intervention

- (158) Section 3.2.2 of the EEAG provides that the Commission will consider that aid is needed if the Member State demonstrates that the aid effectively targets a market failure which is not addressed. In case of individual aid, the Commission will assess the specific need for the case at hand. It is for the Member State to demonstrate that there is a market failure which is still not addressed with regards to the specific activity supported by the aid (see point 38 of the EEAG).
- (159) Spain has not argued that the aid granted by the Award is necessary to address a residual market failure not already addressed, neither in relation to JGC nor in relation to the Solacor plants. In addition, as already explained (recital (150)), the Award and in any event its Implementation compensates the beneficiary ex post for the financial consequences arising from the modification of the 2007 Scheme. There is no evidence regarding the change in the beneficiary's behaviour that the Award and in any event its Implementation would trigger and no ex ante data in order for the Commission to assess whether the aid is intended to alter the beneficiary's behaviour in response to a market failure.

6.3.2.3.3. Appropriateness of the aid

- (160) As provided in section 3.2.3. EEAG, in particular in point 40, the proposed aid measure must be an appropriate instrument to address the policy objective concerned. Point 46 EEAG explains that the choice of the aid instrument should be coherent with the market failure that the aid measure aims at addressing. Point 116 EEAG provides that in order to help Member States to achieve their national energy and climate change targets, the Commission presumes aid to energy from renewable sources to be appropriate and have limited distortive effects provided all other compatibility conditions are met.
- (161) The Commission doubts whether the Award and in any event its Implementation is an appropriate measure, as it has not been proven that it contributes to the achievement of a policy objective, i.e. to promote increased levels of environmental protection or to achieve a well-functioning secure, affordable and sustainable European energy market. In addition, it has not been proven that the Award and in any event its Implementation addresses a market failure and the Commission has doubts that all other compatibility conditions are met, therefore the presumption of point 116 EEAG cannot apply.

6.3.2.3.4. Proportionality

- (162) According to point 69 of the EEAG, aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the the environmental protection or energy objective aimed for. Section 3.3.2.1 of the EEAG establishes detailed rules for operating aid granted to energy from renewable sources, while Section 3.2.5.3 lays down additional conditions for individually notifiable aid.
- (163) Point 124 sets the principle that, from 1 January 2016, for all new schemes and measures, operating aid for electricity from renewable energy sources will be considered compatible with the internal market if the following conditions are met:
- (a) aid is granted as a premium in addition to the market price whereby the generators sell their electricity directly in the market.
 - (b) beneficiaries are subject to standard balancing responsibilities, unless no liquid intra-day markets exist, and
 - (c) measures are put in place to ensure that generators have no incentive to generate electricity under negative prices.
- (164) According to point 125 EEAG, the conditions listed in recital (163) (163)(a) to (163)(c), do not apply to installations with an installed electricity capacity of less than 500 kW and demonstration projects, except for electricity from wind energy where an installed electricity capacity of 3 MW or three generation units applies.

- (165) In the present case, the compensation stemming from the Award would not be granted as a premium per unit of energy produced but as an amount calculated and ordered by the Tribunal. Therefore, from the conditions mentioned in recital (163), at least the condition under (163)(a) is not fulfilled. The exception in point 125 EEAG does not apply, since the Solacor plants have a capacity of 50 MW (recital (33)).
- (166) According to point 126 EEAG, from 1 January 2017, aid must be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. No competitive bidding process is necessary where such a process would not lead to an optimal result due to the presence of one of the sets of circumstances listed in point 126 paragraph 2 (a) to (c). In the present case, JGC was not selected through such a process and Spain submitted that none of these sets of circumstances apply.
- (167) In the absence of a competitive bidding process, point 128 EEAG stipulates that the aid is considered to be proportional if the conditions of point 131 EEAG are applicable. The latter states that the aid per unit of energy must not exceed the difference between the levelised costs of energy ("LCOE") and the market price of the relevant technology. The conditions set out in Point 131 EEAG are cumulative.
- (168) According to point 85 EEAG, for individual aid, the Commission will verify whether the aid amount exceeds the minimum necessary to make the aided project sufficiently profitable. To that purpose, the Commission may use the rates of return commonly observed in the industry concerned.
- (169) The Commission notes that the condition under Point 131(c) EEAG is not met, because the Award consists in a one-off lump-sum payment determined ex post on the basis of a damages assessment, rather than a continuing aid mechanism subject to a regular, at least annual, review of actual production costs. In those circumstances, the measure fails to ensure that the level of support remains aligned with the beneficiary's current economic situation and could result in a material risk of overcompensation, since the aid amount is fixed without regard to subsequent cost or revenue developments.
- (170) Moreover, the Award is not linked to the depreciation time of the relevant assets, nor does it contain any limitation ensuring that compensation ceases once the plants' capital costs have been recovered. As the payment of the Award is not conditioned on whether the plants have been depreciated or not, point 131(d) EEAG is not complied with either.
- (171) In addition, in the 2017 Commission Decision, the proportionality analysis of the aid to existing installations, such as the Solacor plants, under the 2013 scheme was based on the LCOE methodology under paragraph 131 of the EEAG ⁽⁹⁴⁾. The Commission verified that the aid does not exceed what is required to recover the initial investment costs and the relevant operational costs, plus a margin of reasonable return, based on cash flow calculations of 21 standard facilities, as submitted by Spain.
- (172) As noted in recitals (77) and (153), adding the aid stemming from the Award to the aid received by the Solacor plants under the 2013 Scheme, the rate of return would increase above the levels mentioned in the 2017 Commission Decision, i.e. above the levels commonly observed in the industry concerned and considered proportionate by the Commission ⁽⁹⁵⁾.
- (173) Finally, point 129 EEAG provides that the aid is only granted until the plant has been fully depreciated according to normal accounting rules and any investment aid previously received must be deducted from the operating aid. As explained in recital (170), the payment of the Award is not conditioned on whether the plants have been depreciated or not. Furthermore, the Award does not provide for the deduction of any investment aid previously granted to the beneficiary. In those circumstances, the Commission considers that the Award does not contain the safeguards necessary to ensure that the aid remains limited to what is permitted under point 129 EEAG.
- (174) Therefore, the Commission has doubts that the aid is proportionate.

⁽⁹⁴⁾ See 2017 Commission Decision, recitals 119-124.

⁽⁹⁵⁾ See 2017 Commission Decision, recital 120.

6.3.2.3.5. Avoidance of undue negative effects on competition and trade between Member States

- (175) According to point 126 of the EEAG, if the aid is granted through a competitive bidding process open to all generators producing electricity from renewable energy sources on a non-discriminatory basis, the Commission will presume that the aid is proportionate and does not distort competition to an extent contrary to the internal market. As in the present case, the aid to JGC is not granted through a tender and also the Commission has doubts about its proportionality (section 6.3.2.3.4), the presumption does not seem to apply.
- (176) Point 88 EEAG states that for the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortion of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Point 89 explains that there are two main potential distortions caused by aid, namely product market distortions and location effects. With regard to the former, point 92 EEAG provides that aid may also have distortive effects by strengthening or maintaining substantial market power of the beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors.
- (177) In the context of the assessment of individually notifiable aid, point 101 EEAG requires not only to demonstrate that the negative effects of the aid on competition and trade are limited, but also to verify that the individual aid does not lead to supporting inefficient production, distorting dynamic incentives, creating or enhancing market power or exclusionary practices and artificially altering trade flows or the location of production.
- (178) In the present case, the Award and in any event its Implementation has the effect of compensating one sole investor for the modification of the unlawful 2007 Scheme. The compensation granted to a single investor, which benefited from the 2007 Scheme and continues benefiting from the 2013 Scheme, confers on the beneficiary an additional benefit to that received by its competitors, who might not have access to similar compensation following arbitration proceedings.
- (179) Other installations classified with the same type or parameter will receive only the amount provided for under the approved 2013 scheme. Even if these other installations were investors with access to arbitration proceedings, initiating such proceedings would not necessarily guarantee them the adoption of an award in their favour or of an award which grants a compensation equivalent to that granted to JGC.
- (180) Moreover, the Award is granted without the safeguards normally required under the EEAG in order to ensure that support remains proportionate and does not confer an undue advantage. The Award is liable to strengthen the beneficiary's ability to maintain its activity, preserve its assets, obtain financing, and pursue commercial strategies under conditions more favourable than those prevailing for its competitors. Such an advantage is therefore liable to distort competition in a way that may discourage the expansion of existing competitors or induce their exit or discourage the entry of new competitors.
- (181) In light of the above, the Commission has doubts that the aid derived from the Award and in any event its Implementation does not unduly distort competition and trade between Member States.

6.3.2.4. Conclusion on compatibility

- (182) In view of the above, the Commission has doubts that the Award and in any event its Implementation can be declared compatible with the internal market on the basis of two independent grounds: the first relate to a possible breach of Union law, and the second, to the compatibility with the criteria laid down in the EEAG. As no other basis of compatibility seems to be applicable and has been invoked by Spain, the Commission has doubts that any compatibility can be established.

In the light of the foregoing considerations, the Commission has decided to initiate the formal investigation procedure provided for in Article 108(2) of the TFEU in relation to the measures described above. Acting under the procedure laid down in Article 108(2) of the TFEU, the Commission requests Spain to submit its comments and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipients of the aid immediately.

The Commission wishes to remind Spain that Article 108(3) of the TFEU has suspensory effect and would draw its attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipients.

In this case, in addition to not paying, implementing, or executing the Award, Spain shall ensure that no payment, implementation or execution of the Award is otherwise effected from the date of adoption of this Decision.

In order to comply with its obligations under Article 108(3) TFEU, Spain shall also take all appropriate measures to prevent JGC, Basket and any third party that has acquired or may acquire the Award, or any right thereunder, from seeking recognition, enforcement and execution of the Award, whether in Member States of the Union or in third countries.

Moreover, it shall be noted that it follows from the principle of sincere cooperation laid down in Article 4(3) TEU that the Member States, and in particular the national courts, have to take all measures that are necessary to guarantee the application and effectiveness of EU law, and in particular the rules of Union law on State aid laid down in Articles 107 and 108 TFEU ⁽⁹⁶⁾. As a result of this same principle of sincere cooperation, national courts have to take all measures that are necessary to guarantee the application and effectiveness of EU Treaties, namely Article 19(1) TEU, Articles 267 and 344 TFEU, and the principle of autonomy of the EU legal order ⁽⁹⁷⁾. Therefore, in this case, the principle of sincere cooperation requires national courts of the Member States, including non-Spanish national courts, to not recognise, execute, or implement the Award, and to take all measures necessary to prevent the recognition, execution, or implementation of the Award (for example, by ordering undertakings established under their jurisdiction to cease any action designed to seek recognition or execution of the Award in other jurisdictions, and ordering them to pay penalty payments in case of non-compliance with the order to cease any such action).

The Commission warns Spain that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

⁽⁹⁶⁾ Judgment of 14 March 2024, *European Commission v United Kingdom of Great Britain and Northern Ireland*, C-516/22, EU:C:2024:231, paragraphs 93 to 99.

⁽⁹⁷⁾ It is in this context that a Dutch court (the *Rechtbank Amsterdam*), in proceedings *Koninkrijk Spanje v. AES SOLAR ENERGY COÖPERATIEF U.A., AMPERE EQUITY FUND B.V.*, (i) declared that an intra-EU award delivered on the grounds of a breach by Spain of the ECT constituted unlawful state aid under Union law so long as the EU Commission had not approved it; (ii) declared that the recovery of damages under that award would be contrary to Union law as long as the state aid proceedings remained pending; and (iii) ordered the defendants to pay to Spain any amount that Spain may be ordered to pay to the defendant (or any successor in title), on the conditions: that enforcement of the award results in an actual payment by Spain, and that the European Commission has not yet ruled on whether the award amounts to unlawful state aid under Union law.