



EUROPEAN COMMISSION

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SENSITIVE*: *COMP Operations*

Subject: **State Aid SA.100138 (2022/N) – Spain**
 RRF – Social connectivity vouchers for economically vulnerable
 categories of end-users

Excellency,

1. PROCEDURE

- (1) Following pre-notification discussions, on 13 April 2022, the Spanish authorities notified the measure “RRF – connectivity vouchers for social categories” (hereafter ‘the notified measure’ or ‘the notified scheme’).
- (2) By letter submitted on 13 April 2022, Spain agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the Regulation 1/1958¹ and to have this decision adopted and notified in English.

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¹ EEC Council Regulation No 1 determining the languages to be used by the European Economic Community. OJ 17, 6.10.1958, p. 385–386.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the measure

- (3) The notified measure is a voucher scheme which aims to cover part of the cost of a new or an upgraded existing subscription to certain broadband internet access connection services (“eligible broadband services” as defined in Section 2.4.6) at a fixed location undertaken by individuals or households in a vulnerable economic situation (see recitals (12) to (15)). The measure thus aims to support individuals or families that encounter financial difficulties in acquiring or upgrading subscriptions to the eligible broadband services.

2.2. Legal basis

- (4) The measure is laid down in Royal Decree 989/2021² (“the Royal Decree”) regulating the connectivity voucher scheme for vulnerable groups in the framework of the Spanish Recovery, Transformation and Resilience Plan.
- (5) The measure will be implemented through calls for interest to be adopted by the Spanish Autonomous Communities and the cities of Ceuta and Melilla.
- (6) The current Decision is also part of the legal basis.
- (7) Royal Decree-Law 36/2020³ of 30 December on urgent measures for the modernisation of the public administration and for the implementation of the Recovery, Transformation and Resilience Plan, as well as Regulation (EU) 2021/2411 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility⁴, will be applicable to the measure.
- (8) Pursuant to Article 7(7) and the third additional provision of the Royal Decree, the aid will not be granted before the notification of the Commission’s approval of the notified measure, in accordance with Article 108(3) TFEU and Article 3 of Council Regulation (EU) 2015/1589⁵.

2.3. Context of the measure

- (9) The Spanish authorities consider that internet usage and access to online services have significant benefits for families. This has become even more apparent in the

² Real Decreto 989/2021, de 16 de noviembre, por el que se aprueba la concesión directa a las comunidades autónomas y a las ciudades de Ceuta y Melilla de ayudas para la ejecución del programa de emisión de bonos digitales para colectivos vulnerables, en el marco del Plan de Recuperación, Transformación y Resiliencia. Boletín Oficial del Estado n. 275 de 17 de noviembre de 2021, páginas 141667 a 141689.

³ Real Decreto-ley 36/2020, de 30 de diciembre, por el que se aprueban medidas urgentes para la modernización de la Administración Pública y para la ejecución del Plan de Recuperación, Transformación y Resiliencia. Boletín Oficial del Estado n. 341 de 31 de diciembre de 2020, páginas 126733 a 126793.

⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17–75).

⁵ Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union OJ L 248 of 24.9.2015, p.9.

emergency caused by the COVID-19 pandemic, which has accelerated the digitalization of business, services and education. In 2020, only 73% of low-income households in Spain had access to fixed broadband services⁶. According to Red Cross Spain, a similar picture emerges, 63.8% of the households assisted by this organisation during the quarantine period imposed by the Spanish authorities during the COVID-19 pandemic did not have computers at home and 46.6% did not have any subscription to internet services⁷.

- (10) The Spanish authorities seek to ensure that all citizens can have access to adequate broadband internet access services, which in turn will allow access to fundamental services.
- (11) Spain is developing comprehensive strategies to address the digital needs of families. The notified measure is one of these initiatives. It contributes to address the digital divide faced by economically vulnerable individuals and households in Spain. In particular, the Spanish authorities consider that the potential direct beneficiaries are likely to have difficulties in subscribing to broadband services, even more in the context of the economic crisis caused by the COVID-19 pandemic, which has severely affected Spain. Adequate broadband services will allow these beneficiaries to have access to remote educational services and teleworking and other essential services.

2.4. Detailed description of the measure

2.4.1. Eligible end-users

- (12) Eligible end-users will be individual consumer and households residing in Spain whose members are economically vulnerable and wish to subscribe to new broadband connection services or to upgrade current subscriptions (“the eligible end-users”), with the speeds requirements described in recital (23).
- (13) As confirmed by the Spanish authorities, the Autonomous Communities and the cities of Ceuta and Melilla have defined the eligible end-users as individual consumers and households with low income.
- (14) The definition is based on national⁸ and/or regional indicators used to assess the economic situation (in terms of income and assets) of individual consumers and households.
- (15) From those potential direct beneficiaries, which meet the low-income criterion, some Autonomous Communities will grant priority to individual consumers and families facing disability, long-term unemployment, gender-based violence, immigration, social exclusion or single-parenthood.

⁶ Data regarding households with monthly income of less than EUR 900. Source: <https://www.ine.es/jaxi/Datos.htm?tpx=39403>

⁷ Information available here: <https://www2.cruzroja.es/web/ahora/brecha-digital>

⁸ For example, persons with income equal to or lower than low income levels set by the Public Income Index (“Indicador Público de Renta de Efectos Múltiples” or IPREM, <http://www.iprem.com.es/>), persons receiving the minimum guaranteed income (“Ingreso Mínimo Vital”, <https://imv.seg-social.es/> or equivalent at regional level) or beneficiaries of social programs such as persons receiving the non-contributory pension.

2.4.2. Eligible providers

- (16) All providers capable of providing in one, some or all of the Autonomous Communities and in the cities of Ceuta and Melilla broadband services at a fixed location with download speeds of at least 30 Mbps under peak time conditions (eligible broadband services as defined in Section 2.4.6), and which comply with all regulatory and administrative requirements for the provision of electronic communication services in Spain, will have the possibility to request to be included in the registries of “cooperating operators” and to provide the services under the measure.

2.4.3. Granting authority and implementing body

- (17) The granting authority is the Secretary of State for Telecommunications and Digital Infrastructures⁹. The Autonomous Communities and the cities of Ceuta and Melilla will receive, upon explicit request, the aid amounts to be granted to the eligible end-users.
- (18) The Autonomous Communities and the cities of Ceuta and Melilla will implement the measure as explained in this Decision. The funds received by the Autonomous Communities and the cities of Ceuta and Melilla will be earmarked exclusively for the financing of the voucher scheme.

2.4.4. Budget

- (19) The total budget of the measure amounts to EUR 30 000 000, totally made available through the Recovery and Resilience Facility (“RRF”)¹⁰.
- (20) According to the Spanish authorities, the available budget will be sufficient to grant 125 000 vouchers.

2.4.5. Duration

- (21) The aid will be granted as from the notification of the approval of the notified scheme by the Commission until the exhaustion of the budget and, in any case, no later than 31 December 2023.
- (22) Any unspent balance of the measure’s budget will be allocated to the success distribution fund as established in Annex I of Royal Decree and described in recital (30).

2.4.6. Eligible services, form, amount and number of vouchers

- (23) The voucher amounts to EUR 240 per year to be used by each eligible end-user to cover part of the costs of subscription to new broadband connection services at a fixed location providing download speeds of at least 30 Mbps under peak time conditions¹¹. The vouchers can also be used to upgrade current subscriptions for broadband services providing download speeds of less than 30 Mbps under peak

⁹ Secretary of State in the Ministry of Economy and Digital Transformation.

¹⁰ Regulation (EU) 2021/241.

¹¹ Speed under peak time conditions is understood as the speed that end-users are expected to achieve at the time of the day with a typical duration of one hour where the network load is usually at its maximum.

time conditions to broadband services providing 30 Mbps of download speed or more under peak time conditions. The voucher can be used to enter into a new contractual agreement or to modify the existing one for an upgrade of broadband services as described.

- (24) The download speed of 30 Mbps under peak time conditions is the regular minimum speed currently available in Spain¹² and provides sufficient speed to access the main services offered by the electronic communications providers. When setting this minimum speed, the authorities aimed to broaden the number of offers available to the eligible end-users.
- (25) A single voucher can be granted per eligible end-user¹³. A family (household) is eligible only if no member of the household subscribed to an eligible broadband service.
- (26) The Spanish authorities clarified that the value of the voucher was based on the average price of fixed broadband services in Spain.
- (27) The voucher will be granted to the eligible end-users for a total annual amount of EUR 240 to be spread in twelve monthly instalments. The electronic communications providers participating in the scheme will apply a monthly reduction of EUR 20 to the invoice they issue for the subscription for the broadband service of the eligible end-users.
- (28) If after the take-up or upgrade of the subscription of the service, the eligible end-users decide to change the electronic communications provider, the amount of the voucher which has not been used will be transferred to the new subscription, provided that the new subscription complies with the present measure.
- (29) The electronic communications providers that will provide the services for which the vouchers will be spent must commit to continue providing those services for at least one year after the expiration of the voucher at the same conditions. This is meant to avoid that the providers adopt aggressive marketing strategies with particularly advantageous offers to induce eligible end-users to spend the vouchers using their services, while reverting to less advantageous prices immediately after the expiration of the vouchers.
- (30) A definite number of vouchers have been allocated to each Autonomous Communities and to the cities of Ceuta and Melilla¹⁴. However, a success distribution fund will be created and distributed to those Autonomous Communities and cities of Ceuta and Melilla that reach at least 90% usage of the vouchers that were allocated. The initial commitments for this fund may be increased with any unspent balance subject to anticipated return, where confirmation of presence of unspent budget confirmed. Should none of the Autonomous Communities and cities of Ceuta and Melilla reach the abovementioned minimum ratio, the success

¹² The Spanish authorities indicated that, according to the latest data available, in 2020 the coverage in Spain for download speeds equal or exceeding 30 Mbps amounted to 95%.

¹³ Pursuant to Article 12.2 of Royal Decree 989/2021, the household is defined as a unit comprising spouses not legally separated and their minor children or of full age who are legally declared as disabled. In case of legal separation or in absence of marriage bond, the household is to be understood as the one comprising the father or the mother and all minor or disabled children living with them.

¹⁴ As established in Annex I of Royal Decree 989/2021.

distribution fund will be allocated to the five Autonomous Communities or the cities of Ceuta and Melilla that had reached the greatest percentages of vouchers used.

2.4.7. Technology neutrality

- (31) The vouchers scheme is technologically neutral. The eligible end-users will be able to use the vouchers to procure any available broadband services providing download speeds of at least 30 Mbps under peak time conditions, no matter the technology used.

2.4.8. Implementing procedure

- (32) The Spanish authorities confirmed that there will be no discrimination based on the Member State of establishment of the electronic communications provider or of the origin of the products and services concerned, in compliance with the principle of technological neutrality.
- (33) The eligible end-users will submit their requests for vouchers directly to the electronic communications providers of their choice. The eligible providers may request to be included in the registries developed and managed by the authorities of the Autonomous Communities and the cities of Ceuta and Melilla for the purposes of the measure, based on objective, transparent and non-discriminatory criteria.
- (34) Eligible end-users will have the possibility to consult online such registries in order to gather information about the cooperating operators and the eligible services. Moreover, the Spanish authorities will publish the information regarding the measure on the following site: <http://www.pap.hacienda.gob.es/bdnstrans/es/index>.
- (35) The authorities of the Autonomous Communities and the cities of Ceuta and Melilla will monitor the compliance by the eligible end-users and by the cooperating operators of all requirements laid down in the legal bases applicable to the measure. In particular, the regional authorities may request the cooperating operators the information and supporting documents necessary to verify the eligibility criteria, including regarding the eligibility of end-users.
- (36) The granting authority may request the Autonomous Communities and the cities of Ceuta and Melilla to provide it with any information and supporting documents necessary to verify that the measure is implemented in accordance with the requirements contained in the legal bases. Moreover, the granting authority may require the regional authorities to comply with specific directions given by the national or European authorities.
- (37) The principle of accounting separation will be applicable to the budget transferred to the Autonomous Communities and the cities of Ceuta and Melilla for the purposes of the notified measure.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of the aid

- (38) There is State aid within the meaning of Article 107(1) TFEU when there is an intervention by the State or through State resources in any form whatsoever which confers a selective economic advantage on the recipient, distorts or threatens to distort competition and is liable to affect trade between Member States.

3.1.1. State resources

- (39) The scheme is set-up by the Spanish authorities and funded directly from the budget of Spain's Recovery and Resilience plan, which is under the control of the Member State (see recital (19)). The vouchers under the scheme will be disbursed by a public entity to the cooperating operators for the provisioning of the eligible broadband services described at recitals (23) to (30). Hence, the notified measure is funded through State resources and is imputable to the State.

3.1.2. Economic advantage and selectivity

- (40) Article 107(1) TFEU only applies to public support granted to recipients carrying out an economic activity. The recipients must therefore be undertakings¹⁵ performing an economic activity¹⁶ and offering goods or services on a market in order for State aid rules to apply.
- (41) The direct beneficiaries of the scheme are individual consumers or households in Spain, which are in a vulnerable economic situation (see recitals (12) to (15)) and wish to subscribe to new eligible broadband services or to upgrade current subscriptions, having the speeds required in recitals (23) and (24).
- (42) The aid is granted in consideration of the economic situation of the eligible end-users that, according to the Spanish authorities, without the measure may not be in the position to acquire the eligible services. According to the Spanish authorities, lack or insufficient access to such services would risk preventing or restricting the ability of eligible end-users to have access or to continue to learn, socialise, work and purchase goods and services, especially in the context triggered by the COVID-19 pandemic (see recitals (9) to (11)).
- (43) The eligible end-users have been identified based on national and/or regional indicators used to determine the end-users with low income. In this framework, some Autonomous Communities will grant priority to eligible end-users in specific disadvantaged situations (see recitals (14) and (15)).
- (44) Consequently, in the context of the measure the eligible end-users cannot be considered as undertakings performing an economic activity falling within the

¹⁵ See in particular judgment of the Court of 12 September 2000, *Pavlov and Others*, joined cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 74.

¹⁶ Judgment of the Court of 12 September 2000, *Pavlov and Others*, joined cases C-180/98 to C-184/98, EU:C:2000:428, paragraph 75.

scope of Article 107(1) TFEU and thus assistance to them falls outside the scope of State aid rules.

- (45) In cases where the individual consumers are direct beneficiaries of the aid, the case law of the Union courts confirms that those advantages may constitute indirect State aid to undertakings within the meaning of Article 107(1) of the Treaty.¹⁷
- (46) The scheme provides for the vouchers to be directly paid to the cooperating operators that will receive all or part of the amount due by the eligible end-users that without the intervention of the State may have been unable to subscribe to the eligible services, or may have postponed such subscriptions due to economic considerations. The cooperating operators are considered undertakings and thus fall within the scope of State aid rules. The notified measure may stimulate demand for the eligible broadband services by lowering their costs for the eligible end-users. Thus, the scheme may strengthen the market position of cooperating operators, thereby providing them with an economic advantage. That advantage is selective because it applies to undertakings that are active only in one industry sector (electronic communications) and only in certain segments of the overall electronic communications sector (provisioning of certain broadband services providing the required speeds at a fixed location), to the exclusion of other electronic communications services.¹⁸
- (47) Amongst the electronic communications providers only those that can provide services that fulfil the eligibility criteria identified in the scheme (as described in recital (33)) can become cooperating operators and thus become eligible for the voucher scheme. The compliance of the electronic communications providers with the minimum requirements for the provision of the eligible services is assessed by the Spanish authorities and the eligible cooperating operators are enlisted by the Spanish authorities in the registries developed and managed by the Autonomous Communities and the cities of Ceuta and Melilla for the purposes of the measure (see the implementing procedure described in recitals (32) to (37)).
- (48) It follows that the aid granted via the vouchers scheme confers a selective economic advantage to the service providers able to provide the eligible services to eligible consumers.

3.1.3. Distortion of competition and impact on trade

- (49) State measures fall within the scope of Article 107(1) of the Treaty in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case-law, the concept of “effect on trade between Member States” is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that “[i]n particular, where State financial aid strengthens the position of an undertaking as compared with other

¹⁷ Judgment of the General Court of 4 March 2009, *Italy v Commission*, T-424/05, EU:C:2007:367, paragraph 108; judgment of the Court of 28 July 2011, *Mediaset v Commission*, C-403/10 P, EU:C:2011:533, paragraph 81.

¹⁸ Judgment of 15 June 2006, *Air Liquide Industries Belgium SA v Ville de Seraing* (C-393/04) and *Province de Liege* (C-41/05) “*Air Liquide*”, joined cases C-393/04 and C-41/05, EU:C:2006:403, paragraph 31.

undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid".¹⁹

- (50) The measure applies to the electronic communications sector, which is subject to significant intra-EU and international trade and competition. Moreover, the measure may also encourage eligible end-users to take advantage of electronic communications services offered by the cooperating operators rather than other providers. As the scheme gives an economic advantage to the cooperating operators, the measure alters the existing market conditions and is liable to distort competition and affect trade between Member States.

3.1.4. Conclusion on the existence of aid

- (51) In view of the above, the Commission considers that as the measure is imputable to the State, involves State resources, provides a selective advantage to certain indirect beneficiaries engaged in an economic activity, distorts or threatens to distort competition in the internal market and affects trade between Member States, the notified measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Compatibility of the aid

- (52) It is necessary to examine the scheme's compatibility with the internal market with respect to the indirect aid to the participating eligible electronic communications providers.
- (53) The measure provides for vouchers to support low-income eligible end-users (see recitals from (12) to (15)) to procure the eligible services. Article 107(2)(a) of the TFEU states that: "*aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned*" shall be compatible with the internal market. Article 107(2)(a) TFEU covers aid which is, in law, compatible with the internal market, provided that it satisfies certain objective criteria: a) the aid is granted to individual consumers; b) the aid has social character; c) the aid does not discriminate in relation to the products or services concerned.

3.2.1. Aid to individual consumers

- (54) The vouchers are granted exclusively to eligible end-users, which are individual consumers or households in a vulnerable economic situation (see recitals (12) to (15)).

3.2.2. Aid of social character

- (55) The measure has a social character, as the eligible end-users are individual consumers or households in a vulnerable economic situation. The aid is granted to those with low income and, in addition, certain Autonomous Communities will grant priority to individual consumers and households facing disability, long-term unemployment, gender-based violence, immigration, social exclusion or single-parenthood. This specific economic situation justifies the granting of aid for social

¹⁹ Judgment of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, case T-288/97, EU:T:2001:115, paragraph 41.

reasons. The measure responds to a social necessity to ensure that low-income individuals and families have access to the eligible broadband services to take up or continue online learning, socialising, working and purchasing goods and services. Moreover, as an effect of the economic, sanitary and ultimately social consequences triggered by the COVID-19 pandemic, it is likely that without the measure the eligible end-users may face difficulties to bear the costs of acquiring the eligible services, which consequently may prevent them from taking-up or continuing to learn, socialise, work and purchase goods and services online, which would jeopardise the ability of the eligible end-users to have access to basic services addressing their needs. The measure will therefore pursue its social objectives by contributing effectively to overcome the digital divide for the benefit of low-income end-users, at a time where their access to remote educational services and telework is crucial. To the extent that the scheme aims at ensuring that the eligible end-users can access the eligible broadband services, which allow them to exercise essential, constitutionally guaranteed rights, such as the possibility of learning and working, it reflects both short-term and long-term social concerns.

3.2.3. *Aid which does not discriminate regarding the origin of the services concerned*

- (56) As explained in recital (31), the measure is technological neutral since the eligible end-users may purchase services of the required speed irrespective of the underlying technology used by the providers. As described in recitals (32) to (34), the aid can be used to acquire the eligible services from any cooperating operator which is capable of providing the eligible broadband services. Any electronic communications provider capable of providing such speeds and which complies with all regulatory and administrative requirements for the provision of electronic communication services in Spain can become a cooperating operator on the basis of objective, transparent and non-discriminatory criteria, regardless of its Member State of establishment of the electronic communications provider or of the origin of the products and services concerned, in compliance with the principle of technological neutrality.
- (57) In the light of all the foregoing, the Commission concludes that the aid to the participating eligible electronic communications providers can be deemed compatible with the internal market pursuant to Article 107(2)(a) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(a) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

