

## COMMUNICATION FROM THE COMMISSION

### Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia

*- Informal consolidated version based on amendment adopted on 20 November 2023 -*

#### **1. AGGRESSION AGAINST UKRAINE BY RUSSIA, ITS EFFECT ON THE EU ECONOMY AND THE NEED FOR TEMPORARY STATE AID SUPPORT MEASURES**

- (1) On 24 February 2022, after having illegally recognised the non-government controlled areas of Donetsk and Luhansk regions in Ukraine as independent entities, Russia launched an unprovoked and unjustified military aggression against Ukraine. The European Union (EU) and international partners immediately reacted to the serious violation of the territorial integrity, sovereignty and independence of Ukraine by imposing restrictive measures (sanctions). Sanctions were also imposed against Belarus, due to its role in facilitating Russia's military aggression. Further measures have been adopted over the following weeks and months, and others might be adopted as the situation evolves. Russia decided to take certain restrictive economic counter measures of its own and to deliberately weaponise gas flows to the EU.
- (2) The Russian military aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter measures taken, for example by Russia, have economic repercussions on the entire internal market. Undertakings in the EU may be affected in multiple ways, both directly and indirectly. This may take the form of shrinking demand, interruption of existing contracts and projects, with the consequent loss of turn-over, disruptions in supply chains, in particular of raw materials and pre-products, or other inputs no longer being available or not being economically affordable.
- (3) The likelihood of a military aggression by Russia against Ukraine had already had effects on the energy market in the weeks preceding the physical aggression. The Russian military aggression against Ukraine has directly resulted in a disruption of supply chains for EU imports from Ukraine for certain products, especially cereals and vegetable oils, as well as for EU exports to Ukraine. The energy market has been significantly impacted with increases in electricity and gas prices in the EU. High energy prices impact several economic sectors, including some of those particularly hit by the COVID-19 pandemic, like transport and tourism. Some critical products are in short supply, because of the military aggression and the countermeasures taken by Russia. These are specific areas where restricted supply creates the risk of substantial reduction in industrial output, despite ongoing supply substitution. The impact has also been felt on financial markets, in particular with concerns for liquidity and market volatility in commodity trade. The military aggression against Ukraine by Russia has also led to a major displacement of Ukrainian citizens both internally and in neighbouring countries, with a unprecedented inflow into the EU of refugees, with major humanitarian and economic consequences.
- (4) The geopolitical crisis provoked by Russia's aggression against Ukraine is also having a particularly severe impact on the agriculture, food processing, fisheries and

aquaculture sectors in the EU. High energy prices feed into high fertilisers prices. Fertiliser supply in the EU is also impacted by these restrictions on fertiliser imports into the EU from Russia and Belarus. The crisis has had serious consequences on the supply of grain (in particular maize and wheat) and oilseeds (sunflower, rapeseed) or starch-derivatives from Ukraine and Russia to the EU, leading to a strong temporary increase in livestock feed prices. The combined impact of those cost increases in energy, fertiliser, grains and oils is hardest felt by livestock farming in the EU<sup>1</sup>. Ukraine is also an important producer and exporter of vegetable oils (sunflower in particular), therefore price increases for those products are affecting operators in the food-processing sector and forcing them to seek for alternatives.

- (5) A second concern is the trade disruption of EU products to Ukraine and also to Russia and Belarus due to the war situation or its direct or indirect effects. This would affect mainly the sectors of wines and spirits, processed foods (including processed fruits and vegetables), chocolate, confectionery, infant formula, and pet food in the case of Russia, fruits and vegetables in the case of Belarus, and most agricultural products in the case of Ukraine.
- (6) The situation is aggravated by the sharp increase of production costs, in part through the increase of nitrogen fertiliser costs due to the extreme increase of the price of natural gas, but also by direct use of energy in agricultural, fishery and aquaculture production processes.
- (7) The geopolitical crisis provoked by Russia's aggression against Ukraine and its weaponisation of energy supplies also exacerbates the urgency for the EU to reduce its dependence on fossil fuels by accelerating the roll-out of renewable energy, decarbonisation of industry and the deployment of capacities in sectors strategic to the transition towards a net-zero economy, also considering global challenges posing a threat of investments in these sectors being diverted in favour of third countries outside the EEA.
- (8) It is against that background that the Commission has decided to adopt this Communication to specify the criteria for the assessment of the compatibility with the internal market of State aid measures that Member States may take to remedy the economic effects following the aggression against Ukraine by Russia and its direct and indirect effects, including the counter measures taken, for example by Russia<sup>2</sup>. A coordinated economic response of Member States and EU institutions is crucial to

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<sup>1</sup> Ukraine is the EU's fourth biggest external food supplier and a key supplier of cereals (52 % of EU maize imports, 19 % soft wheat), vegetable oils (23 %) and oilseeds (22 %, especially rapeseed: 72 %). Global food prices are already high and could still increase in view of the situation.

<sup>2</sup> For example, on 6 March 2022, the Government of the Russian Federation adopted Decree no 299 Amendment of paragraph 2 of the methodology for determining the amount of compensation to be paid to the patentee when deciding on the use of the invention, utility model, the decision on the use of the invention, without his consent, and the procedure for its payment. This amendment foresees 'no compensation for the use of an invention, utility model or industrial design of the "patent holders" from foreign States which commit 'unfriendly acts''. According to WIPO Global Brand Database, WIPO Global Designs Database, PatentSight database respectively, in March 2022, there were around 150000 trademarks, 2000 industrial designs and 44000 patents held by the EU firms in force in Russia. EU firms' trademarks protected in Russia concern mainly the following sectors: pharma, cosmetics, automotive, chemical and consumer goods, fashion and luxury goods. Given the vague terminology of the amendment of the compensation methodology to be paid to patentee by Decree no 299 of 6 March 2022 adopted by the Russian Government and the economic exposure of EU undertakings and their intangible assets hold in Russia, such a counter measure may have a potential wide and harmful impact on EU undertakings.

mitigate the immediate social and economic negative repercussions in the EU, to preserve economic activities and jobs, and to facilitate the structural adjustments needed in response to the new economic situation created by the Russian military aggression against Ukraine.

### **1.1. Sanctions imposed by the European Union and international partners in response to Russia's aggression against Ukraine**

- (9) Following the unprovoked and unjustified aggression against Ukraine by Russia, the Council of the European Union has agreed on several packages of restrictive measures.
- (10) On 23 February 2022, the Council agreed on a package including (i) targeted sanctions against the 351 members of the Russian State Duma and an additional 27 individuals, (ii) restrictions on economic relations with the non-government controlled areas of Donetsk and Luhansk regions of Ukraine, and (iii) restrictions on Russia's access to the EU's capital and financial markets and services<sup>3</sup>.
- (11) On 25 February 2022, the Council agreed on further sanctions against Russia that target: (i) the financial sector, (ii) the energy, space and transport sectors (aviation), (iii) dual-use goods, (iv) export control and export financing, (v) visa policy, and (vi) additional sanctions against Russian and other (including Belarusian) individuals<sup>4</sup>

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<sup>3</sup> Council Regulation (EU) 2022/259 of 23 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 1); Council Implementing Regulation (EU) 2022/260 and 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 3; OJ L 42 I, 23.2.2022, p. 15); Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42 I, 23.2.2022, p. 74); Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42 I, 23.2.2022, p. 77); Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42 I, 23.2.2022, p. 95); Council Decision (CFSP) 2022/265 and 2022/267 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42 I, 23.2.2022, p. 98; OJ L 42 I, 23.2.2022, p. 114); and Council Decision (CFSP) 2022/266 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42 I, 23.2.2022, p. 109).

<sup>4</sup> Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 48, 25.2.2022, p. 1); Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 49, 25.2.2022, p. 1); Council Decision (CFSP) 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 50, 25.2.2022, p. 1); Council Regulation (EU) 2022/330 of 25 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 51, 25.2.2022, p. 1); Council Decision (CFSP) 2022/331 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 52, 25.2.2022, p. 1); Council Implementing Regulation (EU) 2022/332 of 25 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial

- (12) On 28 February 2022, the Council decided to close the European airspace for Russian aircraft and adopted preventive measures to ensure that the Russian Central Bank cannot deploy its international reserves in ways that undermine the impact of the measures taken<sup>5</sup>. The Council also adopted additional sanctions against Russian persons<sup>6</sup>.
- (13) On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system<sup>7</sup>, (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik<sup>8</sup>.
- (14) On 2 March 2022, due to its role in facilitating the military aggression, the Council decided to introduce further sanctions against Belarus related to the trade of goods used for the production or manufacturing of tobacco products, mineral products, potassium chloride ('potash') products, wood products, cement products, iron and steel products, and rubber products. It also prohibited the export to Belarus or for use in Belarus of dual-use goods and technology, exports of goods and technology which might contribute to Belarus's military, technological, defence and security development, and exports of machinery, together with restrictions on the provision of related services<sup>9</sup>. The Council also adopted individual measures against 22 Belarusian individuals<sup>10</sup>.

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integrity, sovereignty and independence of Ukraine (OJ L 53, 25.2.2022, p. 1); Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 54, 25.2.2022, p. 1).

<sup>5</sup> Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 1), and Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 4).

<sup>6</sup> Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 58, 28 February 2022, p. 1) and Council Decision (CFSP) 2022/337 of 28 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 59, 28 February 2022, p. 1).

<sup>7</sup> Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/346 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 5).

<sup>8</sup> Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 5).

<sup>9</sup> Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 1), and Council Decision (CFSP) 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 103).

<sup>10</sup> Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 1) and Council Decision (CFSP) 2022/354 of 2 March 2022 amending Decision 2014/145/CFSP concerning

- (15) On 9 March 2022, the Council adopted additional measures targeting the Belarusian financial sector, including a SWIFT ban for three Belarusian banks, a prohibition on transactions with the Central Bank of Belarus, limits on the financial inflows from Belarus to the EU and a prohibition on the provision of euro-denominated banknotes to Belarus<sup>11</sup>. The Council also introduced further restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia. In addition, the Council imposed restrictive measures on an additional 160 individuals<sup>12</sup>. On 15 March 2022<sup>13</sup>, the Council agreed on further sectoral and individual measures against Russia. The Council decided in particular to: (i) prohibit all transactions with certain State-owned enterprises, (ii) prohibit the provision of any credit rating services, as well as access to any subscription services in relation to credit rating activities, to any Russian person or entity, (iii) expand the list of persons connected to Russia's defence and industrial base, on whom tighter export restrictions are imposed regarding dual-use goods and technology which might contribute to Russia's technological enhancement of its defence and security sector, (iv) prohibit new investments in the Russian energy sector, and introduce a comprehensive export restriction on equipment, technology and services for the energy industry, and (v) introduce further trade restrictions concerning iron and steel, as well as luxury goods<sup>14</sup>. Furthermore, the Council decided to sanction key Russian oligarchs, lobbyists and propagandists, as well as key companies in the aviation, military and dual use, shipbuilding and machine building sectors<sup>15</sup>.
- (16) On 3 June 2022, the Council adopted a sixth package of sanctions<sup>16</sup>, in light of Russia's continuing war of aggression against Ukraine, Belarus' support for it, and the

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restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 63, 2.3.2022, p. 5).

- <sup>11</sup> Council Regulation (EU) 2022/398 of 9 March amending Council Regulation (EU) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 82, 9.3.2022, p. 1).
- <sup>12</sup> Council Regulation (EU) 2022/394 of 9 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 81, 9.3.2022, p. 1).
- <sup>13</sup> Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87, 15.3.2022, p. 1); Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87I, 15.3.2022, p. 13).
- <sup>14</sup> Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87 I, 15.3.2022, p. 13), and Council Decision (CFSP) 2022/430 of 15 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87 I, 15.3.2022, p. 56).
- <sup>15</sup> Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87 I, 15.3.2022, p. 1), and Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 87 I, 15.3.2022, p. 44).
- <sup>16</sup> Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 1); Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine

- reported atrocities committed by the Russian armed forces. The package includes: 1) a ban on imports from Russia of crude oil and refined petroleum products, with limited exceptions; 2) a SWIFT ban for an additional three Russian bank and one Belarusian bank; and 3) a suspension of broadcasting in the Union for three more Russian State-owned outlets. The Union also adopted sanctions against an additional 65 individuals and 18 entities. They include individuals responsible for the atrocities committed in Bucha and Mariupol.
- (17) On 21 July 2022, the Council adopted a seventh package, also called a ‘maintenance and alignment package’<sup>17</sup> consisting of the following additional measures: 1) gold import ban, 2) reporting requirements strengthened for sanctioned individuals; 3) targeted export bans; 4) port access ban; 5) financial sanctions; 6) food and energy security; 7) medical and pharmaceutical exemptions. The Union also added 54 individuals and 10 entities on the asset freeze list.
- (18) On 6 October 2022, the Council adopted an eighth package of sanctions consisting of the following additional measures<sup>18</sup>: 1) additional listing of persons and entities in the

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(OJ L 153, 3.6.2022, p. 11); Council Implementing Regulation (EU) 2022/878 of 3 June 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 15); Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 153, 3.6.2022, p. 53); Council Regulation (EU) 2022/880 of 3 June 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 75); Council Implementing Decision (CFSP) 2022/881 of 3 June 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 77); Council Decision (CFSP) 2022/882 of 3 June 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 153, 3.6.2022, p. 88); Council Decision (CFSP) 2022/883 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 92); Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 153, 3.6.2022, p. 128); Council Decision (CFSP) 2022/885 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 153, 3.6.2022, p. 139).

<sup>17</sup> Council Regulation (EU) 2022/1269 of 21 July 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 193, 21.7.2022, p. 1), Council Implementing Regulation (EU) 2022/1270 of 21 July 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 193, 21.7.2022, p. 133), Council Decision (CFSP) 2022/1271 of 21 July 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 193, 21.7.2022, p. 196), Council Decision (CFSP) 2022/1272 of 21 July 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 193, 21.7.2022, p. 219).

<sup>18</sup> Council Regulation (EU) 2022/1903 of 6 October 2022 amending Regulation (EU) 2022/263 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, (OJ L259I, 6.10.2022, p. 1), Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, (OJ L259I, 6.10.2022, p. 3), Council Regulation (EU) 2022/1905 of 6 October 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 76), Council Implementing Regulation (EU) 2022/1906 of 6 October 2022 implementing Regulation (EU) No 269/2014

- sanctions list; 2) extension of restrictions to the oblasts of Kherson and Zaporizhzhia; 3) new import and export restrictions; 4) implementing the G7 oil price cap; 5) restrictions on State-owned enterprises; 6) restrictions on financial, IT consultancy and other business services; and 7) deterring sanctions circumvention.
- (19) On 16 December 2022, the Council adopted a ninth package of sanctions<sup>19</sup> in response to Russia's invasion of Ukraine, including bans on exports of drone engines, exports of dual-use goods and technology, investments in the mining sector, transactions with the Russian Regional Development Bank, and the provision of advertising, market research and public opinion polling services; in addition, the Council decided to adopt a comprehensive package of individual measures. On 25 February 2023, the Council adopted a tenth package of sanctions, imposing further export bans on critical technology and industrial goods, such as electronics, specialised vehicles, machine parts, spare parts for trucks and jet engines, as well as goods for the construction sector which can be directed to Russia's military, such as antennas or cranes. The Council also decided to impose restrictive measures on an additional 87 individuals and 34 entities.<sup>20</sup>

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concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 79), Council Decision (CFSP) 2022/1907 of 6 October 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L259I, 6.10.2022, p. 98), Council Decision (CFSP) 2022/1908 of 6 October 2022 amending Decision (CFSP) 2022/266 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L259I, 6.10.2022, p. 118), Council Decision (CFSP) 2022/1909 of 6 October 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L259I, 6.10.2022, p. 122).

<sup>19</sup> Council Regulation (EU) 2022/2474 of 16 December 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 322I, 16.12.2022, p. 1), Council Regulation (EU) 2022/2475 of 16 December 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 315), Council Implementing Regulation (EU) 2022/2476 of 16 December 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 318), Council Decision (CFSP) 2022/2477 of 16 December 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 466), Council Decision (CFSP) 2022/2478 of 16 December 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 322I, 16.12.2022, p. 614), Council Decision (CFSP) 2022/2479 of 16 December 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 322I, 16.12.2022, p. 687).

<sup>20</sup> Council Regulation (EU) 2023/426 of 25 February 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p.1); Council Regulation (EU) 2023/427 of 25 February 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 059I, 25.2.2023, p. 6); Council Implementing Regulation (EU) 2023/429 of 25 February 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p. 278); Council Decision (CFSP) 2023/432 of 25 February 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 059I, 25.2.2023, p. 437); Council Decision (CFSP) 2023/434 of 25 February 2023 amending Decision 2014/512/CFSP

- (20) In close cooperation with the EU, sanctions were also imposed by international partners, notably the United States, the United Kingdom, Canada, Norway, Japan, South Korea, Switzerland and Australia.

## **1.2. Undertakings and households affected by high gas and electricity prices or by disruptions of energy supply**

- (21) The current crisis has driven up the prices for gas and electricity to unprecedented highs, significantly above the already elevated levels observed in the period before the aggression. Russia's deliberate weaponisation of gas flows has created significant volatility and uncertainty in the EU and global energy markets. The EU and its Member States have taken numerous measures to address high prices and secure energy supplies. In this context, the Commission refers to the toolbox which it presented already in October 2021<sup>21</sup> (the 'October Communication'), the REPowerEU Communication of 8 March 2022 ('the REPowerEU Communication')<sup>22, 23</sup>, the REPowerEU Plan<sup>24</sup> of 18 May 2022, the Gas Storage Regulation<sup>25</sup>, the Save Gas for a Safe Winter Communication<sup>26</sup> of 20 July 2022, the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>27</sup> and the Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices<sup>28</sup>. On 18 October 2022, the Commission adopted the Energy Emergency Communication<sup>29</sup> to prepare, purchase and protect the EU together. In conjunction with this Communication the

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concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 059I, 25.2.2023, p. 593).

- <sup>21</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 660 final of 13 October 2021 - Tackling rising energy prices: a toolbox for action and support.
- <sup>22</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 108 final of 8 March 2022 – REPowerEU: Joint European Action for more affordable, secure and sustainable energy.
- <sup>23</sup> Through the Technical Support Instrument established by Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 (OJ L 57, 18.2.2021, p. 1), the Commission supports Member States on request in designing and implementing reforms aimed at ensuring more affordable, secure and sustainable energy.
- <sup>24</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2022/230 final of 18 May 2022 – REPowerEU Plan.
- <sup>25</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.06.2022, p.17).
- <sup>26</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 360 final of 20 July 2022 – “Save gas for a safe winter”.
- <sup>27</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).
- <sup>28</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).
- <sup>29</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2022/553 final of 18 October 2022 - Energy Emergency - preparing, purchasing and protecting the EU together.



Commission proposed a new emergency regulation<sup>30</sup> to address high gas prices in the EU and ensure security of supply for the upcoming winter. This will be done through joint gas purchasing, price limiting mechanisms on the TTF gas exchange, new measures on transparent infrastructure use and solidarity between Member States, and continuous efforts to reduce gas demand.

- (22) Very high energy prices are hurting the economy as well as the purchasing power of EU citizens, notably the most vulnerable. The European Central Bank estimated that real GDP will contract by 0.1% in the last quarter of 2022 and remain flat in the first quarter of 2023 mainly owing to the impact of energy supply disruptions, higher inflation and the related fall in confidence.<sup>31</sup> Continued high energy prices are likely to increase poverty and affect business competitiveness. Energy-intensive industries in particular have faced higher manufacturing costs. These cost increases can in certain cases put into question the continued activity in the EU of undertakings which otherwise would be profitable, with a likely subsequent impact on employment.
- (23) The toolbox presented by the Commission in October 2021 has proven useful, and has been extensively applied by many Member States who have adopted numerous measures at national level. The toolbox was expanded in spring 2022 with the Communication on short-term market interventions and long-term improvements to the electricity market design<sup>32</sup>.
- (24) The REPowerEU Communication outlined measures to respond to rising energy prices and replenish gas stocks for the winter and the REPowerEU plan<sup>33</sup> sets out actions to accelerate the rollout of renewable energy, energy savings and energy efficiency and to diversify energy supplies. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. The Gas Storage Regulation<sup>34</sup> established new minimum gas storage obligations to ensure supply for the coming winter, requiring Member States to fill gas storage facilities by 1 November to 80% in 2022 and to 90% by the same date in the years to follow.
- (25) As the crisis further amplified risks of security of supply and disruptions, the Union started to prepare for a protracted and possibly full cut of gas from Russia. The new European Gas Demand Reduction Plan<sup>35</sup> sets out measures, principles and criteria for coordinated demand reduction and is accompanied by the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>36</sup> which sets a voluntary gas

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<sup>30</sup> Proposal for a Council Regulation, COM/2022/549 final of 18 October 2022 - Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks.

<sup>31</sup> ECB staff macroeconomic projections for the euro area, September 2022.

<sup>32</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 236 final of 18 May 2022 – Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action.

<sup>33</sup> COM/2022/230 final, 18 May 2022.

<sup>34</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173, 30.06.2022, p. 17).

<sup>35</sup> European Commission, Directorate-General for Communication, *A European Gas Demand Reduction Plan*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2775/705563>.

<sup>36</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

- demand reduction target of 15% in all Member States and introduces a process to trigger a binding demand reduction target should it become necessary.
- (26) On 6 October 2022, the Council adopted Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices to reduce the energy bills for European citizens and businesses. Among others, the Regulation (EU) 2022/1854 includes measures to reduce electricity demand, which will help lower the electricity costs for consumers and to redistribute the energy sector's surplus revenues to final customers.
- (27) On 19 and 22 December 2022, the Council adopted further Regulations to tackle the high energy prices, namely: Council Regulation (EU) 2022/2576 on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks<sup>37</sup>, Council Regulation (EU) laying down a framework to accelerate the deployment of renewable energy<sup>38</sup> and Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect citizens and the economy against excessively high prices<sup>39</sup>.

### **1.3. The need for close European coordination of national aid measures**

- (28) Targeted and proportionate application of EU State aid control serves to ensure that national support measures are effective in helping undertakings and workers affected by the current crisis and preserving the long-term fiscal sustainability of the national support measures. EU State aid control also ensures that the EU internal market is not fragmented and that the level playing field stays intact. The integrity of the internal market is important to withstand external pressure and to avoid subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union.
- (29) The Commission considers that the current crisis affecting undertakings in all Member States justifies to allow a calculation of maximum aid ceilings in the applicable sections based on a per Member State basis, as long as it remains ensured that eligible costs may only be covered once and that the specific aid ceilings, applicable under the present Communication, are respected.
- (30) The Commission further considers that in order to address the fossil fuel dependency as a major element exacerbating the crisis and to accelerate the green transition in line with REPowerEU objectives, while ensuring the resilience of future EU low-carbon energy system, additional strategic investments are required. This is particularly relevant in the current global context where such investments are at risk of being diverted away from the EEA. While sections 2.5 and 2.6 of this Communication provide relevant tools to deploy renewable energy generation projects and implement industrial decarbonisation measures, those tools have an important but indirect effect on the production of the equipment and components needed for the transition towards a net-zero economy. Against this background, section 2.8 of this Communication

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<sup>37</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, (OJ L 335, 29.12.2022, p. 1).

<sup>38</sup> Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, (OJ L 335, 29.12.2022, p. 36).

<sup>39</sup> Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices, (OJ L 335, 29.12.2022, p. 45).

provides Member States with additional possibility to grant aid that directly supports productive investments in specified strategic goods necessary for this transition. As the Union's instrument for catalysing private investment into EU priority areas, InvestEU has a central role in mobilising support for those priority areas, in particular with regard to energy and the Green Deal Industrial Plan<sup>40</sup>. Therefore, to the extent that the measures put in place by the implementing partners and financial intermediaries of InvestEU are subject to state aid rules, those measures may be covered by the schemes approved by the Commission under sections 2.5, 2.6 and 2.8 of this Communication. Because the support of investments into production facilities could lead to tensions with overarching objectives of the integrity of the internal market and cohesion, such support needs to be clearly confined to the defined strategic areas, limited in time and nominal aid amounts and ensure sufficient incentives to address cohesion objectives. This Communication sets out in section 2.8 the specific conditions under which support for investments for specific measures for the transition towards a net-zero economy will exceptionally be considered compatible. In so far as this section covers the possibility to provide individual support outside a scheme, it will either be limited to assisted areas as defined in the applicable regional aid maps or it will have to involve investments in at least three EEA Member States, of which a significant part should take place in at least two assisted areas. This requirement will contribute to the further development of a broader ecosystem along the relevant value chain across Europe, strengthening the supply chain resilience.

#### **1.4. Appropriate State aid measures**

- (31) In the overall effort of Member States to address the challenges resulting from the Russian war of aggression against Ukraine, this Communication sets out the possibilities Member States have under EU State aid rules to ensure liquidity and access to finance for undertakings, especially SMEs that face economic challenges under the current crisis, and to incentivise reduced energy consumption.
- (32) As set out in the 2021 October Communication, measures benefiting non-commercial energy consumers do not constitute State aid, provided they do not indirectly benefit a specific sector or undertaking. Member States can, for example, make specific social payments to those most at risk which could help them afford their energy bills in the short term, or provide support for energy efficiency improvements, while ensuring effective market functioning.
- (33) Measures targeting commercial energy consumers do not constitute State aid, provided such measures are of a general nature. Such non-selective measures can, for example, take the form of general reductions in taxes or levies, a reduced rate to the supply of natural gas, electricity or district heating or reduced network costs. To the extent national interventions qualify as aid, they may be considered compatible with State aid rules if they meet certain requirements. For example, aid in the form of reductions in harmonised environmental taxes that respect the minimum levels of taxation and the rules set out in the Energy Taxation Directive<sup>41</sup> and are in line with the provisions of a

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<sup>40</sup> COM(2023) 62 final, Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions, A Green Deal Industrial Plan for the Net-Zero Age, 1.2.2023.

<sup>41</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

Block Exemption Regulation may be implemented by Member States without prior notification to the Commission.

- (34) With respect to sections 2.1 and 2.4 of this Communication aid can be granted directly to the final beneficiary or channelled through an energy supplier. If aid is channelled through an energy supplier, the Member State must demonstrate that it operates a mechanism that preserves competition between suppliers and that ensures that the aid is passed on to the final beneficiary.
- (35) The Commission considers that certain financial needs may require different tools than those covered by sections 2.1, 2.2 and 2.3 of this Communication. This might in particular be the case where the current crisis leads not only to liquidity needs but also to considerable losses that may undermine the beneficiary's ability to service its debt and point at solvency needs. In cases where large amounts of aid are granted to individual beneficiaries and where the ability of those beneficiaries to service their debt, based on their past earning capacity, seems challenging, Member States may consider asking for information from the beneficiaries about their projected future earnings capacity to continue servicing the debt, with the aim of assessing whether the use of different tools, such as solvency support, may be or may become more adequate to address their financial needs.
- (36) In specific circumstances<sup>42</sup>, Member States may consider that undertakings severely affected by the current crisis require solvency support that cannot be sufficiently provided via private sources alone. Where undertakings would cease or downsize operations without such solvency support and when ceasing or downsizing operations would threaten energy markets or other markets which are of systemic importance for the economy (or for the security and resilience of the internal market), such solvency support might be considered compatible based on Article 107(3)(b) TFEU.
- (37) The Commission considers the following general principles as particularly relevant in the required case-by-case assessment outlined in point 36 above:
- a. the aid must be necessary, appropriate and proportionate<sup>43</sup> to avoid a sudden exit from the market of such undertakings and must in any case not exceed the minimum needed to ensure its viability;
  - b. a company belonging to or being taken over by a larger business group is not eligible for aid, except where it can be demonstrated that the company's difficulties are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. In such cases, a substantial contribution by the group to the costs of the solvency measure will typically be required;
  - c. state aid must be granted on terms that afford the State a reasonable remuneration such as an appropriate share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of

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<sup>42</sup> Intervention needs to be limited to situations where it is in the common interest to intervene.

<sup>43</sup> In principle, aid is proportionate if it does not go beyond restoring the capital structure of the beneficiary to the one predating the crisis caused by the aggression of Ukraine by Russia. In assessing the proportionality of the aid, State aid received or planned in the context of the current crisis, and in particular aid provided under this Communication will be taken into account.

the company after losses, including foreseeable losses without the aid measure, have been accounted for;

- d. where aid takes the form of subordinated debt or other hybrid capital instruments, the overall remuneration of such instruments must adequately factor in the characteristics of the instrument chosen, including its level of subordination and all modalities of payment;
- e. appropriate competition measures in line with the principles set out in the 2014 Rescue and Restructuring Guidelines<sup>44</sup> will be necessary. Based on the specificities of each potential case and the relevant competitive landscape, divestments of assets may also be required as a compensatory measure. Furthermore, behavioural measures, including commitments ensuring an effective ban on bonus payments or other variable payments, dividend payments, and acquisitions will be required;
- f. The Commission may require the Member State to provide, also at a time later than the Commission decision, an assessment of the long-term viability of the beneficiary accompanying the notification or at a later date. The Member State must undertake, where considered appropriate by the Commission after examining such assessment, to notify within a period of time determined by the Commission, a restructuring plan as set out in the Rescue and Restructuring Guidelines for approval by the Commission.

(38) Member States are invited to consider, in a non-discriminatory way, setting requirements related to environmental protection or security of supply for granting aid under section 2.4 and 2.8 of this Communication. This could, for example, take the following forms:<sup>45</sup>

- a. Requiring the beneficiary to meet a certain share of energy consumption needs by renewable energies, *e.g.* via power purchasing agreements or direct investments in energy generation from renewable energies;
- b. Requiring investments in energy efficiency, reducing the energy consumption relative to economic output *e.g.* by reduced consumption for production processes, heating or transportation, in particular through measures implementing recommendations from energy audits carried out pursuant to Article 8 (2) or (4) and Annex VI of Directive 2012/27/EU;
- c. Requiring investments to reduce or diversify natural gas consumption, *e.g.* by electrification measures using renewable energy sources or circular solutions such as the re-use of waste gases;
- d. Requiring flexibilisation of investments, to facilitate better adaptations of business processes to price signals on electricity markets.

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<sup>44</sup> Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

<sup>45</sup> Member States are invited to make use of the possibilities for granting aid approved under the Guidelines on State aid for climate-, environmental protection and energy (CEEAG 2022), notably as regards renewable energies, energy efficiency or other decarbonisation measures.

- (39) Member States may also grant aid to make good the damage caused by exceptional occurrences under Article 107(2)(b) TFEU. Such State aid aimed at mitigating damage directly caused by the current and exceptional occurrences of the Russian aggression against Ukraine may also cover the effects of certain consequences of the Russian aggression, including the economic sanctions imposed or of the counter measures negatively affecting the beneficiary from operating its economic activity or a specific and severable part of its economic activity.
- (40) Damage directly caused by mandatory reductions in natural gas or electricity consumption which may have to be imposed by Member States can be assessed under Article 107(2)(b) TFEU, provided there is no overcompensation.
- (41) Member States must notify such aid measures and the Commission will assess them directly under Article 107(2)(b) TFEU. Such aid may be granted to undertakings in difficulty.
- (42) In line with Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas<sup>46</sup>, Member States may consider appropriate measures to incentivise voluntary reductions in natural gas demand. Where Member States envisage introducing such incentives in the context of the current crisis, the Commission will assess such measures directly under Article 107(3)(b) TFEU. While this will require a case-by-case assessment, the Commission considers the following elements to be particularly relevant:
- a. the use of a competitive process based on transparent criteria to contract volumes for voluntary demand reduction;
  - b. the absence of any formal restrictions to cross-border trade or flows;
  - c. the limitation of the incentives concerned to demand reductions in the future that go beyond those that the beneficiary would have undertaken regardless of the measure;
  - d. an immediate reduction in aggregate final gas demand in the Member State concerned while avoiding a mere shift in demand for natural gas.
- (43) Member States may also consider measures to incentivise the filling of gas storage facilities to the extent that the market does not provide incentives to do so adequately. Where Member States envisage granting incentives for the filling of gas storage facilities in the context of the current crisis, the Commission will assess them directly under Article 107(3)(b) TFEU<sup>47</sup>. While this will require a case-by-case assessment, the Commission considers the following elements as particularly relevant:
- a. the use of a competitive process based on transparent criteria to minimise the aid;
  - b. the absence of any restrictions to cross-border trade or flows;
  - c. the presence of safeguards to avoid overcompensation;

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<sup>46</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

<sup>47</sup> See Commission decision of 12.7.2022 on SA.103012 (2022/NN) - Incentive measure to store natural gas in the Bergermeer storage facility for the next heating period.

- d. the compliance with the obligations and conditions for filling and incentivizing gas storage set out in Article 6a to Article 6d of Regulation (EU) 2017/1938<sup>48</sup>, in particular the conditions for support measures set out in Article 6b, paragraphs (2) and (3).
- (44) The Commission will consider on a case-by-case basis possible necessary, proportionate and appropriate aid, in line with the Commission Communication ‘Save gas for a safe winter’<sup>49</sup> and the national gas security of supply emergency plans, in order to adapt facilities that will contribute to replace gas, for a limited period of time, with another more polluting carbon fuel. Any such alternative carbon fuel must have the lowest possible emissions content, while the aid should be subject to energy efficiency efforts and must avoid lock-in effects beyond the crisis, in line with EU climate objectives. Such measures can be aimed at both pre-emptively reducing the consumption of gas or to respond to mandatory reductions in natural gas demand, unless otherwise compensated.<sup>50</sup>
- (45) In view of the challenges to transport goods to and from Ukraine, the Commission will consider on a case-by-case basis possible aid for insurance or reinsurance regarding transport of goods to and from Ukraine. Among other things, Member States will need to show that the insurance or reinsurance is not available at all or at rates which are substantially higher than before Russia's invasion of Ukraine.
- (46) The transport of refugees and humanitarian material does not fall in principle under EU State aid rules, as long as the State is acting in the exercise of public powers (as opposed to carrying out an economic activity) and as long as the transport services are not purchased at a level above the market price.
- (47) Aid granted by Member States under this Communication to undertakings, which is channelled through credit institutions as financial intermediaries, shall benefit those undertakings directly. However, it may confer an indirect advantage on the financial intermediaries. Nevertheless, under the safeguards of sections 2.2 and 2.3, such indirect advantages do not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, such aid would not be qualified as extraordinary public financial support under Directive 2014/59/EU of the European Parliament and of the Council (the Bank Recovery and Resolution Directive - BRRD)<sup>51</sup> or under Regulation (EU) 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)<sup>52</sup>, and would not be assessed under the State aid rules applicable to the banking sector<sup>53</sup>.

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<sup>48</sup> As amended by Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 (OJ L 173, 30.6.2022, p. 17).

<sup>49</sup> COM(2022) 360 final, 20.7.2022.

<sup>50</sup> An example in the context of power generation is Commission decision of 30.9.2022 on State Aid SA.103662(2022/N) – Germany – Temporary lignite power supply reserve to save gas.

<sup>51</sup> OJ L 173, 12.6.2014, p. 190, see Article 2(1)(28) of the BRRD.

<sup>52</sup> OJ L 225, 30.7.2014, p. 1, see Article 3(1)(29) of the SRM Regulation.

<sup>53</sup> Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2); Communication from the Commission on the treatment of impaired assets in the Community financial sector (OJ C 72, 26.3.2009, p. 1); Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195,

- (48) Aid granted by Member States to credit institutions or other financial institutions under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis or aid granted by Member States to credit institutions or other financial institutions under section 2.4 of this Communication, which do not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity would not be qualified as extraordinary public financial support under the BRRD nor under the SRM Regulation, and would also not be assessed under the State aid rules applicable to the banking sector<sup>54</sup>.
- (49) If due to the current crisis credit institutions would need extraordinary public financial support (see Article 2(1)(28) BRRD and Article 3(1)(29) SRM Regulation) in the form of liquidity, recapitalisation or an impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD and Article 18(4)(d)(i), (ii) or (iii) of the SRM Regulation. Where the latter conditions are fulfilled, the credit institution receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail.
- (50) To the extent such measures address problems linked to the aggression against Ukraine by Russia and its direct and indirect effects, they would be deemed to fall under point 45 of the 2013 Banking Communication<sup>55</sup>, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.
- (51) Aid granted under this Communication shall not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition would appear to be harmful to the internal market. Without prejudice to the specific safeguards included in section 2.8 of this Communication, this is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (52) Aid under this Communication shall not be granted to undertakings under sanctions adopted by the EU, including but not limited to:
- a. persons, entities or bodies specifically named in the legal acts imposing those sanctions;
  - b. undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or
  - c. undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

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19.8.2009, p. 9); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 329, 7.12.2010, p. 7); Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7); and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

<sup>54</sup> Any measures to support credit institutions or other financial institutions that constitute State aid in the meaning of Article 107(1) TFEU, including those which fall outside the present Communication must be notified to the Commission and will be assessed under the relevant State aid rules.

<sup>55</sup> As defined in footnote 53.



- (53) State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically-produced products. The Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities.

### **1.5. Applicability of Article 107(3)(b) of the TFEU**

- (54) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid ‘to remedy a serious disturbance in the economy of a Member State’. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU<sup>56</sup>. That interpretation has been consistently applied by the Commission in its decision-making<sup>57</sup>.
- (55) The Commission considers that the aggression against Ukraine by Russia and its direct and indirect effects, including the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods. Those effects taken together have caused a serious disturbance of the economy in all Member States. Supply chain disruptions and increased uncertainty have direct or indirect effects that affect many sectors. In addition, rising energy prices affect virtually every economic activity in all Member States. The Commission considers accordingly, that a wide range of economic sectors in all Member States are affected by a serious economic disturbance. On that basis, the Commission considers that it is appropriate to lay down the criteria for the assessment of State aid measures that Member States may take to remedy that serious disturbance.
- (56) State aid is in particular justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine and its direct and indirect effects, including the sanctions

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<sup>56</sup> Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and others v Commission*, EU:T:1999:326, paragraph 167.

<sup>57</sup> Commission Decision 98/490/EC in Case C 47/96 *Crédit Lyonnais* (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 *Bankgesellschaft Berlin* (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in Case C 50/06 *BAWAG* (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 *Northern Rock* (OJ C 43, 16.2.2008, p. 1); Commission Decision in Case NN 25/08 *Rescue aid to Risikoabschirmung WestLB* (OJ C 189, 26.7.2008, p. 3); Commission Decision of 4 June 2008 in *State aid C 9/08 SachsenLB* (OJ L 104, 24.4.2009, p. 34); and Commission Decision of 16 June 2017 in case SA.32544 (2011/C) *Restructuring of TRAINOSE S.A* (OJ L 186, 24.7.2018, p. 25).

- imposed by the EU or by its international partners, as well as the economic counter measures taken, for example by Russia.
- (57) The Commission sets out in this Communication the criteria for the compatibility assessment it will apply in principle to the aid granted by Member States in this context under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission and falling within the scope of this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the requirements of this Communication are fulfilled.
- (58) State aid measures notified and assessed under this Communication are intended to support undertakings active in the EU that are affected by the Russian military aggression and/or its consequences. The aid measures may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and must be in full compliance with the anti-circumvention rules of the applicable regulations<sup>58</sup>. In particular, it must be avoided that natural persons or entities subject to the sanctions benefit directly or indirectly from any such measures<sup>59</sup>.
- (59) State aid measures falling within the scope of this Communication may be cumulated with one another in line with the requirements in the specific sections of this Communication. State aid measures covered by this Communication may be cumulated with aid under de minimis Regulations<sup>60</sup> or with aid under Block Exemption Regulations<sup>61</sup> provided the provisions and cumulation rules of those Regulations are respected. State aid measures covered by this Communication may be cumulated with aid granted under the COVID-19 Temporary Framework<sup>62</sup>, provided

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<sup>58</sup> For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

<sup>59</sup> Considering the specific situation of two subsequent crises that have affected undertakings in multiple ways, Member States may choose to provide aid under this Communication also to undertakings in difficulty.

<sup>60</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1); Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9); Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45); and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>61</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation); Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, (OJ L 193, 1.7.2014, p. 1); and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

<sup>62</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

their respective cumulation rules are respected. When Member States grant to the same beneficiary loans or guarantees under the COVID-19 Temporary Framework as well as and under this Communication and when the overall amount of the loan principal is calculated on the basis of self-declared liquidity needs of the beneficiary, the Member States must ensure that those liquidity needs are covered only once with aid. Likewise, aid under this Communication may be cumulated with aid under Article 107(2)(b) TFEU but there may be no overcompensation of damage suffered by the beneficiary.

## 2. TEMPORARY STATE AID MEASURES

### 2.1. Limited amounts of aid

- (60) Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings affected by the Russian aggression against Ukraine and/or by its direct or indirect effects can be an appropriate, necessary and targeted solution during the current crisis.
- (61) The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agriculture, the fishery and aquaculture sectors are set out in point 62):
- a. *The overall aid does not exceed EUR 2.25 million per undertaking per Member State at any given point in time<sup>63</sup>. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>64</sup> loans<sup>65</sup> and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 2.25 million per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges;*
  - b. the aid is granted on the basis of a scheme with an estimated budget;
  - c. *the aid is granted by 30 June 2024<sup>66</sup>;*
  - d. the aid is granted to undertakings affected by the crisis;
  - e. the aid granted to undertakings active in the processing and marketing of agricultural products<sup>67</sup> is conditional on not being partly or entirely passed on to

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<sup>63</sup> Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

<sup>64</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

<sup>65</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>66</sup> *If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 30 June 2024.*

<sup>67</sup> As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

- (62) By way of derogation from point 61(a), the following specific conditions apply to aid granted to undertakings active in the primary production of agricultural products, fishery and aquaculture sectors, in addition to the conditions of point 61(b) to (d):
- a. *The overall aid does not at any point in time exceed EUR 280 000 per undertaking active in the primary production of agricultural products per Member State and EUR 335 000 per undertaking active in the fishery and aquaculture sectors per Member State;<sup>68</sup> the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>69</sup>, loans<sup>70</sup> and equity provided the total nominal value of such measures does not exceed the overall relevant cap of EUR 280 000 or EUR 335 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charge;*
  - b. aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
  - c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Regulation (EU) No 717/2014<sup>71</sup>.
- (63) *Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 61(a) and 62(a), the Member State concerned must ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.25 million is not exceeded per undertaking per Member State. Where an undertaking is active exclusively in the sectors covered by point 62(a) the overall maximum amount of EUR 335 000 should not be exceeded per undertaking per Member State.*
- (64) Measures granted under this Communication in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 30 June 2024 and the conditions in this section are complied with.

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<sup>68</sup> Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

<sup>69</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

<sup>70</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>71</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 90, 28.6.2014, p. 45).

## 2.2. Liquidity support in the form of guarantees

- (65) In order to ensure access to liquidity to undertakings affected by the current crisis, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances<sup>72</sup>.
- (66) For the same underlying loan principal, guarantees granted under this section may not be cumulated with aid granted under section 2.3 of this Communication and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. Guarantees granted under this section may be cumulated for different loans provided the overall loan amount per beneficiary does not exceed the ceilings set out in point 67(e) of this Communication. A beneficiary may benefit in parallel from multiple measures under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 67(e).
- (67) The Commission will consider such State aid in the form of public guarantees as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:
- a. Public guarantees are provided on new individual loans made to undertakings<sup>73</sup>;
  - b. Guarantee premiums are set per individual loans at a minimum level, which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of recipient	For 1 <sup>st</sup> year	For 2 <sup>nd</sup> –3 <sup>rd</sup> year	For 4 <sup>th</sup> -6 <sup>th</sup> years
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

- c. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby guarantee duration, guarantee premiums and guarantee coverage may be modulated for each underlying individual loan principal (for instance, lower guarantee coverage could offset a longer duration or could allow lower guarantee premiums); a flat premium may be used for the entire duration of the guarantee, if it is higher than the minimum premiums for the 1st year set out in the table above for each type of beneficiary, as adjusted according to guarantee duration and guarantee coverage under this paragraph;
- d. The guarantee is granted by 31 December 2023;

<sup>72</sup> For the purpose of this section, the term ‘public guarantees on loans’ covers also guarantees on certain factoring products, namely guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree. Eligible reverse factoring products must be limited to products that are used only after the seller has already executed its part of the transaction, *i.e.* the product or service has been delivered. Financial leasing is also covered by the term ‘public guarantees on loans’. Where public guarantees are aimed at addressing liquidity needs of undertakings that need to provide financial collaterals for trading activities on energy markets, these public guarantees may exceptionally also cover bank guarantees or be provided as financial collateral to central counterparties or clearing members.

<sup>73</sup> These individual loans cannot be granted to credit institutions or other financial institutions.

- e. The overall amount of loans per beneficiary, for which a guarantee is granted under this section, shall not exceed:
- i. 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods <sup>74</sup> ;
  - ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted <sup>75</sup> ; or
  - iii. upon appropriate justification to be provided by the Member State to the Commission for its assessment (for example in connection with the challenges faced by the beneficiary during the current crisis)<sup>76</sup>, the amount of the loan may be increased:
    - to cover the liquidity needs from the moment of granting for the coming 12 months for SMEs<sup>77</sup> and for the coming 6 months for large enterprises;
    - for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
    - The liquidity needs should be established through self-certification by the beneficiary<sup>78</sup>;
    - The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework cannot be covered by measures adopted under this Communication;
- f. The duration of the guarantee is limited to maximum six years, unless modulated according to point 67(c), and the guarantee may not exceed:

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<sup>74</sup> When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 67(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

<sup>75</sup> When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 67(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

<sup>76</sup> Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter measures taken, for example by Russia. Those effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis.

<sup>77</sup> As defined in Annex I to the General Block Exemption Regulation.

<sup>78</sup> The liquidity plan may include both working capital and investment costs. The Commission clarifies that while this Communication is in force, Member States may grant under this section additional public guarantees to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of this Communication and needs to ensure that the same liquidity needs are only covered once.

- i. 90 % of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or
  - ii. 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee); and
  - iii. in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally;
- g. Upon appropriate justification to be provided by the Member State and by derogation from points 67(a), 67(e), 67(f) and 67(h), the public guarantee can be provided as unfunded financial collateral<sup>79</sup> to central counterparties or clearing members to cover new liquidity needs derived from the need to provide financial collaterals for cleared trading activities on energy markets for energy undertakings. The coverage for these unfunded guarantees may exceptionally exceed 90%. For these unfunded guarantees, the Member State has to:
- i. if the guarantee coverage exceeds 90%, demonstrate the need for such higher coverage, based on robust and specific evidence and commit to validate and regularly monitor that final beneficiaries are not able to meet these liquidity needs through other sources of internal or external financing, including other aid under this Communication;
  - ii. justify the amount of the guarantees, which in any case may not exceed the amount to cover the liquidity needs for the coming 12 months that are derived from the need to provide financial collaterals for cleared trading activities on energy markets. Member States have to review these needs on a regular basis;
  - iii. justify the period for which the guarantee is granted, which has to be limited to 31 December 2023 and in any case does not exceed the period where such guarantees are considered as highly liquid collateral according to the Commission Delegated Regulation (EU) 2022/2311 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements<sup>80</sup>;
  - iv. demonstrate how the conditions for the mobilisation of the guarantee will sufficiently address moral hazard concerns regarding the beneficiary and financial intermediary. In particular, this concerns the condition on the recovery from the final beneficiary of the guaranteed amounts, where the Member State's claims on the final beneficiary's assets have to rank at the same or higher priority level as the final beneficiary's other outstanding senior debt and loans;

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<sup>79</sup> As explained in footnote 72 and in contrast to public guarantees on loans under this section, which are used to facilitate the provision of liquidity directly to undertakings, the public guarantees provided as financial collateral under this point 67(g) are unfunded and provided directly to the central counterparty or clearing member without any underlying instrument.

<sup>80</sup> Commission Delegated Regulation (EU) 2022/2311 of 21 October 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements, (OJ L 307, 28.11.2022, p. 31) .

- v. indicate the premiums that will be applied for such guarantees, which have to be at least equal to the guarantee premiums referred to in the table of point 67(b) plus 200 bps and, if the central counterparty or clearing member does not charge any interest rate or fees for the unfunded collateral position, the base rate as defined in point 70(b) must be added;
  - vi. ensure that points 67(d) and 67(i) are also complied with. The option under point 67(c) is not applicable and the guarantee shall only relate to liquidity needs as defined in point 67(g);
- h. The guarantee shall relate to investment and/or working capital loans;
- i. Guarantees may be provided directly to final beneficiaries or to credit institutions and other financial institutions as financial intermediaries. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantees to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees.

### **2.3. Liquidity support in the form of subsidised loans**

- (68) In order to ensure access to liquidity to undertakings affected by the current crisis, subsidised interest rates for a limited period and loan amount may be an appropriate, necessary and targeted solution during the current circumstances.
- (69) For the same underlying loan principal, loans granted under this section shall not be cumulated with aid granted under section 2.2 of this Communication and vice-versa. Loans and guarantees granted under this Communication may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 67(e) or in point 70(e). A beneficiary may benefit in parallel from multiple subsidised loans under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 70(e).
- (70) The Commission will consider State aid in the form of subsidised loans in response to the current crisis as compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:
- a. The loans are not granted to credit institutions or other financial institutions;
  - b. The loans may be granted at reduced interest rates, which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission<sup>81</sup>) available

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<sup>81</sup> Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) and published on the website of DG Competition at [https://ec.europa.eu/competition-policy/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates\\_en](https://ec.europa.eu/competition-policy/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates_en).



either on 1 October 2022<sup>82</sup> or applicable at the moment of granting the support, plus the credit risk margins as set-out in the table below<sup>83</sup>

Type of recipient	Credit risk margin for 1st year	Credit risk margin for a 2nd -3rd year	Credit risk margin for 4th-6th year
SMEs	25bps <sup>84</sup>	50bps <sup>85</sup>	100bps
Large enterprises	50bps	100bps	200bps

- c. As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby the loan maturity and the level of credit risk margins may be modulated, for instance, a flat credit risk margin may be used for the entire duration of the loan, if it is higher than the minimum credit risk margin for the 1<sup>st</sup> year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph<sup>86 87</sup>;
- d. The loan contracts are signed by 31 December 2023 and are limited to maximum six years, unless modulated according to point 70(c);
- e. The overall amount of the loans per beneficiary shall not exceed:
- i. 15 % of the beneficiary's average total annual turnover over the last three closed accounting periods<sup>88</sup> ; or
  - ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted<sup>89</sup> ;
  - iii. with appropriate justification provided by the Member State to the Commission (for example in connection with the challenges faced by the

<sup>82</sup> For loans granted until 31 December 2022, the base rate of 1 February 2022 may be used.

<sup>83</sup> If a grace period is applied for interest payments, the minimum interest rates set out in point 70(b) must be complied with and interests must accrue from the first day of the grace period and must be capitalised at least annually. The duration of the loan contracts will remain limited to maximum of six years from the moment of granting the loan unless modulated in line with point 70(c) and the overall amount of the loans per beneficiary referred to in point 70(e) will not be exceeded.

<sup>84</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

<sup>85</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

<sup>86</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

<sup>87</sup> See the summary of case practice on modulation under point 70(c) published on the website of DG Competition at [https://ec.europa.eu/competition-policy/state-aid/ukraine\\_en](https://ec.europa.eu/competition-policy/state-aid/ukraine_en).

<sup>88</sup> When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 70(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

<sup>89</sup> When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 70(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

beneficiary during the current crisis)<sup>90</sup>, the amount of the loan may be increased:

- to cover the liquidity needs: from the moment of granting for the coming 12 months for SMEs<sup>91</sup> and for the coming 6 months for large enterprises;
  - for large enterprises that need to provide financial collaterals for trading activities on energy markets, to cover the liquidity needs derived from these activities from the moment of granting for the next coming 12 months;
  - The liquidity needs should be established through self-certification by the beneficiary<sup>92</sup>;
  - The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework shall not be covered by the current Communication;
- f. Loans shall relate to investment and/or working capital needs;
- g. Loans may be provided directly to final beneficiaries or through credit institutions and other financial institutions as financial intermediaries. In such a case, the credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries without conditioning the granting of subsidised loans under this section to refinancing existing loans.

#### **2.4. Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices**

- (71) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support could alleviate the consequences of exceptionally severe increases in the price of natural gas and electricity caused by Russia's aggression against Ukraine. Such support can be provided to undertakings on the basis of either their current or historical energy consumption. In the former case, the support would enable continued economic activity of the most affected undertakings but would inherently involve less incentives

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<sup>90</sup> Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the Russian aggression, including restrictive economic measures taken by the Union and its international partners, as well as counter measures taken by Russia. Those effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased price volatility on energy markets and related collateral needs, increased risks of cyber-attacks, or rising prices for specific inputs or raw-materials affected by the current crisis.

<sup>91</sup> As defined in Annex I to the General Block Exemption Regulation.

<sup>92</sup> The liquidity plan may include both working capital and investment costs. The Commission clarifies that while this Communication is in force, Member States may grant under this section additional subsidised loans to beneficiaries that have already received such support to take into account new liquidity needs that were not included in the original liquidity needs assessment. Any such support needs to comply with all the conditions of this Communication and needs to ensure that the same liquidity needs are only covered once.

to save energy. Against the background of the scarcity of gas supplies in the EU, it is also important to maintain strong incentives for demand reductions and gradual shifts towards reducing gas consumption. Support based on historical energy consumption could maintain intact market incentives to reduce energy consumption and help undertakings cope with the consequences of the current crisis, provided beneficiaries do not substantially reduce production activities below what is necessary to realise the targeted energy savings and/or merely shift their consumption elsewhere. Member States are therefore invited to require beneficiaries to provide adequate commitments to that effect. For any eligible period, Member States may put in place a support scheme either on the basis of current or historical energy consumption.

(72) The Commission will consider State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:

- a. *The aid is granted by 30 June 2024;*<sup>93</sup>
- b. The aid may be granted in the form of direct grants, tax<sup>94</sup> and payment advantages or other forms such as repayable advances, guarantees<sup>95</sup>, loans<sup>96</sup> and equity provided the total nominal value of such measures does not exceed the applicable aid intensity and aid ceilings. All figures used must be gross, that is, before any deduction of tax or other charge;
- c. *Aid granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by 31 December 2024;*
- d. The aid is granted on the basis of a scheme with an estimated budget. Member States may limit the aid to activities that support specific economic sectors of particular importance to the economy or to the security and resilience of the internal market, taking into account, for example, the criteria for prioritising critical non-protected customers in the “Save gas for a safe winter” Communication<sup>97</sup>. However, such limits need to be designed broadly and not lead to an artificial limitation of potential beneficiaries;
- e. For the purposes of this section, eligible costs are calculated based on the consumption of natural gas (including as feedstock), electricity, and heating and cooling<sup>98</sup> directly produced from natural gas and electricity procured by the beneficiary<sup>99</sup>.

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<sup>93</sup> *By way of derogation, when the aid is granted only after an ex post verification of the supporting documentation of the beneficiary and the Member State decides not to include the possibility to grant advance payments in line with point 74, aid may be granted until 31 December 2024 provided the eligible period as defined in point 72(e) is respected.*

<sup>94</sup> *If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 30 June 2024.*

<sup>95</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

<sup>96</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>97</sup> COM/2022/360 final, 20.7.2022.

<sup>98</sup> In the case of district heating or cooling networks, it may not always be possible to determine precisely the fuel used by the central source. In such situations, Member States may rely on certifications from the district heating operators or estimations indicating the energy mix of the respective networks and use that

The maximum eligible cost is calculated according to the following formula:

$$(p(t) - p(\text{ref}) * 1.5) * q$$

Where:

*T is a given month, or a period of several consecutive months, between 1 February 2022 and 30 June 2024 at the latest ('eligible period')*

ref is the period from 1 January 2021 to 31 December 2021 ('reference period')

p(t) is the average price per unit consumed by the beneficiary in the eligible period (for example, in EUR/MWh)

p(ref) is the average price per unit consumed by the beneficiary in the reference period (for example, in EUR/MWh)

q is the quantity procured from external suppliers and consumed by the beneficiary as a final consumer<sup>100</sup>. It can be set by a Member State as either:

q(t), *i.e.* the consumption of the beneficiary in the eligible period, or

q(ref), *i.e.* the consumption of the beneficiary in the reference period.

As from 1 September 2022, q cannot exceed 70% of the beneficiary's consumption for the same period in 2021.

- f. The overall aid per beneficiary does not exceed 50% of the eligible costs and the overall aid per undertaking per Member State does not exceed EUR 4 million at any given point in time;
  - g. Aid granted under this section may be cumulated with aid granted under section 2.1, provided that the applicable aid ceilings per undertaking under this section are not exceeded. For the same consumption volume, aid granted under this section that is calculated on the basis of historical consumption (q(ref)) may not be cumulated with aid granted under section 2.7.
- (73) In certain situations, further aid may be necessary for beneficiaries suffering from a reduction in economic performance during the crisis. Member States may grant aid exceeding the values calculated pursuant to point 72(f), where, in addition to meeting the conditions in point 72(a) to (e) and (g), the following conditions are met:
- a. The overall aid per beneficiary does not exceed 40% of the eligible costs and the overall aid per undertaking per Member State does not exceed EUR 100 million at any given point in time;

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information to calculate the share of consumption of heating/cooling that can be eligible for compensation under this section.

<sup>99</sup> For the purposes of section 2.4, 'beneficiary' means an undertaking or a legal entity that forms part of an undertaking.

<sup>100</sup> As demonstrated by the beneficiary e.g. based on the respective bill. Only energy consumption by end users will be counted, sales and own production are excluded. The energy consumption of the energy sector itself and losses occurring during transformation and distribution of energy are excluded.

- b. For beneficiaries qualifying as ‘energy-intensive businesses’<sup>101</sup> the overall aid per beneficiary may be increased to a maximum of 65% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 50 million at any given point in time. The beneficiary must in addition show that it has either a reduction in EBITDA<sup>102</sup> (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
  - c. For beneficiaries qualifying as ‘energy-intensive businesses’ active in one or more sectors or sub-sectors listed in Annex I<sup>103</sup>, the overall aid per beneficiary may be increased to a maximum of 80% of the eligible costs and the overall aid per undertaking per Member State may not exceed EUR 150 million at any point in time. The beneficiary must in addition show that it has either a reduction in EBITDA (excluding aid) of at least 40% in the eligible period compared to the reference period, or a negative EBITDA (excluding aid) in the eligible period;
  - d. For aid granted under points 73(a), 73(b) and 73(c), the beneficiary’s EBITDA in the eligible period, including the overall aid, may not exceed 70% of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.
  - e. *For aid granted under points 73(a), 73(b), 73(c) and 73(d) in relation to eligible costs incurred between 1 January 2024 and 30 June 2024, the EBITDA in the eligible period may exceptionally be calculated on the basis of the calendar year ending on 31 December 2023.*
- (74) Under this section, the granting authority may make an advance payment to the beneficiary. When doing so, the granting authority may rely on estimations of the eligibility criteria in this section provided that the aid ceilings in this section are respected. The granting authority shall establish a process to verify the relevant eligibility requirements and aid ceilings ex-post on the basis of actual data and claw back any aid payments that do not meet the eligibility criteria or that exceed the aid ceilings no later than six months after the eligible period has ended.

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<sup>101</sup> An ‘energy-intensive business’ is a legal entity where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0% of the production value or turnover, based on data from the financial accounting reports for the calendar year 2021. Alternatively, data for the first semester of 2022 may be used, in which case the beneficiary may qualify as ‘energy-intensive business’ if the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 6.0% of the production value or turnover.

<sup>102</sup> EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

<sup>103</sup> Annex I lists the sectors and subsectors deemed to be particularly exposed to loss of competitiveness by reason of the energy crisis, for which the (sub)sector’s intensity of trade with third countries and emission intensity represent objective proxies. A beneficiary will be considered as active in a sector or subsector listed in Annex I according to the beneficiary’s classification in the sectoral national accounts or if one or several of the activities it carries out and which are included in Annex I generated more than 50 % of its turnover or production value in 2021.

## 2.5. Aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU

- (75) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan<sup>104</sup> to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuels imports, accelerate the energy transition and achieve lower and less volatile energy prices. State aid to accelerate the deployment of renewable energy and energy storage capacity forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels in the current context. In the light of the urgent need to ensure the swift implementation of projects that accelerate the rollout of renewable energy and energy storage, certain simplifications for the implementation of support measures are justified on a temporary basis to allow for the implementation of REPowerEU.
- (76) The faster rollout of renewable energy and energy storage may require complementary investments in energy infrastructure, including grid expansion. In line with the Notion of Aid Notice<sup>105</sup>, support to energy infrastructure within the framework of a legal monopoly is not subject to State aid rules. In the energy sector, this is particularly relevant for those Member States where the construction and operation of certain infrastructures is exclusively reserved by law for the Transmission System Operator or Distribution System Operator.

### 2.5.1. Investment aid for accelerating the rollout of renewable energy and for energy storage

- (77) The Commission will consider investment aid for the promotion of energy from renewable sources and for energy storage as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:
- a. the aid is granted for one of the following:
    - (i) investments for the production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001<sup>106</sup>, including the production of renewable hydrogen and renewable hydrogen-derived fuels but excluding the production of electricity from renewable hydrogen;

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<sup>104</sup> COM/2022/230 final, 18 May 2022.

<sup>105</sup> See 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). Given that the notion of State aid is an objective and legal concept defined directly by the Treaty (judgment of the Court of Justice of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, ECLI:EU: C:2008:757, paragraph 111) the views set out in points 373 to 375 are without prejudice to the interpretation of the notion of State aid by the Union Courts (judgment of the Court of Justice of 21 July 2011, *Alcoa Trasformazioni v Commission*, C-194/09 P, ECLI:EU:C:2011:497, paragraph 125); the primary reference for interpreting the Treaty is always the case-law of the Union Courts.

<sup>106</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (ii) investments in electricity storage<sup>107</sup> and thermal storage<sup>108</sup> (also in combination with one of the other types of investments covered by this section);
  - (iii) investments in storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75 % of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;
- b. the aid is granted on the basis of a scheme with an estimated capacity volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 77(a) but must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of direct grants, repayable advances, loans<sup>109</sup>, guarantees<sup>110</sup> or tax advantages including tax credits;
- f. the aid amount is either:
  - (i) determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription<sup>111</sup>. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced) or aid per unit of energy output or capacity installed; or
  - (ii) administratively set by the Member State on the basis of data on the investment cost of each supported project;

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<sup>107</sup> Electricity storage means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy.

<sup>108</sup> Thermal storage means deferring the final use of thermal energy to a moment later than when it was generated, or the conversion of electrical or thermal energy into a form of energy which can be stored, the storing of such energy, and, where appropriate, the subsequent conversion or reconversion of such energy into thermal energy for final use (i.e., heating or cooling).

<sup>109</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>110</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

<sup>111</sup> The volumes of capacity tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology.

- g. aid for solar photovoltaic, onshore and offshore wind, and hydropower installations shall be granted only in a competitive bidding process in line with point 77(f)(i).
- h. in derogation from point 77(g) above, a competitive bidding process is not mandatory for solar photovoltaic, onshore and offshore wind, and hydropower installations when the aid granted per undertaking per project does not exceed EUR 30 million and the supported projects are small projects that are defined as:
  - (i) projects with installed capacity equal or below 1MW; or
  - (ii) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs or renewable energy communities; or
  - (iii) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises or by renewable energy communities;

In such a situation, the aid shall be administratively set on the basis of point 77(f)(ii);

- i. the aid intensity shall not exceed:
  - (i) 100% of the total investment costs when the aid is set in a competitive bidding process on the basis of point 77(f)(i); or
  - (ii) 45% of the total investment costs when the aid is administratively set on the basis of point 77(f)(ii); the aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings;
- j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels<sup>112</sup>, the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;
- l. aid shall be granted with respect to newly installed or repowered capacities<sup>113</sup>. The aid amount shall be independent from the energy output. In case of repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid;

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<sup>112</sup> Liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass.

<sup>113</sup> Repowering means renewing power plants that produce renewable energy, including the full or partial replacement of installations or operation systems and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation.



- m. aid under this section may be cumulated with any other State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid, except for aid under section 2.5.2 of this Communication, or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the applicable aid intensity set out in point 77(i)<sup>114</sup>;
- n. aid under this section may be cumulated with aid under section 2.5.2 of this Communication only when the notified aid scheme foresees for that possibility at the time of its initial notification;
- o. aid may be granted for investments for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023, or before 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
- p. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
- q. the Member State must ensure compliance with the ‘do no significant harm’ principle.

*2.5.2. Operating aid for accelerating the rollout of renewable energy and for energy storage*

- (78) The Commission will consider operating aid for the promotion of energy from renewable sources and for energy storage as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:
- a. the aid is granted for one of the following:
    - (i) production of energy from renewable sources as defined in Article 2 point (1) of Directive (EU) 2018/2001, including the production of renewable hydrogen and renewable hydrogen-derived fuels but excluding the production of electricity from renewable hydrogen;

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<sup>114</sup> If the Member State allows for such a cumulation, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

- (ii) operation of electricity storage<sup>115</sup> and thermal storage<sup>116</sup> (also in combination with one of the other types of investments covered by this section);
  - (iii) operation of storage for renewable hydrogen, biofuels, bioliquids, biogas (including biomethane) and biomass fuels that obtains at least 75% of its content from a directly connected renewable hydrogen, biofuels, bioliquids, biogas or biomass fuels production facility, on an annual basis;
- b. the aid is granted on the basis of a scheme with an estimated capacity or output volume and budget;
- c. the support schemes may be limited to one or several technologies covered in point 78 (a) but must not include any artificial limitation or discrimination (including in the award of licences, permits or concessions when they are required);
- d. the aid is granted by 31 December 2025. With the exception of offshore wind technologies, the installations must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- e. the aid is granted in the form of two-way contracts for difference<sup>117</sup>, in relation to the energy output of the installation and with a contract duration no longer than 20 years after the aided installation starts operations<sup>118</sup>;
- f. the aid amount is determined either:
  - (i) through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding and undersubscription<sup>119</sup>. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced) or aid per unit of energy output or capacity; or

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<sup>115</sup> As defined in footnote 107.

<sup>116</sup> As defined in footnote 108.

<sup>117</sup> A two-way contract for difference means a contract signed between a power generating facility operator and a counterpart, usually a public entity, that provides both minimum remuneration protection and a limit to excess remuneration. The contract is designed to preserve incentives for the generating facility to operate and participate efficiently in the energy markets.

<sup>118</sup> The support payments under the contract must be limited to 20 years but Member States are free to require installations to continue making paybacks under the contracts for as long as the supported facility continues operating.

<sup>119</sup> The volumes of capacity or production tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology.

- (ii) with the strike price administratively set by the competent energy regulatory authority<sup>120</sup> to cover expected net costs, including the estimated WACC, and taking into account all main revenues and any aid already received;
- g. the aid for the production of electricity from solar photovoltaic, onshore and offshore wind, and hydropower shall be granted only in a competitive bidding process in line with point 78(f)(i);
- h. in derogation from point 78(g) above, a competitive bidding process is not mandatory for the production of electricity from solar photovoltaic, onshore and offshore wind, and hydropower when the aid granted per undertaking per project does not exceed EUR 30 million and the supported projects are small projects that are defined as:
  - (i) projects with an installed capacity equal or below 1 MW; or
  - (ii) projects with an installed capacity equal or below 6 MW, if they are 100 % owned by SMEs or renewable energy communities; or
  - (iii) for wind generation only, projects with an installed capacity equal or below 18 MW, if they are 100 % owned by small and microenterprises or by renewable energy communities;

In such a situation, the aid shall be administratively set on the basis of point 78(f)(ii);

- i. the aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative<sup>121</sup>;
- j. where the aid is granted for the production of renewable hydrogen or for the production of renewable hydrogen-derived fuels<sup>122</sup>, the Member State must ensure that the hydrogen and the hydrogen-derived fuels are produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- k. where the aid is granted for the production of biofuels, bioliquids, biogas (including biomethane) and biomass fuels, the Member State must ensure that the aided fuels

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<sup>120</sup> ‘Regulatory authority’ means a regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944 (OJ L 158, 14.6.2019, p. 125).

<sup>121</sup> Small-scale renewable electricity installations may benefit from direct price support that covers the full costs of operation and does not require them to sell their electricity on the market, in line with the exemption in Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale if their capacity is below the applicable threshold in Article 5 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), (OJ L 158, 14.6.2019, p. 54).

<sup>122</sup> Liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass.

are compliant with the sustainability and greenhouse gases emissions saving criteria of Directive (EU) 2018/2001 and its implementing or delegated acts;

- l. the aid shall be granted with respect to newly installed or repowered capacities<sup>123</sup>;
  - m. aid under this section may be cumulated with any other State aid or with centrally managed funds, as long as those measures concern different identifiable eligible costs. Aid may be cumulated with State aid or with centrally managed funds in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding 100% of the expected net costs as defined in point 78(f)(ii)<sup>124</sup>;
  - n. aid may be granted for installations for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023, or before 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
  - o. the aid must induce the beneficiary to undertake an activity, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
  - p. the Member State must ensure compliance with the ‘do no significant harm’ principle.
- (79) The Commission will consider aid for increasing the maximum electricity generation capacity of existing installations while not undertaking further investments as compatible with the internal market on the basis of Article 107(3)(c) TFEU provided the following conditions are met:
- a. the existing installation is connected to the grid before 1 October 2022 and benefitted from aid approved by the Commission under Article 107(3)(c) TFEU or exempted from notification;
  - b. the aid is necessary to increase the maximum capacity of existing installations so that their capacity is increased by up to 1 MW per installation or equivalent while not undertaking further investments;
  - c. the aid is granted by 31 December 2023 and the eligible period for support under the aid measure shall end by 31 December 2024;

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<sup>123</sup> As defined in footnote 113.

<sup>124</sup> If the Member State allows for such a cumulation, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

- d. the aid complies with the requirements laid down in points 78(a), 78(b), 78(c), 78(e), 78 (i) and 78(j);
- e. the aid under this measure must not be cumulated with other aid supporting the same additional capacity.

**2.6. Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures**

- (80) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the current crisis and the REPowerEU Plan to facilitate investments in the decarbonisation of industrial activities with a view to quickly reducing dependency on fossil fuels imports. Accelerating electrification and energy efficiency measures in industry, as well as introducing technologies using renewable and electricity-based hydrogen fulfilling the conditions of point 81(i) or renewable hydrogen-derived fuels fulfilling the conditions of point 81(h) form part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels.
- (81) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for investments leading to (i) a substantial reduction of greenhouse gas emissions from industrial activities currently relying on fossil fuels as energy source or feedstock, or (ii) a substantial reduction of energy consumption in industrial activities and processes, provided that all the following conditions are met:
- a. the aid is granted on the basis of a scheme with an estimated budget;
  - b. the maximum individual aid amount that may be granted per undertaking must, in principle, not exceed either 10 % of the total budget available for such a scheme or EUR 200 million. Upon appropriate justification to be provided by the Member State to the Commission for its assessment, the Commission may accept schemes that provide for the granting of individual aid amounts exceeding 10 % of the total budget available for the scheme;
  - c. the aid is granted in the form of direct grants, repayable advances, loans<sup>125</sup>, guarantees<sup>126</sup> or tax advantages including tax credits;
  - d. the investment<sup>127</sup> must enable the beneficiary to do one or both of the following:
    - (i) reduce by at least 40 % compared to the situation before the aid, direct greenhouse gas emissions from its industrial installation currently relying on fossil fuels as energy source or feedstock, by means of the electrification of the production processes, or the switch to the use of renewable and electricity-based hydrogen fulfilling the conditions of points 81(g) and (i) or of renewable hydrogen-derived fuels fulfilling

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<sup>125</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>126</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

<sup>127</sup> Aid for investments that aim to reduce direct greenhouse gas emissions or energy consumption, including below the thresholds in point 81(d) of this Communication, may be exempted from notification provided the rules in the General Block Exemption Regulation are respected.

the conditions of point 81(h) to substitute fossil fuels; for the purposes of verifying the reduction of greenhouse gas emissions, also actual emissions from the combustion of biomass is to be taken into account,<sup>128</sup>

- (ii) reduce by at least 20 % compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities;<sup>129</sup>
- e. for investments relating to activities covered by the Emission Trading System (ETS), the aid must lead to a reduction in the beneficiary installation's greenhouse gas emissions going below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447<sup>130</sup>;
- f. the aid must not aim at financing an increase of the overall production capacity of the beneficiary. This is without prejudice to limited capacity increases resulting from technical necessity. This is presumed to be the case for capacity increases not exceeding 2 % compared to the situation before the aid;
- g. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen, the Member State must ensure that the hydrogen used is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts;
- h. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen-derived fuels, those fuels comply with the following cumulative requirements:
  - (i) they are liquid and gaseous fuels that derive from renewable hydrogen, the energy content of which is derived from renewable sources other than biomass;
  - (ii) they achieve lifecycle greenhouse gas emissions savings of at least 70% relative to a fossil fuel comparator of 94g CO<sub>2</sub>eq/MJ and
  - (iii) they have been produced in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts.
- i. the aid can also be granted for an industrial decarbonisation investment involving the use of hydrogen produced from electricity in one of the following instances:

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<sup>128</sup> The reduction in direct greenhouse gas emissions must be measured by reference to average direct greenhouse gas emissions occurred over the five years preceding the aid application (average emission on an annual basis).

<sup>129</sup> The reduction of energy consumption must be measured by reference to energy consumption occurred over the five years preceding the aid application (average consumption on an annual basis).

<sup>130</sup> Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 87, 15.3.2021, p. 29).

- (i) the hydrogen is produced only in hours in which the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electricity is consumed is a fossil-free electricity generation plant. Hydrogen produced in such hours and which has already been counted as renewable hydrogen within the meaning of point 81(g) cannot be counted a second time under this section;
  - (ii) alternatively, hydrogen is produced from electricity taken from the grid and the electrolyser produces hydrogen for a number of full load hours equal or lower than the number of hours in which the marginal price of electricity in the bidding zone was set by installations producing fossil-free electricity; hydrogen produced for a number of full load hours equal or lower than the number of hours in which the marginal price of electricity in the bidding zone was set by installations producing renewable electricity and which has already been accounted as renewable hydrogen within the meaning of point 81(g) cannot be counted a second time under this section;
  - (iii) alternatively, the Member State must ensure that the used electricity-based hydrogen achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO<sub>2</sub>eq/MJ and that it originates from fossil-free sources. The method to compute the greenhouse gas emissions allocated to the electricity should not lead to an increased consumption of fossil fuel in line with REPowerEU objectives. Only the share of the produced hydrogen corresponding to the average share of electricity from fossil-free electricity generation plants, in the country of production, as measured two years before the year in question, can be used for the purpose of this section. The share of hydrogen produced in line with the present point corresponding to the average share of electricity from renewable electricity generation plants in the country of production, as measured two years before the year in question, cannot be counted a second time under this section to the extent that it has already been accounted for as renewable hydrogen within the meaning of point 81(g);
- j. the aid is granted by 31 December 2025 and is subject to the condition that the installation or equipment to be financed by the investment must be completed and be in operation within 36 months after the date of granting. The scheme should include an effective system of penalties in case this deadline is not met;
- k. the aid may be granted for investments for which works started as of 9 March 2023, with the exception of investments eligible under the previous Temporary Crisis Framework for which works may have started as of 20 July 2022; for projects started before 9 March 2023 or 20 July 2022 for investments eligible under the previous Temporary Crisis Framework, aid may be granted, if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;

- l. the aid must not be granted for merely complying with applicable Union standards<sup>131</sup>;
- m. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law; it is deemed that beneficiaries would continue their activities without changes for investments referred to in point 81(d)(i) above;
- n. the eligible costs are the difference between the costs of the project referred to in point 81(d) and the cost savings or additional revenues, compared to the situation in the absence of the aid, over the lifetime of the investment. The scheme must be designed in a way that allows to address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in place a claw-back mechanism defined ex ante. The aid intensity must not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings. The aid intensity may also be increased by 15 percentage points for investments delivering a reduction of direct greenhouse gas emissions of at least 55 % or of energy consumption of at least 25 % compared to the situation prior to the investment<sup>132</sup>;
- o. as an alternative to point 81(n), the aid amount is determined through a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex-ante and minimising the risk of strategic bidding. At least 70 % in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO<sub>2</sub> reduced, or EUR per unit of energy saved). The budget related to the bidding process must be a binding constraint in that it can be expected that not all bidders will receive aid;
- p. as a further alternative to points 81(n) and (o), the eligible costs may correspond to the investment costs linked to the project referred to in point 81(d), in particular costs of equipment, machinery or installations needed to achieve the electrification, switch to hydrogen or hydrogen-derived fuels or energy efficiency improvement. In such a situation, the aid intensity must not exceed 60 % of the eligible costs for investments referred to under point 81(d)(i) other than electrification projects. For

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<sup>131</sup> 'Union standard' means: (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings; (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of this Communication; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable.

<sup>132</sup> The reduction in direct greenhouse gas emissions or energy consumption must be measured by reference to average direct greenhouse gas emissions or energy consumption occurred over the five years preceding the aid application (average emission/consumption on an annual basis).



electrification projects and for the investments referred to under point 81(d)(ii), the aid intensity must not exceed 30% of the eligible costs;

- q. the aid under this section may be cumulated with any other State aid or with centrally managed funds, as long as those measures concern different identifiable eligible costs;
- r. the aid granted in accordance with points 81(n) and (o) may be cumulated with other aid or with centrally managed funds in relation to overlapping eligible costs, provided that the maximum aid amount allowed under points 81(n) and (o) is not exceeded;
- s. the aid granted in accordance with point 81(p) may be cumulated with other aid or with centrally managed Union funds in relation to overlapping eligible costs, provided that the highest aid intensity and/or aid amount applicable under any of the relevant rules is not exceeded. Under no circumstances may the total aid amount exceed 100% of the eligible costs.

## **2.7. Aid for additional reduction of electricity consumption**

- (82) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support might be needed to achieve the reduction of electricity consumption covered by Articles 3 and 4 of Regulation (EU) 2022/1854<sup>133</sup>. That support might help alleviate the exceptional increase in electricity prices by reducing consumption for more expensive electricity generation technologies (presently based on gas). Therefore, it is equally important to maintain incentives for existing electricity consumption reductions and to ensure consistency with the gas demand reduction targets laid down in Regulation (EU) 2022/1369<sup>134</sup>. In view of the differences across Member States, guidance is needed to ensure that flexibility is framed by criteria aimed at ensuring a level-playing field and the preservation of the integrity of the single market.
- (83) The Commission will consider compatible with the internal market on the basis of Article 107(3)(b) TFEU aid for reduction of electricity consumption, provided the following cumulative conditions are met:
- a. the aid must provide financial compensation only when such compensation is paid for additional electricity not consumed compared to the expected consumption ('counterfactual') in the hour concerned without the competitive bidding process referred in point 83(e) ('additional consumption reduction'). In order to determine the additional consumption reduction, different methodologies can be used. To ensure that aid is only granted for additional demand reduction, Member States should in general take into account incentives from higher energy prices, any incentives from other support payments and schemes, weather conditions, and gaming risks;

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<sup>133</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

<sup>134</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, (OJ L 206, 8.8.2022, p. 1).

- b. the aid must be designed to primarily contribute to reaching an electricity consumption reduction target set in Articles 3 and 4 of Regulation (EU) 2022/1854<sup>135</sup>. If the aid is designed to go beyond the targets, the Member State must demonstrate the existence of additional benefits of the aid (for example, reduced energy system costs or reduced gas consumption), which are necessary<sup>136</sup> and proportionate to remedy the serious disturbance of the economy while preserving the internal market;
- c. the aid must be granted on the basis of a scheme with an estimated capacity volume and budget;
- d. aid may be granted in various forms including direct grants, loans<sup>137</sup> and guarantees<sup>138</sup>;
- e. the aid must be granted in a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding. If a risk of overcompensation is identified, aid must be designed in a way that allows addressing windfall profits, such as by putting in place a claw-back mechanism defined ex-ante;
- f. the competitive bidding process(es) should in principle be open to all possible ways to achieve additional consumption reduction, in particular:
  - i. consumers shifting or avoiding electricity consumption;
  - ii. behind-the-meter storage, to reduce consumption during peak hours (unless aid would not lead to any additional consumption reduction); and
  - iii. behind-the-meter electricity generation assets that do not use gas as fuel. Member States may choose to exclude generation based on other fossil fuels;
- g. with respect to point 83(f), schemes might be limited to one or several categories of beneficiaries in one of the following circumstances:
  - i. where differences in the characteristics (e.g. duration, frequency of activation) of the services that can be offered by potential beneficiaries are such that offers per MWh cannot be considered comparable;
  - ii. where Member States can demonstrate to the Commission that competition would not be unduly distorted; or
  - iii. to ensure timely implementation (e.g. by extending existing schemes);

In any case, the schemes must not include any artificial limitation or discrimination. In accordance with Article 17 of Directive (EU) 2019/944<sup>139</sup>,

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<sup>135</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

<sup>136</sup> Such aid will generally be deemed necessary if it contributes to achieving a reduction in gas consumption.

<sup>137</sup> When aid is granted in form of loans under this section, the additional conditions in point 70(g) apply.

<sup>138</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 67(i) apply.

schemes must not be unduly limited to specific customers or customer groups, including aggregators;

- h. the eligibility criteria for participation in the competitive bidding process(es) must be transparent, objective and non-discriminatory. Beneficiaries must already have appropriate electricity metering<sup>140</sup> or commit to install it before delivering the additional consumption reduction. A minimum bid size requirement for beneficiaries may apply for reasons of administrative simplification; in this case, the minimum bid size must not be higher than 10MW and aggregation to reach the threshold must be allowed;
- i. to enable beneficiaries to accurately price their offers, clear and objective criteria must be defined and must describe when the beneficiary's additional consumption reduction will be activated. However, sufficient safeguards – for example some randomisation of activation – may need to be put in place to avoid creating gaming incentives such as the artificial inflation of counterfactuals;
- j. to avoid negative consequences on gas consumption, beneficiaries should commit that their additional electricity consumption reduction will not lead to increase their overall gas consumption. In addition, for aid reducing electricity consumption during peak hours, to deliver the benefits of moving electricity from peak to “off-peak” hours<sup>141</sup> while avoiding to hamper achieving the target to reduce overall electricity consumption, beneficiaries should commit not to consume more than 150% “off peak” of the compensated “peak” electricity consumption reduction;
- k. within the competitive bidding process, beneficiaries must be selected based on the lowest unit cost of additional consumption reduction (in EUR/MWh or equivalent<sup>142</sup>). Member States may introduce additional objective, transparent and non-discriminatory ranking criteria to promote greener technologies necessary to support the delivery of the Union's environmental protection objectives;
- l. the remuneration must be granted to each beneficiary based on the actual additional consumption reduction achieved (as opposed to the additional consumption reduction the beneficiary committed to achieve);
- m. the aid must not unduly distort the proper functioning of the internal market in electricity. Member States may open the aid to cross-border participation;

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<sup>139</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (OJ L 158, 14.6.2019, p. 125).

<sup>140</sup> *I.e.* metering that measures separately consumption when additional demand reduction is required and when it is not.

<sup>141</sup> “Off peak” must be defined to generally avoid electricity consumption when gas is used for power generation.

<sup>142</sup> For example, when beneficiaries are selected based on capacity price (EUR/MW) for consumption reduction during a fixed number of hours. In this case, the number of hours must be defined ex-ante.

- n. the additional consumption reduction which is compensated must take place within the period of application of the relevant Article(s) of Regulation (EU) 2022/1854<sup>143</sup>, or in case of aid going beyond those targets, by 31 December 2023;
- o. cumulation with other State aid measures is possible, so long as overcompensation is avoided by ensuring for example that aid is granted through an open competitive bidding process. In any event, aid cannot be granted if it covers eligible costs that are already covered by other State aid measures.

## **2.8. Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy**

- (84) In view of the need to accelerate the economic transition and overcome the current crisis, Member States may envisage supporting private investment to address the productive investment gap in sectors strategic for the transition towards a net-zero economy and provide incentives for their fast deployment also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA.
- (85) The Commission will consider aid for investment projects with strategic importance for the transition towards a net-zero economy compatible with the internal market under Article 107(3)(c) TFEU provided the following conditions are met:
  - a. The aid is granted to incentivise:
    - i. the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage (CCUS); or
    - ii. the production of key components designed and primarily used as direct input for the production of the equipment defined under (i); or
    - iii. the production or recovery of related critical raw materials necessary for the production of the equipment and key components defined in (i) and (ii) above;
  - b. the aid is granted on the basis of a scheme<sup>144</sup> with an estimated budget;
  - c. the aid is granted by 31 December 2025;
  - d. the beneficiary must apply for aid before the start of works<sup>145</sup> and must provide the required information in Annex II of this Communication to the Member State<sup>146</sup>.

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<sup>143</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, (OJ L 261I, 7.10.2022, p. 1).

<sup>144</sup> Such a scheme can cover projects submitted and selected under the Innovation Fund, insofar as the applicable conditions under point 85 are met.

<sup>145</sup> ‘Start of works’ means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

- e. the aid may be granted in the form of direct grants, or other forms such as tax advantages, subsidised interest rates on new loans or guarantees on new loans provided the nominal amount of the tax advantage or the nominal amount of the underlying new loan does not exceed the applicable aid intensity and overall aid amounts under this point. When the guarantees or loans are channelled through credit institutions and other financial institutions as financial intermediaries, the conditions included in points 67(i) and 70(g) shall be respected in order to ensure that the aid granted under this section is passed on directly, to the largest extent possible, to the final beneficiaries;
- f. the eligible costs relate to all investment costs in tangible (such as land, buildings, plant, equipment, machinery) and intangible assets (such as patent rights, licences, know-how or other intellectual property) required for the production or recovery of the goods listed in point 85(a). Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) they must be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) must remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs);
- g. the aid intensity may not exceed 15% of the eligible costs and the overall aid amount may not exceed EUR 150 million per undertaking per Member State. However,
  - i. for investments in assisted areas designated in the applicable regional aid map for the Member State concerned in accordance with Article 107(3)(c) TFEU ('c' areas), the aid intensity may be increased to 20% of the eligible costs and the overall aid amount may not exceed EUR 200 million per undertaking per Member State;
  - ii. for investments in assisted areas designated in the applicable regional aid map for the Member State concerned in accordance with Article 107(3)(a) TFEU ('a' areas) the aid intensity may be increased to 35% of the eligible costs and the overall aid amount may not exceed EUR 350 million per undertaking per Member State;
- h. when the aid is granted in form of tax advantages, loans or guarantees, aid intensities set out in point 85(g) may be increased by 5 percentage points. For investments made by small enterprises, the aid intensities may be further increased by 20 percentage points and for those investments made by medium-sized enterprises, the aid intensities may be increased by 10 percentage points;
- i. the beneficiary must commit to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment;

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<sup>146</sup> Such aid applications may be based on any legal basis as long as the amount of aid to be granted under section 2.8 of this Communication does not exceed the amount initially applied for.

- j. before granting the aid and on the basis of the information provided by the beneficiary in Annex II of this Communication and the commitments provided under point 85(k), the granting authority must verify the concrete risks of the productive investment not taking place within the EEA and that there is no risk of relocation within the EEA in the sense of point 85(k);
  - k. the aid may not be provided to facilitate relocation<sup>147</sup> of production activities between Member States. For this purpose, the beneficiary has to:
    - i. confirm that in the two years preceding the application for aid, it has not carried out a relocation to the establishment in which the aided investment is to take place; and
    - ii. commit not to carry out such relocation up to a period of two years after completion of the investment;
  - l. the aid may not be granted to undertakings in difficulty<sup>148</sup>;
  - m. the aid may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances may the total aid amount exceed 100% of the eligible costs;
  - n. Member States may consider including in a non-discriminatory way requirements related to environmental protection such as those listed in point 37 of this Communication or related to social protection or employment conditions when notifying schemes under this point;
  - o. Member States must inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary in Annex II to this Communication.
- (86) Exceptionally, by derogation from point 85(b) and on the basis of individual notifications, for the production of the relevant goods for the transition towards a net-zero economy as defined in point 85(a) of this Communication, the Commission may approve on the basis of Article 107(3)(c) TFEU individual aid up to the amount of subsidy<sup>149</sup>, which the beneficiary could demonstrably receive for an equivalent investment in a third country jurisdiction outside the EEA, provided the following conditions are met:

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<sup>147</sup> 'Relocation' means a transfer of the same or a similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the aid beneficiary in the EEA.

<sup>148</sup> As defined under the Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, ([OJ C 249, 31.7.2014, p. 1](#)).

<sup>149</sup> The notified aid and the subsidy which the beneficiary could demonstrably receive in a third country jurisdiction outside EEA will be compared in discounted terms.

- a. The aid incentivises the beneficiary to locate the investment project or to trigger linked investment projects<sup>150</sup> necessary for the production of the relevant goods defined in point 85(a) either:
  - i. fully in an assisted area as defined in the applicable regional aid map; or
  - ii. in at least three EEA Member States where a significant part of the capital investment takes place in at least two assisted areas. An important part of such significant investment should take place in an ‘a’ area as defined in the applicable regional aid map(s);
- b. The aid is granted by 31 December 2025;
- c. The beneficiary must commit to use for the production of goods defined in point 85(a) of this Communication the latest commercially available state-of-the-art production technology from an environmental emissions perspective;
- d. The beneficiary must apply for aid before the start of works<sup>151</sup> and must provide the required information in Annex II of this Communication and supporting relevant documents to the Member State.<sup>152</sup> The beneficiary must provide solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project and must demonstrate that without the aid the planned investment would not take place in the EEA<sup>153, 154</sup>. In addition, the beneficiary must provide evidence that the aid does not create counter-cohesion effects<sup>155</sup>;

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<sup>150</sup> Undertakings from all Member States which are active in the relevant value chain must be given a genuine opportunity to participate in an emerging project. Notifying Member States must demonstrate that such undertakings were informed of the possible emergence of a project, and of the commercial opportunities it could represent, for example by way of contacts, alliances, meetings, or match-making events, also involving SMEs and start-ups, while paying due regard to commercial secrecy.

<sup>151</sup> As defined in footnote 145.

<sup>152</sup> Such aid applications may be based on any legal basis as long as the amount of aid to be granted under section 2.8 of this Communication does not exceed the amount initially applied for.

<sup>153</sup> Relevant documentary evidence to underpin the counterfactual described in the Annex II of this Communication needs to be credible, *i.e.* genuine and relevant to the decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the investment. Member States are invited to draw on genuine and official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision-making process concerning the investment or its location. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment scenarios, or documents provided to the financial institutions could help Member States to demonstrate the incentive effect.

<sup>154</sup> In principle, aid amounts that exceed capital investment costs seem unlikely to be justifiable, given that in such cases, the investments are likely to take place in the EEA also with lower aid amounts.

<sup>155</sup> Where several locations in the EEA are under consideration for the investment, State aid under this point may not be granted to attract the investment to an area with a regional aid intensity as specified in the applicable regional aid map that is lower than in alternative EEA areas under consideration, since this would constitute a negative effect on competition and cohesion that is unlikely to be compensated by any positive effect. This would not apply if the beneficiary can demonstrate that the investment would not otherwise happen in such alternative EEA areas and instead be diverted to a third country. In cases where the alternative EEA locations are of the same regional aid intensity, State aid under this point may be granted if the beneficiary demonstrates that the location was chosen based on objective criteria irrespective of State aid.

- e. The aid may not exceed the minimum amount needed to incentivise the aid beneficiary to locate the investment in the area concerned in the EEA (funding gap)<sup>156</sup>;
- f. The aid may not be provided to facilitate relocation<sup>157</sup> of production activities between Member States. When evaluating the notifiable measures, the Commission will request all necessary information to consider whether the State aid is likely to result in a substantial loss of jobs in existing locations within the EEA. In this situation, and if the investment enables the aid beneficiary to relocate an activity to the target area, if there is a causal link between the aid and the relocation, this constitutes a negative effect that is unlikely to be compensated by any positive effects;
- g. The beneficiary must commit to maintain the investment in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period. However, no further aid may be awarded to replace that plant or equipment.
- h. the aid under this section may not be granted to undertakings in difficulty<sup>158</sup>.

### 3. MONITORING AND REPORTING

- (87) Member States must publish relevant information on each individual aid above EUR 100 000<sup>159</sup> granted under this Communication, and above EUR 10 000<sup>160</sup> in the primary agriculture and in the fisheries sectors, on the comprehensive State aid

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<sup>156</sup> This funding gap is determined by the difference between the net present value of expected cash-flows (including the investment and operation) of the aided investment and the net present value of the expected cash-flows of the counterfactual investment in a non-EEA jurisdiction which the aid beneficiary would credibly carry out in the absence of aid in the EEA (notably including the aid that the beneficiary would credibly receive in the non-EEA jurisdiction in the counterfactual). Both scenarios must be sufficiently proven, *i.e.* using realistic assumptions as part of a credible business plan. In principle, it is unlikely that the Commission will consider compatible with Article 107(3)(c) TFEU, aid amounts exceeding the capital investment costs necessary to locate the projects in the area concerned considering that such aid is unlikely to have an incentive effect.

<sup>157</sup> As defined in footnote 147.

<sup>158</sup> As defined under the Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([OJ C 249, 31.7.2014, p. 1](#)).

<sup>159</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III to Commission Regulation (EU) No 702/2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

<sup>160</sup> Referring to information required in Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.



website or Commission's IT tool<sup>161</sup> within 12 months from the moment of granting, except for aid granted under section 2.8 for which Member States will have to publish the relevant information within 6 months from the moment of granting.

- (88) For aid measures under section 2.4. of this Communication, when the overall aid per undertaking per Member State exceeds EUR 50 million, Member States must include in their schemes a requirement that the beneficiary must submit to the granting authority, within one year from the moment of granting the aid, a plan that specifies how the beneficiary will reduce the carbon footprint of its energy consumption or how it will implement any of the requirements related to environmental protection or security of supply described in point 37 of this Communication. This requirement applies as from 1 January 2023.
- (89) Member States must submit annual reports to the Commission<sup>162</sup>.
- (90) Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.
- (91) The Commission may request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.
- (92) In order to monitor the implementation of this Communication, the Commission may request Member States to provide aggregate information on the use of State aid measures to remedy the serious disturbance of the economy due to the current crisis.

#### **4. FINAL PROVISIONS**

- (93) The Commission applies this Communication from 9 March 2023. The Commission applies the provisions of this Communication to all measures notified as of 9 March 2023, as well as to measures notified prior to that date.
- (94) This Communication replaces the Temporary Crisis Framework adopted on 28 October 2022<sup>163</sup> ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework is withdrawn with effect from 9 March 2023. The previous Temporary Crisis Framework already replaced the Temporary Crisis Framework adopted on 23 March 2022<sup>164</sup> as amended on 20 July 2022<sup>165</sup>.
- (95) Overall, aid granted under sections 2.1 to 2.3 of the previous Temporary Crisis Frameworks and aid granted under the same respective sections of this

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<sup>161</sup> The State aid transparency public search gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid and can be found at <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>162</sup> OJ L 140, 30.4.2004, p. 1.

<sup>163</sup> OJ C 426, 9.11.2022, p. 1.

<sup>164</sup> OJ C 131I, 24.3.2022, p. 1.

<sup>165</sup> OJ C 280, 21.7.2022, p. 1.

Communication cannot exceed the aid ceilings provided in the respective sections of this Communication at any point in time. As regards section 2.4, aid granted under the previous Temporary Crisis Frameworks and aid granted under this Communication cannot exceed the aid ceilings provided by this Communication for the same eligible period. Aid granted under sections 2.5 and 2.6 of the previous Temporary Crisis Frameworks cannot be cumulated with aid granted under the same respective sections of this Communication if it covers the same eligible costs.

- (96) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>166</sup>, the Commission applies this Communication to non-notified aid if the aid is granted as of 9 March 2023.
- (97) In all other cases, the Commission will apply the rules laid down in the Framework in force when the aid was granted.
- (98) The Commission will review all sections under this Communication before 31 December 2023 on the basis of important competition or economic considerations, as well as the international developments. Where helpful, the Commission may also provide further clarifications on its approach to particular issues.
- (99) The Commission, in close cooperation with the Member States concerned, ensures swift assessment of measures upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.

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<sup>166</sup> OJ C 119, 22.5.2002, p. 22.

## ANNEX I

Particularly affected sectors and sub-sectors<sup>167</sup>

	NACE code	Description
1	0510	Mining of hard coal
2	0610	Extraction of crude petroleum
3	0710	Mining of iron ores
4	0729	Mining of other non-ferrous metal ores
5	0891	Mining of chemical and fertiliser minerals
6	0893	Extraction of salt
7	0899	Other mining and quarrying n.e.c.
8	1041	Manufacture of oils and fats
9	1062	Manufacture of starches and starch products
10	1081	Manufacture of sugar
11	1106	Manufacture of malt
12	1310	Preparation and spinning of textile fibres
13	1330	Finishing of textiles
14	1395	Manufacture of non-wovens and articles made from non-wovens, except apparel
15	1411	Manufacture of leather clothes
16	1621	Manufacture of veneer sheets and wood-based panels
17	1711	Manufacture of pulp
18	1712	Manufacture of paper and paperboard
19	1910	Manufacture of coke oven products
20	1920	Manufacture of refined petroleum products

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<sup>167</sup> The (sub)sectors listed by reference to their emissions intensity and trade intensity correspond to those listed in Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of the sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030, (OJ L 120/20, 8.5.2019).

21	2011	Manufacture of industrial gases
22	2012	Manufacture of dyes and pigments
23	2013	Manufacture of other inorganic basic chemicals
24	2014	Manufacture of other organic basic chemicals
25	2015	Manufacture of fertilisers and nitrogen compounds
26	2016	Manufacture of plastics in primary forms
27	2017	Manufacture of synthetic rubber in primary forms
28	2060	Manufacture of man-made fibres
29	2110	Manufacture of basic pharmaceutical products
30	2311	Manufacture of flat glass
31	2313	Manufacture of hollow glass
32	2314	Manufacture of glass fibres
33	2319	Manufacture and processing of other glass, including technical glassware
34	2320	Manufacture of refractory products
35	2331	Manufacture of ceramic tiles and flags
36	2332	Manufacture of bricks, tiles and construction products, in baked clay
37	2341	Manufacture of ceramic household and ornamental articles
38	2342	Manufacture of ceramic sanitary fixtures
39	2351	Manufacture of cement
40	2352	Manufacture of lime and plaster
41	2399	Manufacture of other non-metallic mineral products n.e.c.
42	2410	Manufacture of basic iron and steel and of ferro-alloys
43	2420	Manufacture of tubes, pipes, hollow profiles and related fittings, of steel
44	2431	Cold drawing of bars
45	2442	Aluminium production

46	2443	Lead, zinc and tin production
47	2444	Copper production
48	2445	Other non-ferrous metal production
49	2446	Processing of nuclear fuel
50	2451	Casting of iron
	Prodcom code	Description
1	81221	Kaolin and other kaolinic clays
2	10311130	Frozen potatoes, prepared or preserved (including potatoes cooked or partly cooked in oil and then frozen; excluding by vinegar or acetic acid)
3	10311300	Dried potatoes in the form of flour, meal, flakes, granules and pellets
4	10391725	Concentrated tomato puree and paste
5	105122	Whole milk powder
6	105121	Skimmed milk powder
7	105153	Casein
8	105154	Lactose and lactose syrup
9	10515530	Whey and modified whey in powder, granules or other solid forms, whether or not concentrated or containing added sweetening matter
10	10891334	Bakers' yeast
11	20302150	Vitrifiable enamels and glazes, engobes (slips) and similar preparations for ceramics, enamelling or glass
12	20302170	Liquid lustres and similar preparations; glass frit and other glass in powder; granules or flakes
13	25501134	Open die forged ferrous parts for transmission shafts, camshafts, crankshafts and cranks etc.

## Annex II

### **Information to be included in the application form for aid under section 2.8 of this Communication**

#### **1. Information about the aid beneficiary:**

- Name, registered address of main seat, main sector of activity (NACE code).
- Declaration that the firm is not in difficulty, as defined under the rescue and restructuring guidelines.
- For aid granted under a scheme under point 85: non-relocation declaration and commitments listed in point 85(k)

#### **2. Information about the investment to be supported:**

- Short description of the investment.
- Short description of expected positive effects for the area concerned (for example, number of jobs created or safeguarded, R&D&I activities, training, creation of a cluster and project's possible contribution to the green and digital transition of the regional economy).
- Applicable legal basis (national, EU or both).
- Planned start of works and completion of the investment.
- Location(s) of the investment.
- For aid under point 86: information on the triggered linked investments in other Member States in line with point 86 (a): location and amount of the triggered investments. Provide information on the links between the investment to be supported and the triggered investments.

#### **3. Information about the financing of the investment:**

- Investment costs and other associated costs.
- Total eligible costs.
- Aid amount needed to carry out the investment in the area concerned.
- Aid intensity.
- For aid under point 86: a Funding Gap analysis, including the business plan and Net Present Value calculations for the factual and counterfactual scenarios, with estimated investment costs, operating costs, revenues and terminal value in both scenarios (in excel format), with supporting evidence.

#### **4. Information on the need for aid and its expected impact:**

- Short explanation of the need for aid and its impact on the investment decision or location decision. This must include an explanation of the alternative investment or location decision if aid is not granted.
- For aid under point 86, the beneficiary must provide:

- solid evidence of subsidies it would credibly receive in a non-EEA jurisdiction for a similar project included in the counterfactual scenario
- evidence that without the aid the planned investment would not take place in the EEA.
- evidence that the aid does not create counter-cohesion effects in the sense of point 86 (d).