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COMMUNICATION FROM THE COMMISSION

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

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

(1) On 22 February 2022, Russia illegally recognised the non-government controlled areas of Donetsk and Luhansk regions in Ukraine as independent entities. On 24 February 2022, 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 others might be adopted as the situation evolves. Russia decided to take certain restrictive economic counter measures[1] of its own.

(2) The Russian military aggression against Ukraine, the sanctions imposed and the counter measures taken, for example by Russia, will 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 Russian military aggression against Ukraine has 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. 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. High energy prices impact several economic sectors, including some of those particularly hit by the COVID-19 pandemic, like transport and tourism. 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.

[1] 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''.

(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. High energy prices feed into high fertilisers prices. Fertiliser supply is also impacted by these restrictions on fertiliser imports from Russia and Belarus. The crisis is likely to have 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 increase in livestock feed prices. The combined impact of those cost increases in energy, fertiliser, grains and oils is hardest felt by livestock farming[2]. 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 impossibility for EU products to continue to flow to Ukraine and potentially also to Russia and Belarus due to the war situation or sanctions. 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 production processes. As Russia and Belarus are important producers and exporters of all the three key fertilisers (nitrogen, phosphorus, potassium), sanctions will drive fertiliser prices even higher.

(7) 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 the following sanctions imposed by the EU and international partners and the counter measures taken, for example by Russia[3]. A coordinated economic response of Member States and EU institutions is crucial to 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.

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[2] 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.

[3] For example, 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 (see footnote 1) 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.

1.1. Sanctions imposed by the European Union and international partners

(8) Following the unprovoked and unjustified aggression against Ukraine by Russia, the Council of the European Union has agreed on several packages of restrictive measures.

(9) 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[4].

(10) 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[5]

(11) 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

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[4] 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).

[5] 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 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).

measures taken[6]. The Council also adopted additional sanctions against Russian persons[7].

(12) On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system[8], (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik[9].

(13) 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[10]. The Council also adopted individual measures against 22 Belarusian individuals[11].

(14) 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

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6 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).

7 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).

8 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).

9 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).

10 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).

11 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 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).

to Belarus[12]. 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[13]. On 15 March 2022[14], 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[15]. 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[16].

(15) On 3 June 2022, the Council adopted a sixth package of sanctions[17], in light of Russia's continuing war of aggression against Ukraine, Belarus' support for it, and the

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[12] 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).

[13] 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).

[14] 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).

[15] 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).

[16] 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).

[17] 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 (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,

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.

(16) On 21 July 2022, the Council adopted a seventh package, also called a 'maintenance and alignment package'[18] 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.

(17) On 5 October 2022, the Council adopted an eighth package of sanctions consisting of the following additional measures ([19]): 1) additional listing of persons and entities in

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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).

[18] 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).

[19] 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 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

the 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.

(18) 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

(19) 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[20] (the 'October Communication'), the REPowerEU Communication of 8 March 2022 ('the REPowerEU Communication')[21, 22], the REPowerEU Plan[23] of 18 May 2022, the Gas Storage Regulation[24], the Save Gas for a Safe Winter Communication[25] of 20 July 2022, the Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas[26] and the Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices[27]. On 18 October 2022,

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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).

[20] 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.

[21] 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.

[22] 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.

[23] 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.

[24] 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).

[25] 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".

[26] Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

[27] 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).

the Commission adopted the Energy Emergency Communication[28] to prepare, purchase and protect the EU together. In conjunction with this Communication the Commission proposed a new emergency regulation[29] 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.

(20) 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.[30] 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.

(21) 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[31].

(22) The REPowerEU Communication outlined measures to respond to rising energy prices and replenish gas stocks for the winter and the REPowerEU plan[32] 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[33] 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.

(23) 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

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[28] 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.

[29] 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.

[30] ECB staff macroeconomic projections for the euro area, September 2022.

[31] 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.

[32] COM/2022/230 final, 18 May 2022.

[33] 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).

European Gas Demand Reduction Plan[34] 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[35] which sets a voluntary gas demand reduction target of 15% in all Member States and introduces a process to trigger a binding demand reduction target should it become necessary.

(24) 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.

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

(25) 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. 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.

1.4. Appropriate State aid measures

(26) In the overall effort of Member States to address the challenges resulting from the geopolitical situation, 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.

(27) As set out in the 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.

(28) 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[36] and are in line with the provisions of a

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[34] 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.

[35] Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

[36] 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.

(29) 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.

(30) 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.

(31) In specific circumstances[37], 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.

(32) The Commission considers the following general principles as particularly relevant in the required case-by-case assessment:

a. the aid must be necessary, appropriate and proportionate[38] 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

[37] Intervention needs to be limited to situations where it is in the common interest to intervene.

[38] 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[39] 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. for each beneficiary, Member States must undertake a long-term viability assessment and, where considered appropriate by the Commission, notify to the Commission for approval a restructuring plan in accordance with the Rescue and Restructuring Guidelines within a specified period of time.

(33) 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 of this Communication. This could, for example, take the following forms:[40]

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.

(34) 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

[39] 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).

[40] 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.

against Ukraine may also cover certain direct effects of 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.

(35) 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.

(36) 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.

(37) In line with Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas[41], 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.

(38) 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[42]. 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;

[41] Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

[42] 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[43], in particular the conditions for support measures set out in Article 6b, paragraphs (2) and (3).

(39) 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'[44] 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.[45]

(40) 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.

(41) 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.

(42) 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)[46] or under Regulation (EU) 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)[47], and would not be assessed under the State aid rules applicable to the banking sector[48].

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[43] 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).

[44] COM(2022) 360/2, 20.7.2022.

[45] 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.

[46] OJ L 173, 12.6.2014, p. 190, see Article 2(1)(28) of the BRRD.

[47] OJ L 225, 30.7.2014, p. 1, see Article 3(1)(29) of the SRM Regulation.

[48] 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,

(43) Aid granted by Member States to credit institutions under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis, which does 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[49].

(44) If due to the current crisis and the sanctions imposed in connection with that aggression, 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.

(45) To the extent such measures address problems linked to the aggression against Ukraine by Russia and the sanctions imposed in connection with that aggression, they would be deemed to fall under point 45 of the 2013 Banking Communication[50], which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.

(46) 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. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(47) 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.

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).

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

[50] As defined in footnote 48.

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

(48) 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[51]. That interpretation has been consistently applied by the Commission in its decision-making[52].

(49) The Commission considers that the aggression against Ukraine by Russia, 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, including in the agri-food sector. 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.

(50) 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, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken, for example by Russia.

(51) 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.

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[51] Joined Cases T-132/96 and T-143/96 Freistaat Sachsen and others v Commission, EU:T:1999:326, paragraph 167.

[52] 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).

(52) 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 the consequences of the economic sanctions imposed and of the retaliatory counter measures taken, for example by Russia. 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[53]. In particular, it must be avoided that natural persons or entities subject to the sanctions benefit directly or indirectly from any such measures[54].

(53) 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[55] or with aid under Block Exemption Regulations[56] 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[57], provided 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.

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53 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).

54 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.

55 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).

56 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).

57 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).

2. TEMPORARY STATE AID MEASURES

2.1. Limited amounts of aid

(54) 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 the sanctions imposed or by the retaliatory counter measures taken in response can be an appropriate, necessary and targeted solution during the current crisis.

(55) 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 56):

a. The overall aid does not exceed EUR 2 million per undertaking at any given point in time[58]. The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees[59] loans[60] and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 2 million per undertaking; 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 no later than 31 December 2023[61];

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[62] is conditional on not being partly or entirely passed on to 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.

(56) By way of derogation from point 55(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 55(b) to (d):

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58 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.

59 When aid is granted in form of guarantees under this section, the additional conditions in point 61(i) apply.

60 When aid is granted in form of loans under this section, the additional conditions in point 64(g) apply.

61 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 31 December 2023.

62 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).

a. the overall aid does not at any point in time exceed EUR 250 000 per undertaking active in the primary production of agricultural products and EUR 300 000 per undertaking active in the fishery and aquaculture sectors;[63] the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees[64], loans[65] and equity provided the total nominal value of such measures does not exceed the overall relevant cap of EUR 250 000 or EUR 300 000 per undertaking; 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[66].

(57) Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 55(a) and 56(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 million is not exceeded per undertaking. Where an undertaking is active exclusively in the sectors covered by point 56(a) the overall maximum amount of EUR 300 000 should not be exceeded per undertaking.

(58) 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 at the latest and the conditions in this section are complied with.

2.2. Liquidity support in the form of guarantees

(59) 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[67].

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[63] Aid granted on the basis of schemes approved under this section that has been reimbursed before granting of new aid under this section must not be taken into account in determining whether the relevant ceiling is exceeded.

[64] When aid is granted in form of guarantees under this section, the additional conditions in point 61(i) apply.

[65] When aid is granted in form of loans under this section, the additional conditions in point 64(g) apply.

[66] 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).

[67] 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.

(60) 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 61(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 61(e).

(61) 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;

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 1st year	For 2nd –3rd year	For 4th -6th 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 at the latest;

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 [68] ;

ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted [69] ; or

[68] When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 61(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

[69] 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 61(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

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)[70], 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[71] 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[72];

- 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 61(c), and the guarantee may not exceed:

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 61(a), 61(e), 61(f) and 61(h), the public guarantee can be provided as unfunded financial collateral[73] to central counterparties or clearing

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[70] 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.

[71] As defined in Annex I to the General Block Exemption Regulation.

[72] 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.

[73] As explained in footnote 67 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 (61)(g) are unfunded and provided directly to the central counterparty or clearing member without any underlying instrument.

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) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties[74], as amended;

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;

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 61(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 64(b) must be added;

vi. ensure that points 61(d) and 61(i) are also complied with. The option under point 61(c) is not applicable and the guarantee shall only relate to liquidity needs as defined in point 61(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

[74] OJ L 52, 23.2.2013, p. 41.

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

(62) 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.

(63) 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 61(e) or in point 64(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 64(e).

(64) 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[75]) available either on 1 October 2022[76] or applicable at the moment of granting the support, plus the credit risk margins as set-out in the table below[77]

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[78]	50bps[79]	100bps
Large enterprises	50bps	100bps	200bps

[75] 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 .

[76] For loans granted until 31 December 2022, the base rate of 1 February 2022 may be used.

[77] If a grace period is applied for interest payments, the minimum interest rates set out in point 64(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 64(c) and the overall amount of the loans per beneficiary referred to in point 64(e) will not be exceeded.

[78] The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

[79] The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

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 1st year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph[80] [81];

d. The loan contracts are signed by 31 December 2023 at the latest and are limited to maximum six years, unless modulated according to point 64(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[82] ; or

   ii. 50 % of energy costs over the 12 months preceding the month when the application for aid is submitted[83] ;

   iii. with appropriate justification provided by the Member State to the Commission (for example in connection with the challenges faced by the beneficiary during the current crisis)[84], 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[85] 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[86];

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

81 See the summary of case practice on modulation under point 64(c) published on the website of DG Competition at https://ec.europa.eu/competition-policy/state-aid/ukraine_en.

82 When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 64(e)(i) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

83 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 64(e)(ii) will be calculated based on the undertaking's duration of existence at the moment of the aid application by the undertaking.

84 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.

85 As defined in Annex I to the General Block Exemption Regulation.

- 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

(65) 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 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.

(66) 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 no later than 31 December 2023;[87]

b. The aid may be granted in the form of direct grants, tax[88] and payment advantages or other forms such as repayable advances, guarantees[89], loans[90] and

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[86] 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.

[87] 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 68, aid may be granted until 31 March 2024 provided the eligible period as defined in point 66(e) and the requirements in point 68 are respected.

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 30 June 2024 at the latest;

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[91]. 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[92] directly produced from natural gas and electricity procured by the beneficiary[93]. The maximum eligible cost is calculated according to the following formula:

$$(p(t) - p(ref) * 1.5) * q$$

Where:

t is a given month, or a period of several consecutive months, between 1 February 2022 and 31 December 2023 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)

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88 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 31 December 2023.

89 When aid is granted in form of guarantees under this section, the additional conditions in point 61(i) apply.

90 When aid is granted in form of loans under this section, the additional conditions in point 64(g) apply.

91 COM/2022/360 final.

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

93 For the purposes of section 2.4 exclusively, 'beneficiary' means an undertaking or a legal entity that forms part of an undertaking.

q is the quantity procured from external suppliers and consumed by the beneficiary as a final consumer[94]. 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 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.

(67) 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 66(f), where, in addition to meeting the conditions in point 66(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 does not exceed EUR 100 million at any given point in time;

b. For beneficiaries qualifying as 'energy-intensive businesses'[95] the overall aid per beneficiary may be increased to a maximum of 65% of the eligible costs and the overall aid per undertaking 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[96] (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[97], the overall aid per beneficiary may be increased to a maximum of 80% of the eligible costs and the overall aid

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[94] 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.

[95] 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.

[96] EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

[97] 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.

per undertaking 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 67(a), 67(b) and 67(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.

(68) 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.

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

(69) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of the Russian military aggression against Ukraine and of the REPowerEU Plan[98] to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on Russian fossil fuels imports and accelerate the energy transition. State aid to accelerate the deployment of solar capacity, wind power capacity, geothermal energy capacity, electricity and thermal energy storage, renewable heat as well as the production of renewable hydrogen, biogas and biomethane from waste and residues, 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, storage and renewable heat certain simplifications for the implementation of support measures are justified on a temporary basis.

(70) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for the promotion of electricity from renewable sources, renewable hydrogen, biogas and biomethane from waste and residues, electricity and thermal energy storage and renewable heat provided the following conditions are met:

a. the aid is granted for one of the following:

i. photovoltaic or other solar electricity generation;

ii. wind power electricity generation;

iii. geothermal energy generation;

[98] COM/2022/230 final, 18 May 2022.

iv. electricity or thermal energy storage (also in combination with one of the other types of investments covered by this section);

v. the production of renewable heat, including through heat pumps compliant with Annex VII to Directive (EU) 2018/2001 of the European Parliament and of the Council[99];

vi. the production of renewable hydrogen;

vii. the production of biogas and biomethane from waste and residues, compliant with the EU sustainability criteria pursuant to Article 29 to Directive (EU) 2018/2001 and with Regulation (EU) 2018/841[100];

b. support schemes may be limited to one or several technologies under point 70(a) but must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required) such as limitations by size of projects, location or regional aspects or very specific (sub)types of technologies within one of the technologies referred in point 70(a);

c. the aid is granted in the form of direct grants, repayable advances, loans, guarantees or tax advantages;

d. the aid is granted on the basis of a scheme with an estimated volume and budget;

e. the aid is granted by 31 December 2023 at the latest and the installations must be completed and be in operation within 30 months after the date of granting or 36 months after the date of granting for aid to offshore wind and renewable hydrogen installations. Where this deadline is not met, 5 % of the amount of aid awarded must be reimbursed or reduced per month after the first 3 months of delay, increasing to 10 % per month of delay after the sixth month, unless the delay is due to factors outside the control of the aid beneficiary, and could not reasonably have been foreseen[101];

f. where the aid is granted in the form of contracts for ongoing aid payments, those contracts must not have a duration longer than 20 years after the aided installation starts operations;

g. the aid is 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. At least 70% in the total selection

[99] 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).

[100] Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p.1).

[101] These factors could for example include a mandatory confinement of population due to a pandemic, or disruptions in the supply chain of necessary equipment for the projects. However, it would not include delays in obtaining the required permits for the project.

criteria used for ranking bids must be defined in terms of aid per unit of environmental protection[102] or aid per unit of energy output or capacity;

h. a competitive bidding process is not mandatory when aid is granted in the form of tax advantages, insofar as it is granted in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure. Furthermore, a competitive bidding process is not mandatory when the aid granted per undertaking per project does not exceed EUR 25 million and the aid beneficiaries are small projects defined as follows:

   i. for electricity generation, electricity or thermal storage – projects below or equal to 1 MW of installed capacity;

   ii. for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;

   iii. for the production of renewable hydrogen – projects below or equal to 3 MW of installed capacity or equivalent;

   iv. for the production biogas and biomethane from waste and residues – projects below or equal to 25000 tonnes/year of installed capacity;

   v. for 100 % SME-owned or renewable energy community projects – projects equal to or below 6 MW installed capacity;

   vi. for projects 100 % owned by small and microenterprises or by renewable energy communities for wind generation only – projects equal or below 18 MW of installed capacity.

   Where aid for small projects is not granted in a competitive bidding process, the aid intensity shall not exceed 45 % of the total investment cost. 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;

i. 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[103], 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;

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[102] Such as EUR per tonne of CO_2 reduction.

[103] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

j. the aid must be designed to preserve efficient operating incentives and price signals. Furthermore, aid must be designed in a way that allows to addressing windfall profits, including in times of extremely high electricity or gas prices, such as, by putting in place a claw-back mechanism defined ex-ante or by granting the aid in the form of two-way contracts for differences[104];

k. where the aid is granted for the production of renewable hydrogen, the Member State must ensure that the hydrogen 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;

l. aid under this measure must not be combined with other aid for the same eligible costs;

m. aid may be granted for investments for which works started as of 20 July 2022; for projects started before 20 July 2022, 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;

n. 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;

o. the Member State must ensure compliance with the 'do not significant harm' principle.

(71) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for increasing the maximum capacity of existing installations while not undertaking further investments 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 2023;

[104] A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.

d. the aid complies with the requirements laid down in points 71(a), 71 (b), 71(c), 71(d), 71(j) and 71(k);

e. the aid under this measure must not be combined 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

(72) Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, State aid to facilitate investments in the decarbonisation of industrial activities, notably through electrification and technologies using renewable and electricity-based hydrogen fulfilling the conditions of point 73(h), and in energy efficiency measures in industry forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels in the context of Russian military aggression against Ukraine. In the light of the urgent need to accelerate that process for swift implementation of such investments certain simplifications are justified.

(73) The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU the 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 10 % of the total budget available for such a scheme. With appropriate justification provided by the Member State to the Commission, 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, guarantees or tax advantages;

d. the investment[105] 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 use of renewable and electricity-based hydrogen fulfilling the conditions of point 73(h) below to substitute fossil fuels; for the purposes of verifying the reduction of

[105] Aid for investments that aim to reduce direct greenhouse gas emissions or energy consumption, including below the thresholds in point 73(d) of this Communication, may be exempted from notification provided the rules in the General Block Exemption Regulation are respected.

greenhouse gas emissions, also actual emissions from the combustion of biomass is to be taken into account;[106]

(ii) reduce by at least 20 % compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities;[107]

e. regarding investments relating to activities covered by the Emission Trading System (ETS), the aid leads 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[108];

f. the aid must not be used to finance an increase of the overall production capacity of the beneficiary;

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;

h. aid can also be granted for an industrial decarbonisation investment involving the use of hydrogen produced from electricity in one of the following instances:

(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 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 renewable electricity generation plant and which has already been counted as renewable hydrogen within the meaning of point 73(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

[106] 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).

[107] 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).

[108] 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).

hydrogen within the meaning of point 73(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 CO2eq/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 73(g);

i. the aid is granted by 31 December 2023 and is subject to the condition that the installation or equipment to be financed by the investment must be completed and be in full operation within 30 months after the date of granting or within 36 months after the date of granting for investments involving the use of renewable and electricity-based hydrogen fulfilling the conditions of point 73(h). Where the deadline for completion and entry into operation is not met, 5 % of the amount of aid awarded must be reimbursed or reduced per month after the first three months of delay, increasing to 10 % per month of delay after the sixth month, unless the delay is due to factors outside the control of the aid beneficiary, and could not reasonably have been foreseen[109]. Where the deadline for completion and entry into operation is respected, aid in the form of repayable advances may be transformed into grants; if not, the repayable advance is to be reimbursed in equal annual instalments within five years after the date of granting the aid;

j. aid may be granted for investments for which works started as of 20 July 2022; for projects started before 20 July 2022, 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;

k. the aid must not be granted for merely complying with applicable Union standards[110];

l. 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

[109] These factors could for example include a mandatory confinement of population due to a pandemic, or disruptions in the supply chain of necessary equipment for the projects. However, it would not include delays in obtaining the required permits for the project.

[110] As defined in point 19(89) of the Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

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;

m. the eligible costs are the difference between the costs of the aided project and the cost savings or additional revenues, compared to the situation in the absence of the aid, over the lifetime of the investment;

n. 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[111];

o. as an alternative to the requirements set out in points 73(m) and 73(n), the investment aid may 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 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 CO2 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. 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;

q. aid under this section must not be combined with other aid for the same eligible costs.

2.7. Aid for additional reduction of electricity consumption

(74) 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([112]). 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[113]. In view of the differences across Member States, guidance is needed to

[111] 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).

[112] 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).

[113] Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (OJ L 206, 8.8.2022, p. 1).

ensure that flexibility is framed by criteria aimed at ensuring a level-playing field and the preservation of the integrity of the single market.

(75) 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 75(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;

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[114]. 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[115] 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 volume and budget;

d. aid may be granted in various forms including direct grants, loans and guarantees;

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;

[114] 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).

[115] Such aid will generally be deemed necessary if it contributes to achieving a reduction in gas consumption.

g. with respect to point 75 (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 [116], 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[117] 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[118] 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[119]). Member States may introduce additional objective, transparent

[116] 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).

[117] *i.e.* metering that measures separately consumption when additional demand reduction is required and when it is not.

[118] "off peak" must be defined to generally avoid electricity consumption when gas is used for power generation.

[119] 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.

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;

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[120], 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.

3. MONITORING AND REPORTING

(76) Member States must publish relevant information on each individual aid above EUR 100 000[121] granted under this Communication, and above EUR 10 000[122] in the primary agriculture and in the fisheries sectors, on the comprehensive State aid website or Commission's IT tool[123] within 12 months from the moment of granting.

(77) For aid measures under section 2.4. of this Communication, when the overall aid per undertaking 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 33 of this Communication. This requirement applies as from 1 January 2023.

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[120] 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).

[121] 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.

[122] 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.

[123] 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.

(78) Member States must submit annual reports to the Commission[124].

(79) 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.

(80) 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.

(81) 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 and the related restrictive measures.

4. FINAL PROVISIONS

(82) The Commission applies this Communication from 28 October 2022. The Commission applies the provisions of this Communication to all measures notified as of 28 October 2022, as well as to measures notified prior to that date.

(83) This Communication replaces the Temporary Crisis Framework adopted on 23 March 2022[125] as amended on 20 July 2022[126] ('previous Temporary Crisis Framework). This previous Temporary Crisis Framework is withdrawn with effect from 27 October 2022.

(84) Overall, aid granted under sections 2.1 to 2.3 of the previous Temporary Crisis Framework and aid granted under the same respective sections of this 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 Framework 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 Framework cannot be cumulated with aid granted under the same respective sections of this Communication if it covers the same eligible costs.

(85) In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid[127], the Commission applies this Communication to non-notified aid if the aid is granted as of 28 October 2022.

(86) In all other cases, the Commission will apply the rules laid down in the Temporary Crisis Framework in force when the aid was granted.

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[124] OJ L 140, 30.4.2004, p. 1.

[125] OJ C 131I, 24.3.2022, p. 1.

[126] OJ C 280, 21.7.2022, p. 1.

[127] OJ C 119, 22.5.2002, p. 22.

(87) 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.

(88) 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.

ANNEX I

Particularly affected sectors and sub-sectors[128]

	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

[128] 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

Correlation table

Temporary Crisis Framework adopted on 23 March 2022 as amended on 20 July 2022		**This Temporary Crisis Framework**	
Points	(1)-(14)	Points	(1)-(14)
Point	14bis	Point	15
		New Points	(16)-(17)
Point	15	Point	18
Point	16	Point	19
Point	17	Point	20
Point	18	Point	21
Point	19	Point	22
		New Points	(23)-(24)
Point	20	Point	25
Point	21	Point	26
Point	22	Point	27
Point	23	Point	28
		New Points	(29), (30), (31) and (32)
Point	24	Point	33
Point	25	Point	34
Point	25bis	Point	35
Point	26	Point	36
Point	26bis	Point	37
Point	26ter	Point	38
Point	26quarter	Point	39
Point	26quinquies	Point	40
Point	27	Point	41
Point	28	Point	42
Point	29	Point	43
Point	30	Point	44
Point	31	Point	45
Point	32	Point	46
Point	33	Point	47
Point	34	Point	48
Point	35	Point	49
Point	36	Point	50
Point	37	Point	51
Point	38	Point	52
Point	39	Point	53
Point	40	Point	54
Point	41	Point	55
Point	42	Point	56
Point	43	Point	57
Point	44	Point	58

Point	45	Point	59
Point	46	Point	60
Point	47	Point	61
		New sub-letter	61 (g)
Point	47 (g)	Point	61(h)
Point	47 (h)	Point	61(i)
Point	48	Point	62
Point	49	Point	63
Point	50	Point	64
Point	51	Point	65
Point	52	Point	66
Point	53	Point	67
		New Point	68
Point	53bis	Point	69
Point	53ter	Point	70
		New Point	71
Point	53quarter	Point	72
Point	53quinquies	Point	73
		New Points	(74) and (75)
Point	54	Point	76
		New Point	77
Point	55	Point	78
Point	56	Point	79
Point	57	Point	80
Point	58	Point	81
Point	59	Point	82
		New Points	(83), (84), (85) and (86)
Point	60	Point	87
Point	61	Point	88