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Subject: State Aid SA.103280 (2022/N) – France
TCF: Aid measures for the additional costs of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 June 2022, the French Republic (France) notified an aid scheme to support energy-intensive undertakings affected by the rise in energy prices caused by Russia's aggression against Ukraine (*Mesures d'aides aux surcoûts des prix du gaz naturel et de l'électricité en faveur des entreprises grandes consommatrices d'énergie touchées par le conflit ukrainien*; the "measure") under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis Framework")¹.
- (2) On 21 and 22 June 2022, France provided further information in reply to queries from the Commission of 22 June 2022.

¹ Communication from the Commission on the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131I , 24.3.2022, p. 1).

Son Excellence Madame Catherine Colonna
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- (3) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) France considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (the “current crisis”) so far affect the real economy of the country.
- (5) The current crisis affects the French economy in several ways: (i) a sharp rise in the price of energy, which affects virtually every economic activity, and raw materials; (ii) disruptions to value chains and the shock to world trade; and (iii) uncertainty leading to lost investment or causing financial stress.
- (6) Business and consumer surveys in April point to a sharp decline in production prospects, with demand expectations also declining in April compared with January.
- (7) As regards energy, France explained that natural gas prices have strongly responded to the current crisis. The price of the July contract on the TTF³ market reached on 17 June more than 124 EUR/MWh⁴, approximately 6 times the long-term average gas price and getting close to double the value before the start of the Russian aggression on Ukraine⁵. The spot-market price for gas on the larger of the two French market areas, PEG NORD, reached 103 EUR/MWh on 19 June⁶. More generally, the French National Institute of Statistics and Economic Studies (INSEE) estimates that prices of gas sales via pipelines increased sharply over one year (+ 153.7 %).
- (8) Wholesale electricity prices in France also increased considerably, reaching 197 EUR/MWh in May 2022, compared to 57 EUR/MWh in the same month of the previous year⁷. This corresponds to a 246 % rise year-on-year.
- (9) France argues that this increase in gas and electricity prices penalises in particular the chemical sector (with gas representing 22 % of energy costs in the sector

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ The Title Transfer Facility, more commonly known as TTF, is a virtual trading point for natural gas in the Netherlands.

⁴ <https://www.theice.com/products/27996665/Dutch-TTF-Gas-Futures/data?marketId=5396828> on 19 June 2022.

⁵ Interactive dataset: EU Power and Fuel Prices, BloombergNEF.

⁶ <https://www.powernext.com/spot-market-data> on 19 June 2022.

⁷ ENTSO-E Transparency platform, available at <https://transparency.entsoe.eu/transmission-domain/r2/dayAheadPrices/show>.

which represents 3.4 % of the sector's value added). Agri-food is also affected by the impact on the chemical sector, as fertiliser production is highly dependent on gas consumption; 36 % of intermediate energy consumption in agri-food is gas consumption. More generally, energy-intensive sectors are negatively affected by rising energy prices (paper and board industry, steel, etc.).

- (10) France confirms that the aid under the measure is not 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. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (11) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of section 2.4 of the Temporary Crisis Framework.

2.1. The nature and form of aid

- (12) The measure provides aid in the form of direct grants for aid for additional costs due to exceptionally severe increases in natural gas and electricity prices under section 2.4 of the Temporary Crisis Framework. France confirms that all figures used must be gross, that is, before any deduction of tax or other charges.

2.2. Legal basis

- (13) The legal basis for the measure (the “national legal basis”) is comprised of:
 - (a) Article 20 of the Constitution of 4 October 1958;
 - (b) the Décret n°2022-512 du 7 avril 2022 portant ouverture et annulation de crédits à titre d'avance (Decree No 2022-512 of 7 April 2022 concerning the opening and cancelling of credits as advances);
 - (c) the draft Décret instituant une aide visant à compenser la hausse des coûts d'approvisionnement de gaz naturel et d'électricité des entreprises particulièrement affectées par les conséquences économiques et financières de la guerre en Ukraine (the Decree on aid to compensate for the increase in the cost of natural gas and electricity for undertakings particularly affected by the economic and financial consequences of the war in Ukraine). France confirmed that it will adopt this decree only after the adoption of the present decision.
- (14) Should the Temporary Crisis Framework be amended, the French authorities commit that they will make, within a period of 4 weeks, but in any case not earlier than 1 September 2022, all the necessary adjustments to bring the measure in line with the Temporary Crisis Framework including in relation to any eligibility criteria as amended, for the third notified eligible period under the measure, namely that of September to November 2022 (see recital (32)).

2.3. Administration of the measure

- (15) The granting authority for the measure is the Direction Générale des Finances Publiques (the Public Finances Directorate General; the “granting authority”).

2.4. Budget and duration of the measures

- (16) The estimated budget of the measure is EUR 5 billion. The measure will be financed from the national budget.
- (17) Aid will be granted under the measure as from the notification of the Commission's decision approving the measure no later than 31 December 2022.

2.5. Beneficiaries

- (18) The measure is open to all beneficiaries that are energy-intensive businesses whose purchases of electricity and natural gas, excluding any other energy product, amount to at least 3 % of the turnover, by analogy with the first sentence of Article 17(1)(a) of the Energy Taxation Directive⁸. The French authorities explained that this definition deviates in certain aspects from the definition in point 53(a) of the Temporary Crisis Framework.
- (19) First, France intends to apply the definition at the level of the legal entity, and not at the level of the undertaking. France argues that this approach is in line with the provisions of the Energy Taxation Directive, which specifies in Article 11, point 2 that *“With respect to this Directive, the business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means”*. Furthermore, France explained that the consolidation of purchases of energy products and production value/turnover at the level of the undertaking may in some cases (for example, when the undertaking is composed of many distinct legal entities in many jurisdictions worldwide) be very difficult to obtain before the deadline for the granting of aid under the Temporary Crisis Framework has expired because financial statements are consolidated only once the financial year has passed.
- (20) Second, France contends that, at least in one aspect, the definition that it proposes is more restrictive, in the sense that only natural gas and electricity qualify as energy products, whereas the definition in point 53 of the Temporary Crisis Framework allows other energy products to qualify as well.
- (21) Third, France intends to use turnover instead of production value to verify whether applicants qualify as energy intensive businesses. The French authorities explained that, while the formula based on production value represents one possibility to verify the qualification as energy intensive business under the Energy Taxation Directive, that indicator is not an aggregate usually used in French accounting⁹. Most applicants for reduced energy tax rates allowed under

⁸ 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).

⁹ France argues that the use of turnover also constitutes an element of simplification, providing certainty for the French authorities and the beneficiaries under the measure. The turnover is calculated by all the companies or the trusted third party within the framework of the keeping and closing of the accounts and is communicated to the tax services. The granting authority will thus already have this element in their databases, which will make it easy to check and avoid any errors. Conversely, the production value is not an aggregate usually used in French accounting. Companies would thus have to make accounting restatements, which could possibly give rise to errors and would take time. The CNOEC (National Council of the Order of Chartered Accountants) and the CNCC (National Company of

the Energy Taxation Directive in France use an alternative definition based on value added that is also allowed by the Energy Taxation Directive. France also explained that while in most cases the turnover will be higher than the production value, and thus the definition applied will be more restrictive, this cannot be ensured in all cases.

- (22) Beneficiaries from all sectors of the economy are eligible for aid under the measure except for credit institutions and financial institutions.
- (23) Beneficiaries with outstanding tax or social security debt on 31 December 2021 are not eligible for aid under the measure, except for those which, on the date of submission of the aid application, have settled their respective liabilities or have covered them by a settlement plan. No account shall be taken of tax debts of a total amount of EUR 1 500 or less, nor of those the existence or amount of which is the subject of proceedings on 1 April 2022 in respect of which a final decision has not been reached.
- (24) In line with footnote 30 of the Temporary Crisis Framework, the French authorities decided not to exclude undertakings that are deemed “in difficulty” from benefitting from the measure.¹⁰
- (25) France confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (26) France confirms that the measure will not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations¹¹. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.
- (27) France confirms that aid shall not be conditional on the use of national products in preference to imported products.
- (28) France estimates that around 30 000 beneficiaries will be eligible for aid under the measure.

Auditors), authorities responsible for representing trusted third parties authorized to file files, favour the use of turnover and have issued an alert on the complicating factor represented by recourse to the value of production. Finally, the French authorities explained that the services in charge of taxation on energy-intensive businesses have confirmed that the production value is in practice almost never used, in favour of the added value. Those services have also considered that it is possible to use the turnover insofar as this is provided for by the Directive.

¹⁰ Within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

¹¹ 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).

2.6. Sectoral and regional scope of the measure

- (29) The measure is open to all sectors except to credit and financial institutions and applies throughout France with the exception of the French overseas collectivities¹².

2.7. Basic elements of the measure

2.7.1. Common conditions for all beneficiaries

- (30) The measure provides aid for additional costs due to exceptionally severe increases in natural gas and electricity prices. The aim of the measure is to mitigate the exceptionally large increases in the price of natural gas and electricity incurred by energy-intensive undertakings, which cannot be passed on to customers or with which they are unable to cope.
- (31) Aid will be in form of direct grants to alleviate the exceptionally severe increases in the price of natural gas and electricity.
- (32) The measure covers three eligible periods in respect of which applications for aid may be submitted: (1) from March to May 2022; (2) from June to August 2022; and (3) from September to November 2022. France explained that, in view of the evolution of the current crisis, it will review whether or not to apply the measure in respect of the third period (September to November 2022).
- (33) The eligible costs are calculated by comparing the costs of natural gas and electricity over the respective eligible period in 2022 and the unit price average over the reference period, which runs from 1 January 2021 to 31 December 2021. For entities created between 1 January 2021 and 30 November 2021¹³, the reference period corresponds to the period between the date of creation of the entity and 31 December 2021.
- (34) The eligible cost is the product of the number of units of natural gas and/or electricity procured by the entity as a final consumer from external suppliers in a period between 1 March 2022 and 30 November 2022 at the latest and a certain increase in the price that the entity pays per unit consumed (measured in EUR/MWh).
- (35) That price increase is calculated as the difference between the unit price paid by the entity in a given month in the eligible monthly period and twice (200 %) the unit price paid by the entity on average for the reference period 2021.

$$(P(t) - p(\text{ref}) * 2) * q(t)^{14}$$

¹² Saint Pierre and Miquelon, Saint-Barthélemy, Saint-Martin, French Southern and Antarctic Lands, Wallis and Futuna, French Polynesia, New Caledonia, Clipperton Island.

¹³ Entities created after 30 November are not eligible for aid under the measure.

¹⁴ More specifically, $p(t)$ denotes the unit price of natural gas and electricity in EUR/MWh borne by the undertaking during the relevant month of the eligible period; $P(\text{ref})$ denotes the average unit price of natural gas and electricity in EUR/MWh borne by the undertaking during the reference period; $Q(t)$

- (36) Applicants must prove that the monthly price paid per unit of natural gas and/or electricity consumed has at least doubled compared to the unit price paid by the applicants on average in 2021. The assessment of this condition is carried out on a monthly basis: applicants must justify this increase over at least one month of each eligible period of three months. If this justification is not provided for a month, this month is not considered eligible but the eligibility of the other months of the eligible period is not affected.
- (37) Only final consumption is counted, with sales and own production being excluded. The eligible costs must be demonstrated by the applicant, through the corresponding invoices.
- (38) France explained that requests for aid will be made at the level of the legal entity concerned and not at the level of the undertaking. France further clarified that this means that the qualification as energy-intensive business (see recitals (18) to (21)), the calculation of eligible costs, the calculation of operating losses, and the verification of the relationship between the operating losses and eligible costs will be carried out at the same level (i.e. legal entity). France acknowledges that this approach represents a deviation from the Temporary Crisis Framework but considers it justified in view of the following considerations:
- (a) First, France argues that, for reasons of coherence and consistency, all above conditions must apply at the same level, i.e. for the same entity;
 - (b) Second, France considers that applying the above conditions at the level of the undertaking means that in certain cases it may not be able to grant aid within the deadline required by the Temporary Framework Crisis because potential beneficiaries (i.e. undertakings comprising multiple legal entities) would not be able to produce consolidated data for the required indicators until after the end of the financial year, when consolidated financial statements are typically prepared;
 - (c) Third, the French authorities argue that this deviation will allow them to implement the measure in a timely fashion, which is crucial considering the objective of the measure which is to mitigate extremely high energy price increases and ensure continuation of economic activity during the crisis, and thus remedy a serious disturbance in France's economy.
- (39) However, the aid ceilings referred to in recital (40) will apply at the level of the undertaking.
- (40) Under the measure, there are three aid sub-categories with different aid ceilings i.e. EUR 2 million, EUR 25 million or EUR 50 million per undertaking at any given point in time.

denotes the amount of natural gas and electricity consumed by the beneficiary in the relevant month of the eligible period.

2.7.2. Additional conditions and aid intensity for aid not exceeding EUR 2 million

- (41) Where the total amount of aid for the eligible period does not exceed EUR 2 million per undertaking, applicants must demonstrate either an operating loss over the eligible period or a decrease in their EBITDA (earnings before interest, taxes, depreciation and amortization, excluding one-time impairment losses) of at least 30 % over the eligible period compared to 2021. That criterion is to be demonstrated by the applicant on a quarterly basis.
- (42) The maximum aid intensity is set at 30 % of the eligible costs and the total amount of aid for the eligible period will not exceed EUR 2 million per undertaking at any given point in time.

2.7.3. Additional conditions and aid intensity for aid not exceeding EUR 25 million:

- (43) To be eligible for aid not exceeding EUR 25 million, applicants must show that they have suffered operating losses, to be demonstrated by the applicant at the level of the legal entity on a quarterly basis.
- (44) The applicants are considered to have operating losses when their EBITDA for the eligible period is negative and must show that the eligible costs calculated on the basis of the increase in the costs of natural gas and electricity amounts to at least 50 % of the said operating loss during the eligible period. The French authorities explained that, in order to verify this condition, a monthly average of the operating losses will be calculated for each eligible period and compared with the eligible costs for each eligible month.
- (45) For this category, the maximum aid intensity is 50 % of the eligible costs and the aid shall amount to a maximum of 80 % of the operating losses of the beneficiary. The total amount of aid for the eligible period will not exceed EUR 25 million per undertaking at any given point in time.

2.7.4. Additional conditions and aid intensity for aid between EUR 25 million and EUR 50 million

- (46) To be eligible for aid between EUR 25 million and EUR 50 million applicants must demonstrate that they have suffered operating losses¹⁵ during the eligible period (to be demonstrated by the applicant at the level of the entity on a quarterly basis).
- (47) Applicants must further demonstrate that:
 - (a) they carry out their principal activities, for which aid is requested under this aid category, in a sector or sub-sector included in Appendix I of the decree referenced in recital (13)(c) (“Appendix I”). Appendix I is identical to Annex I to the Temporary Crisis Framework.

¹⁵ The beneficiary is considered to have operating losses when the EBITDA for the eligible period is negative.

- (b) the eligible costs, calculated on the basis of the increase in the costs of natural gas and electricity, amount to at least 50 % of the said operating loss during the eligible period. To verify this condition, a monthly average of the operating losses will be calculated for each eligible period and compared with the eligible costs on a monthly basis.
- (48) The aid intensity will not exceed 70 % of the eligible costs and will amount to a maximum of 80 % of the operating losses of the beneficiary.
- (49) The total amount of aid for the eligible period will not exceed EUR 50 million per undertaking at any given point in time.
- (50) Where an applicant's activities fall both inside and outside the sector or subsectors referred to in Appendix I, the beneficiary must show that the eligible activity listed in that appendix constitutes its principal activity. A principal activity is understood as one or more activities in one or more sectors or subsectors listed in Appendix I and whose cumulative turnover represents more than 50 % of the beneficiary's total turnover.
- (51) The French authorities acknowledge that the approach described in recital (50) represents a deviation from the provisions in point 53(e) of the Temporary Crisis Framework which they justify as follows. First, France explained that it may not always be possible to accurately assign energy costs and operating losses to one activity or another, for example when a production line is used to produce multiple products, some corresponding to activities eligible under Appendix I, others not. Second, in order to determine the eligible costs that can be assigned to a certain activity, the Temporary Crisis Framework requires a comparison of energy costs during the eligible period with the equivalent costs incurred in 2021, which implies that beneficiaries must have already implemented a system for tracking the activity-related costs before the measure was even announced. Such retroactive condition may mean that some potential beneficiaries are unfairly excluded. Finally, France explained that a similar simplified approach is applied in other State Aid Guidelines such as the Guidelines on State aid for climate, environmental protection and energy 2022¹⁶.

2.8. Cumulation

- (52) The French authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹⁷ or the General Block

¹⁶ Communication from the Commission Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ C 317, 25.9.2020, p. 5). This concerns section 4.11 of the said Guidelines under which energy-intensive users can receive aid in the form of reductions from electricity levies. Energy-intensive undertakings are eligible for reduced levies on their entire electricity consumption as long as they are classified under a sector listed in an Annex. Undertakings are classified according to the Statistical Classification of Economic Activities in the European Community ('NACE rev. 2' classification) by the National Statistical Office of the concerned Member State on the basis of their main activity. This means that even though an undertaking can have a considerable amount of other activity falling under sectors not listed in the Annex, it can still benefit from reduced levies on its entire electricity consumption.

¹⁷ 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

Exemption Regulation the Regulation declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market or the Regulation declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market¹⁸ provided the provisions and cumulation rules of those Regulations are respected.

- (53) The French authority authorities confirm that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (54) France confirms that aid granted under the measure may be cumulated with aid granted under the COVID-19 Temporary Framework¹⁹, provided their respective cumulation rules are respected.
- (55) France confirms that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.
- (56) Aid under point 52 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the overall cap of EUR 2 million per undertaking is not exceeded. Aid under point 53 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the ceiling laid down in point 53(d) or 53(e), whichever applies, is not exceeded.

2.9. Claw back mechanism, monitoring and reporting

- (57) France states that the aid will be paid out after the eligible costs have been incurred, with applicants being able to submit aid applications only once the eligible period for which aid is requested has ended. Advanced payments will

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).

¹⁸ 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 (OJ L 187 of 26.6.2014, p. 1), 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) 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).

¹⁹ 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).

therefore not be made, and the aid will be assessed on the basis of invoices and other relevant documents in order to determine the eligibility of the aid, and in particular the eligible cost bases. Therefore, there will be no estimate of eligible costs and an ex-post correction mechanism is not necessary.

- (58) France confirms that it will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 and EUR 10 000 in the primary agriculture and in the fisheries sectors granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting²⁰).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (59) By notifying the measure before putting it into effect²¹, France has respected its obligations under Article 108(3) TFEU. As mentioned in recital (13)(c), the draft decree will only come into force after the adoption of the present decision.

3.2. Existence of State aid

- (60) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (61) The measure is imputable to the State, since it is administered and granted by the Direction Générale des Finances Publiques (see recital (15)) and is based on Article 20 of the Constitution of 4 October 1958, the Décret n°2022-512 du 7 avril 2022 portant ouverture et annulation de crédits à titre d'avance and the draft Décret instituant une aide visant à compenser la hausse des coûts d'approvisionnement de gaz naturel et d'électricité des entreprises particulièrement affectées par les conséquences économiques et financières de la guerre en Ukraine (see recital (13)). The measure is financed through State resources, since it is financed by public funds (see recital (16)).
- (62) The measure confers an advantage on its beneficiaries in the form of direct grants covering aid for exceptionally severe increases in natural gas and electricity prices (see recital (12)). The measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.
- (63) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular energy-intensive undertakings affected by the current crisis, which are applying for support (see recital (18)). Furthermore, the

²⁰ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.

²¹ See article 12 of the national legal basis and recital (13).

Commission notes that credit and financial institutions are excluded from the measure.

- (64) The measure is liable to distort competition, since it strengthens the competitive position of the beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (65) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The French authorities do not contest that conclusion.

3.3. Compatibility

- (66) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measure is compatible with the internal market.
- (67) 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*”.
- (68) By adopting the Temporary Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military 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. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of France. The Commission concluded that State aid is 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 so far, for example by Russia.
- (69) The measure has the aim to remedy a serious disturbance in the economy of France. The measure seeks to mitigate the consequences for undertakings of the exceptionally severe increases in the price of natural gas and electricity and help them cope with the steep cost increases as a consequence of the current crisis, and also reduce the inflationary pressure from energy price increases. It does so by compensating entities for the severe increase in natural gas and electricity prices and the support is of a scale which can be reasonably anticipated to produce effects across the entire French economy.
- (70) The measure is one of a series of measures conceived at national level by the French authorities to remedy a serious disturbance in their economy. The importance of the measure to mitigate the consequences for undertakings the exceptionally severe increases in the price of natural gas and electricity is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire economy of France. Furthermore, the measure has been designed to meet the requirements of a

specific category of aid (“*Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices*”) described in section 2.4 of the Temporary Crisis Framework.

- (71) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the relevant conditions of the Temporary Crisis Framework. In particular:
- (72) Aid will be granted under the measure no later than 31 December 2022 (see recital (17)). The measure therefore complies with point 52(a) of the Temporary Crisis Framework.
- (73) The Commission notes that France intends to deviate from a number of points of the Temporary Crisis Framework.
- (74) It should be noted, as a preliminary point, that the measure is part of a regulatory framework adopted following the Russian military aggression against Ukraine.
- (75) The economic repercussions of that crisis have required immediate action at both Member State and EU level. To that end, the Commission adopted the Temporary Crisis Framework on 23 March 2022, that is to say a few weeks after the beginning of the Russian military aggression against Ukraine, in order to enable those States to act with the urgency that the situation demanded. From that point of view, the Commission set out in the Temporary Crisis Framework the conditions that temporary State aid measures had to fulfil in order to be regarded as compatible with the internal market on the basis of Article 107(3)(b) TFEU and authorised very rapidly after their notification by the Member State concerned. That framework, in the light of the extremely urgent circumstances that existed when it was adopted, could not foresee all the measures that the Member States might adopt for economic operators affected by the crisis. In order to take account of developments in the situation and the different types of measures that the Member States planned to utilise in order to deal with the harmful consequences of the current crisis, the Commission is set to amend the Temporary Crisis Framework shortly after the adoption of the present decision.
- (76) In particular, since the adoption of the Temporary Crisis Framework, energy prices have become increasingly volatile (see recitals (5) to (9)). This has accentuated the need to expedite the granting of aid to, inter alia, those potential beneficiaries identified in section 2.4 of the Temporary Crisis Framework. Delays in facilitating the granting of such aid could undermine the objective of the Temporary Crisis Framework.
- (77) The Commission notes that France intends to deviate from the definition of energy-intensive businesses provided in point 53(a) of the Temporary Crisis Framework (see recital (18) to (21)) and to apply that definition to all potential beneficiaries under the measure, including those qualifying for aid under the EUR 2 million ceiling.
- (78) The Commission observes that, as stated in recitals (18) to (21), the French authorities intend to count only electricity and natural gas as energy products for the purposes of this scheme, which makes their definition potentially more restrictive than that in point 53(a) of the Temporary Crisis Framework. At the

same time, France intends to apply the definition at the level of the legal entity instead of the undertaking and to use turnover instead of production value to calculate whether a beneficiary qualifies as an energy intensive business. The Commission considers that these deviations are limited and justified in view of practical arguments put forward by the French authorities and the exceptional circumstances prevailing at the time of the notification of the measure (see recitals (5) to (9)) which further amplify the need to provide aid with expediency to ensure that the measure reaches its objective, which is to remedy to serious disturbance to France's economy. The Commission considers it plausible that providing up-to-date information on energy consumption and prices and operating losses in a large global undertaking can be challenging for a beneficiary to gather and provide within the timeline required by the Temporary Crisis Framework. The same applies for indicators such as the production value is not an aggregate usually used in French accounting (see recital (21)). The Commission agrees that a strict implementation of the conditions in point 53(a) of the Temporary Crisis Framework may entail significant delays in the granting of aid, with the effect that the deadline of 31 December 2022 may not be met in certain cases, although beneficiaries could in principle be able to prove ex-post that they meet all applicable conditions. The Commission considers thus that the measure complies with the objective of point 53(a) of the Temporary Crisis Framework. The Commission will apply the same approach to other comparable future cases and it will initiate the process to modify the Temporary Crisis Framework to reflect the approach taken in the present decision.

- (79) Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (16). As described in recital (22), the scope of the measure covers all sectors, except for credit and financial institutions which are excluded. The Commission notes that under section 2.4 of the Temporary Crisis Framework, Member States are only required to limit aid exceeding EUR 2 million to energy-intensive businesses. Below this amount, this limitation does not apply. However, France has chosen to impose such a limitation for all beneficiaries. By limiting the granting of aid to energy intensive businesses, France aims to target entities and sectors of the economy most likely to be severely affected by the increase in energy costs, as also demonstrated by the application of higher aid ceilings to those entities and sectors under certain circumstances under the Temporary Crisis Framework. Given that the importance of energy-intensive businesses to the French and Union economy and given that all energy-intensive businesses are eligible for aid under the measure, the Commission considers that the measure is designed broadly and does not lead to an artificial limitation of potential beneficiaries. It therefore complies with point 52(d) of the Temporary Crisis Framework.
- (80) The Commission notes that, for the purpose of the measure, while maximum aid ceilings are set and assessed at the level of the undertaking, the qualification of an energy-intensive business, the calculation of eligible costs and operating losses are carried out at the level of the legal entity, rather than at the level of the undertaking. This approach deviates from the Temporary Crisis Framework, which refers to the notion of undertaking (see recital (38)).
- (81) The Commission considers that the purpose of section 2.4 of the Temporary Crisis Framework is to alleviate the burden due to additional costs due to the exceptionally severe increases in natural gas and electricity prices. Among other

conditions, to be eligible for aid under point 53 of the Temporary Crisis Framework, beneficiaries must be able to establish a link between the operating losses and the eligible costs, i.e. the increase in energy costs. The Commission accepts that the calculation of the eligible costs and operating losses and establishing such a link at the level of the legal entity instead of the undertaking is crucial for ensuring that the measure can be implemented in practice for all potential eligible beneficiaries within the deadline for the granting of aid. An assessment of those conditions at the level of the undertaking on a monthly basis would require the submission of final consolidated accounts which in many cases would not be available before the end of the granting period, therefore making the implementation of the measure impossible within its time frame and that of the Temporary Crisis Framework. Given this, the Commission considers that the application of the eligibility conditions, the calculation of the amount of aid, of the eligible costs and of the operating losses at the level of the legal entity is justified and in line with the intention underlying the requirements and the objectives of the Temporary Crisis Framework which, due to the severity and rapidity of the disturbance, needs to enable also timely support where appropriate.²²

- (82) The Commission notes that, despite the deviations from the provisions of the Temporary Crisis Framework described in recitals (77), (78), (80) and (90), the maximum amount of aid per undertaking will in any event be limited to the absolute ceilings specified in recital (40). The Commission will apply the same approach to other comparable future cases and it will initiate the process to modify the Temporary Crisis Framework to reflect the approach taken in the present decision.
- (83) The aid takes the form of direct grants (see recital (12)). All figures used are gross, that is, before any deduction of tax or other charge; the nominal value of the direct grant does not exceed the applicable aid intensity and aid ceilings laid down in point 52(f) of the Temporary Crisis Framework, as applied at the level of the legal entity (see recitals (12) and (42)). The measure therefore complies with point 52(b) of the Temporary Crisis Framework, taking into account the reasoning set out in recitals (80) to (82).
- (84) The eligible costs are calculated based on a formula (see recital (35) and footnote 14) that only deviates from point 52(e) of the Temporary Crisis Framework in the sense that it applies to the legal entity and not the undertaking (see recitals (33) to (38)). The Commission considers that measure complies with the objectives of point 52(e) of the Temporary Crisis Framework, taking into account the reasoning set out in recitals (80) to (82). The measure separates this eligible period into three sub-periods, which is not excluded by the Temporary Crisis Framework and does not affect the outcome of the compatibility assessment.
- (85) The overall aid per legal entity will not exceed 30 % of the eligible costs incurred by the legal entity and the maximum of aid per undertaking cannot exceed EUR 2 million at any given point in time. The measure therefore complies with the

²² Point 7 of the Temporary Crisis Framework refers to the need to mitigate the *immediate* social and economic negative repercussions in the EU.

objectives of point 52(f) of the Temporary Crisis Framework, taking into account the reasoning set out in recitals (80) to (82).

- (86) The legal entities eligible for aid under point 53(a) of the Temporary Crisis Framework are only those that incur operating losses. Furthermore, the increase in the legal entities' eligible costs as defined in point 52(e) of the Temporary Crisis Framework amounts to at least 50 % of operating losses in the eligible periods, as defined by the French authorities (recital (32)). The measure therefore complies with the objectives of point 53(b) of the Temporary Crisis Framework, taking into account the reasoning set out in recitals (80) to (82).
- (87) The overall aid does not exceed 50 % of the eligible costs as defined in point 52(e) of the Temporary Crisis Framework and amounts to a maximum of 80 % of the operating losses of the legal entity (recital (45)). The overall aid amount does not exceed EUR 25 million per undertaking at any given point in time (recital (45)). The measure therefore complies with the objectives of point 53(c) and (d) of the Temporary Crisis Framework, taking into account the reasoning set out in recitals (80) to (82).
- (88) The sectors and subsectors referred to in recital (47)(a) are covered by Appendix I (which is identical to the Annex I to the Temporary Crisis Framework). The measure foresees increased aid intensities and amounts for energy-intensive entities active in those sectors and subsectors (recital (48) and (49)). This is in line with the respective requirements in point 56(e) of the Temporary Crisis Framework. In addition, for the activities in the sectors and subsectors referred to in recital (47)(a) and covered by Annex I to the Temporary Crisis Framework, the overall aid amount may not exceed EUR 50 million per undertaking at any given point in time, whereby activities not listed in Annex I to the Temporary Crisis Framework cannot receive more than EUR 25 million. The measure therefore complies with these requirements as regards the maximum aid amounts allowed at the level of the undertaking.
- (89) Paragraph 53(e) of the Temporary Crisis Framework also requires that, where an undertaking is active in several sectors to which different maximum ceilings apply in accordance to point 53(c), (d) and (e) of the Temporary Crisis Framework, the Member State concerned shall 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 50 million is not exceeded per undertaking.
- (90) The Commission notes that the approach proposed by France under the measure deviates from the requirements described in recital (89). As described in recital (50), France considers that when the activities of a beneficiary fall both inside and outside the sector or subsectors referred to in Annex I of the Temporary Crisis Framework, the beneficiary must show that the eligible activity listed in that annex constitutes its principal activity. A principal activity is understood as one or more activities appearing in one or more sectors or subsectors mentioned in Annex I and whose cumulative turnover represents more than 50 % of the beneficiary's total turnover. Therefore, when the principal activity of a beneficiary is listed in Annex I, all energy costs and losses incurred by that beneficiary can be taken into account for the calculation of the amounts of aid. France argues that this approach is meant to simplify the administration of the measure and to

address situations where beneficiaries do not have at their disposal the necessary data or analytical accounting to ensure an accurate allocation of energy costs and operating losses to one activity or another, including for the year 2021, which preceded the announcement of the measure. The Commission considers that the approach proposed by the French authorities will mean that, in practice, the maximum aid ceilings of EUR 50 million for activities eligible under Annex I and of EUR 25 million for energy-intensive activities not falling under Annex I will be respected. This consideration takes into account the condition that overall aid cannot exceed EUR 50 million per undertaking at any point in time. Indeed, since Annex I eligible activities must generate at least 50% of the turnover, and assuming that energy costs and operating losses can be allocated to eligible and non-eligible activities in the same proportion, this implies that in practice non-eligible activities cannot receive aid above the EUR 25 million. The Commission considers that the approach proposed by the French authorities constitutes an appropriate means to determine whether or not the activity falls under Annex I and is in line with the intention underlying the requirements and the objectives of the Temporary Crisis Framework and notes that a similar simplified approach is already applied under other State aid rules (see recital (51)). The Commission will apply the same approach to other comparable future cases and it will initiate the process to modify the Temporary Crisis Framework to reflect the approach taken in the present decision.

- (91) In view of the reasoning in recitals (88) to (90), the Commission considers that the measure complies with the objectives of point 53(e) of the Temporary Crisis Framework.
- (92) In view of the volatile situation especially on the gas market, the Commission particularly welcomes that, should the Temporary Framework be amended, France has committed to make all the necessary adjustments, as from 1 September 2022, to bring the measure in line with the Temporary Crisis Framework as amended (see recital (12)).
- (93) Since no advance payments are to be made under the measure there is no need for an ex post verification to check whether or not the actual costs incurred exceed the ceilings laid down in point 52(f) of the Temporary Crisis Framework (see recital (57)).
- (94) Aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided that the applicable ceiling in points 52(h), 53(d) or 53(e) of the Temporary Crisis Framework are not exceeded (see recital (56)). Thus, the measure complies with those points of the Temporary Crisis Framework.
- (95) The French authorities confirm that, pursuant to point 32 of the Temporary Crisis Framework, the aid under the measure is not 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. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (see recital (10)). The measure therefore complies with point 32 of the Temporary Crisis Framework.
- (96) The French authorities confirm that, pursuant to point 33 of the Temporary Crisis Framework, the aid under the measure will 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 (see recitals (25) and (26)). The measure therefore comply with point 33 of the Temporary Crisis Framework.

- (97) The French authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (see recital (58)). The French authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (see recitals (52) to (54)).
- (98) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since the measure meet all the relevant conditions of the Temporary Crisis Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President