EUROPEAN COMMISSION

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Subject: State Aid SA.104325 – France
TCF: Amendments to SA.103280 (2022/N) 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 21 September 2022, France notified amendments (the "notified amendments") to the existing aid scheme (the "existing aid scheme"), which the Commission approved in case SA. 103280 (2022/N) – France - TCF (together referred to as "the measure" or "the amended measure"): Aid measures for the additional costs of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict (the "initial decision") 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) 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

[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 131 I, 24.3.2022, p. 1), as amended by Commission Communication C/2022/5342 (OJ C 280, 21.7.2022, p. 1).

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Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

(3) The objective of the existing aid scheme is 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 aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia.

(4) The existing aid scheme covers aid in the form of grants for additional costs due to exceptionally severe increases in natural gas and electricity prices that can be granted for three eligible periods: (1) from March to May 2022; (2) from June to August 2022; and (3) from September to November 2022 (see recital (32) of the initial decision). Under the existing aid scheme, there are three aid sub-categories with different aid ceilings i.e. EUR 2 million, EUR 25 million and EUR 50 million per undertaking, to which specific conditions apply.

(5) France wishes to amend the existing aid scheme as follows:

(a) Allow aid under the measure to be granted until the 31 March 2023.

(b) Extend the eligible period under the measure until 31 December 2022 and split the scheme into four eligible periods as follows: (1) from March to May 2022, (2) from June to August 2022, (3) from September to October 2022 and (4) from November to December 2022.

(c) Replace the requirement that applicants for aid not exceeding EUR 2 million must demonstrate either an operating loss over the eligible period or a decrease in their EBITDA of at least 30% over the eligible period compared to 2021 (see recital (41) of the initial decision) by the condition that they must demonstrate either an operating loss over the eligible period or a decrease in their EBITDA over the eligible period compared to 2021. This amendment will apply for the eligible periods (2), (3), and (4) as defined in recital (5)(b).

(d) Allow beneficiaries of aid under the measure to demonstrate compliance with the operating losses condition (see recitals (41), (44), and (46) of the initial decision), at their choice, either on a monthly basis, or for each eligible period as a whole. This amendment will apply for the eligible periods (2), (3), and (4) as defined in recital (5)(b). The French authorities explain that this amendment means that operating losses may be demonstrated by the applicant either monthly or on a quarterly basis for the second eligibility period and for two months intervals corresponding to the third and fourth eligibility periods. They consider that this setup will maintain consistency with the initial scheme and limit administrative burden for the beneficiaries while speeding up the implementation of the scheme.

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

(e) Modify the formula to calculate eligible costs (see recitals (33) to (35) of the initial decision) by limiting the quantity of natural gas and electricity used to calculate the eligible costs to a maximum of 70% of the beneficiary's consumption for the same period in 2021. This amendment will apply for each of the eligibility periods (3), and (4) as defined in recital (5)(b).

(6) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.

(7) The legal basis for the notified amendments is a draft amendment Decree to the existing Decree no. 2022-967 of 1 July 2022 on aid to compensate for the increase in the costs 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.

(8) Aid may be granted under the existing aid scheme, as amended, as from the notification of the Commission's approval of the notified amendments.

3. ASSESSMENT

3.1. Lawfulness of the measure

(9) By notifying the amendments before putting them into effect, the French authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(10) 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 be liable to affect trade between Member States.

(11) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (60) to (65) of the initial decision. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

(12) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of section 1 and section 2.4 of the Temporary Crisis Framework for the reasons set out in recitals (66) to (98) of the initial decision. The Commission therefore refers to the respective assessment of the initial decision.

(13) The notified amendments do not affect that conclusion. In particular:

(14) The Commission considers that the extension of the period from granting aid under the measure until 31 March 2023 (see recital (5)(a)) is justified in view of the fact that aid under the measure will be granted only after an ex-post verification of the supporting documentation of the beneficiary and the fact that France did not include the possibility to grant advance payments (see recital (57) of the initial decision). The scheme as amended therefore complies with point 52(a) and footnote 63 of the Temporary Crisis Framework.

(15) The extension of the eligible period under the measure until 31 December 2022 and its division into four distinct eligible periods (see recital (5)(b)) do not affect the outcome of the compatibility assessment of the measure and are in line with point 52(e) of the Temporary Crisis Framework.

(16) The relaxing of the EBITDA criterion for applicants for aid not exceeding EUR 2 million (see recital (5)(c)) does not affect the outcome of the compatibility assessment of the measure and is in line with point 52 of the Temporary Crisis Framework.

(17) The Commission considers that the amendment that allows applicants for aid under the measure to demonstrate operating losses either on a monthly basis or for the duration of each of the eligible periods defined is duly justified by the need to maintain consistency with the initial scheme, reduce administrative burden for applicants for aid and speed up implementation (see recital (5)(d)), and therefore the amended measure complies with point 53(b) and footnote 72 of the Temporary Crisis Framework.

(18) The modification of the formula for calculating eligible costs by limiting the quantity of natural gas and electricity in the eligible period to a maximum of 70% of the beneficiary's consumption for the same period in 2021 (see recital (5)(e)) is in line with the commitment of the French authorities (see recital (14) of the initial decision) and point 52(e) of the Temporary Crisis Framework.

(19) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.

(20) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Crisis Framework. The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the scheme, as amended, 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