EUROPEAN COMMISSION

Brussels, 31.10.2022
C(2022) 8001 final

PUBLIC VERSION

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Subject: State Aid SA.104461 (2022/N) – Denmark
TCF: Payment deferral scheme for electricity, gas, and heating consumers

Excellency,

1. PROCEDURE

(1) By electronic notification of 4 October 2022, modified on 11, 21, and 25 of October 2022, liquidity support in the form of subsidised loans due to exceptionally severe increases in natural gas, electricity, and heating prices (Liquidity support in the form of loans to households, undertakings, and certain energy supply undertakings' related to the deferral of higher energy prices, 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].

[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), and by Commission Communication C/2022/7945 (not yet published).

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DANMARK

(2) Denmark 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 1/1958[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Denmark 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'), have had a real impact on the Danish economy – especially in regard to energy and heating prices. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas, electricity, and district heating.

(4) Specifically, the Danish authorities note that since Gazprom Export stopped its delivery of gas to the major Danish energy company Ørsted on 1 June 2022, Denmark has seen a continuous increase in electricity, gas, and heating prices during the summer of 2022. According to Denmark, electricity, gas, and heating prices are expected to remain at very high levels – or even increase further – as we move towards the coming winter and the heating season.

(5) In particular, the Danish authorities state that the high electricity and heating prices will significantly affect households and undertakings already impacted by increasing inflation. According to Denmark, the increases in the price of energy affect substantially the disposable income of households, resulting to a drastic decrease of their purchasing power, thus posing a serious risk of significant negative consequences for the Danish economy. Regarding the negative consequences for the undertakings, Denmark notes that if the energy prices continue to increase at the current rate, Danish undertakings are expected to have a total additional burden of DKK 41 billion (approx. EUR 5.5 billion)[3] relating to gas, electricity and heating prices. Denmark calculates that electricity and gas make up the majority of undertakings' energy consumption, with approximately 40% of undertakings' energy consumption coming from electricity across sectors.

(6) Thus, the measure aims to remedy the liquidity shortage faced by households and 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. Specifically, the overall aim of the measure is to support Danish undertakings and households (hereafter called "end-users") amid a rapid rise in prices for electricity, gas, and district heating.

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

[3] Exchange rate on the day of notification (4 October 2022): EUR 1 = DKK 7.437.

(7) Denmark explains that the measure will consist of the following two sub-measures:

(a) A payment deferral measure with subsidised loans provided to end-users through energy companies ("sub-measure 1"). In the context of this sub-measure, households and undertakings will be provided with a right to defer part of their utility payments for electricity, gas, and district heating[4] bills. The sub-measure will last for six years. The six-year period consists of a one-year deferral period (from 1 November 2022 to 31 October 2023 for electricity and gas bills and from 1 January 2023 until 31 December 2023 for district heating bills) where the end-users can defer their payment followed by a one-year grace period (from 1 November 2023 to 31 October 2024 for electricity and gas bills and from 1 January 2024 until 31 December 2024 for district heating bills). The instalment period will then be four years after this (from 1 November 2024 to 31 October 2028 for electricity and gas bills and from 1 January 2025 until 31 December 2028 for district heating bills). The end-users will be billed the full energy or heating price – which continues to be determined on market terms – by the energy companies, but will be given the option to postpone the payment of the part of their energy cost that is above a set maximum unit price. The Danish authorities will set this maximum unit price based on the average energy prices in the fourth quarter of 2021 by virtue of a law. From the moment they confirm to their energy company that they want to make use of the deferral option, end-users will be able to defer the relevant part of the energy bills that they receive before the end of the deferral period. The subsidised loan is provided to the end-users through the energy companies, as the latter will administer the sub-measure to the end-users. The role of the energy companies under this sub-measure is exclusively to extend the loans from the State to the end-users, keep record of the end-users' accumulation of deferred payments and collect repayment. All energy companies will provide their end-users with the option to make a deferral of the payment of the energy and heating prices above the maximum price that will be set by the State separately for gas, electricity, and district heating. While it is voluntary for the end-users to participate in the sub-measure, the energy companies are obliged to inform the end-users about the deferral option, and accept the request from households and undertakings to make a deferral of their payment. In their role of administrators of the sub-measure, the energy companies will be able to take out loans with the Danish State only corresponding to the part of the payment that was deferred by the households and undertakings. Thus, the only beneficiaries of this sub-measure will be the end-users, namely the households and undertakings. Furthermore, the Danish authorities note that the purpose of the sub-measure is to support end-users while maintaining the price signals of energy prices (the sub-measure merely offers deferral, not compensation, and market prices are maintained). Finally, the Danish authorities point out that since all energy companies that provide electricity, gas and district heating, will have to provide the deferral option there is no discrimination among these companies. In addition, since the price signal is maintained (i.e. prices are

[4] In practice, this will concern district heating that is mainly reliant on natural gas as energy source.

not capped, there is only a partial deferral over time), energy companies can continue to compete for clients based on price and they also remain free to determine the fees they charge to end-users.

(b) A subsidised loan measure to cover the administrative costs of energy companies ("sub-measure 2"). Given their role as administrators for sub-measure 1, energy companies will be able to apply to the State for subsidised loans that will cover the technical adjustments to their IT-systems (e.g. ERP-systems[5]), so they are able to administer the deferred payment. Denmark clarifies that the technical adjustments to the IT-systems will not benefit the energy companies after the end of the measure as the adjustment will only concern the possibility to deliver deferred payment to the end-users, which is not a part of the normal operations of the energy companies. Denmark notes that the energy companies will only be able to apply for loans to cover such administrative costs, and will not be able to receive loans to cover other types of costs, e.g. additional staffing necessary to administer sub-measure 1. Denmark also clarifies that the energy companies are allowed to charge additional fees to the end-users who have opted to defer payments, to be able to repay the loans that were received for the additional administrative costs. The fee will be added to the deferred payments, and may be charged until the end of the full six-year period of the deferral scheme. In order to ensure that the energy companies do not benefit from charging this fee, the total amount of this fee (charged to end-users) may only include the energy company's administrative costs associated with the deferral scheme and the interest on the subsidised loan granted under sub-measure 2.

(8) Denmark 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.

(9) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of Sections 1 and 2.3 of the Temporary Crisis Framework.

2.1. The nature and form of aid

(10) The measure provides aid in the form of loans with subsidised interest rates:

(a) to undertakings (end-users) for sub-measure 1[6];

(b) to energy companies that supply electricity, gas, or district heating to undertakings and households for sub-measure 2.

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[5] Enterprise resource planning systems.

[6] As analysed in recitals (40) to (42), support under this measure is also provided to households, but this support cannot be considered State aid because households do not qualify as undertakings, and according to Article 107(1) TFEU State aid can only be provided to undertakings.

2.2. Legal basis

(11) The legal basis for the measure is: a) the law regarding the administration of the liquidity support in the form of loans to certain energy undertakings' deferral of higher energy prices ("*Lov om likviditetslån m.v. i forbindelse med indefrysningsordning for høje energiregninger og til energiintensive virksomheder m.v.*"[7]), and b) the law regarding the frame of the measure ("*Lov om en indefrysningsordning for høje energiregninger*"[8]). The abovementioned laws were adopted by the Danish Parliament on 29 September 2022, but have not entered into force. The Danish authorities clarify that this will only happen after a Commission decision approving the measure.

(12) An implementing act will also be adopted by the Ministry of Industry, Business and Financial Affairs. The Danish authorities confirm that the implementing act of the measure will only be adopted after a Commission decision approving the measure.

2.3. Administration of the measure and granting authority

(13) The Danish Business Authority ("DBA"), which is a public authority under the Danish Ministry of Industry, Business and Financial Affairs, is the granting authority and competent to manage the measure (sub-measures 1 and 2). The energy companies will apply for administering the subsidised loans to the DBA.

(14) As explained above, sub-measure 1 will also be administered by the energy companies, who will act as intermediaries between the end-users and the State (DBA). The subsidised loan will be provided to the end-users through the energy companies, the latter receiving the loans directly from the DBA. Specifically, the energy companies will bill the full energy price to the end-users, the latter being given the option to postpone the payment of the part of their energy cost (invoiced during the deferral period) that is above the maximum unit price that the Danish authorities will set for each form of energy (gas, electricity, district heating). The role of the energy companies is exclusively to extend the loans from the State to the end-users, keep record of the end-users accumulation of deferred payments and collect repayment. Denmark clarifies that all deferrals of payments will take place by 31 October 2023 at the latest for gas and electricity bills and by 31 December 2023 at the latest for district heating bills, and that all end-users will have previously agreed in writing to those deferrals.

(15) Specifically, for sub-measure 1, the energy companies will be able to take out loans, by 31 December 2023 at the latest, on behalf of the end users with the Danish State, corresponding to the part of the payment that was deferred by the households and undertakings during the period from 1 November 2022 to 31 October 2023 for gas and electricity bills and during the period from 1 January 2023 to 31 December 2023 for district heating bills. Denmark clarifies that the loans to energy companies will not cover a period beyond 31 October 2023 for gas and electricity bills and a period beyond 31 December 2023 for district heating bills. However, the Danish authorities explain that it will be possible to

[7] https://www.ft.dk/ripdf/samling/20211/lovforslag/l213/20211_l213_som_vedtaget.pdf

[8] https://www.ft.dk/ripdf/samling/20211/lovforslag/l212/20211_l212_som_vedtaget.pdf

grant the loans to energy companies until 31 December 2023 also for electricity and gas bills, as unforeseen issues may arise which can create the need for the granting of loans after 31 October 2023, which will cover liquidity needs that arose during the period of the deferral (until 31 October 2023). The measure will have consequences for the energy companies since they will not be receiving full payment at the time of delivery of energy to those end-users that opt to defer part of their invoice. The energy companies will apply to the DBA for a loan equal to the amount deferred by their end-users on a monthly basis within the deferral period (i.e. by 31 December 2023 at the latest). This loan will provide the energy companies the necessary liquidity in order to administer sub-measure 1 (see recital (30) for additional details).

(16) Regarding the procedure of receiving the loans for obtaining the necessary liquidity to administer sub-measure 1, Denmark clarifies that the energy companies must submit a monthly report and demonstrate to the DBA: i) how many end-users (households and undertakings) they expect to defer payment; ii) the expected energy price; and iii) thereby their liquidity needs for the coming month. The loan will be established on the basis of the provided data and a new loan will be granted on a monthly basis. This can be done until 31 December 2023. Denmark considers that the liquidity needs are hence established on the basis of a self-certification which the energy companies have to prepare using the actual invoices to end-users and their requests to make use of the deferral option.

(17) Denmark specifies that the energy companies must follow their usual procedures that apply when end-users do not pay their energy bills. In case end-users are not able to pay the deferred amount to energy companies, the DBA will take over only the part of the claim that corresponds to the deferred amount of the bill issued by the energy companies. Prior to this, the energy company must provide documentation proving that it has completed its usual payment reminder procedure, including sending at least two reminders to the end-user.

(18) Furthermore, the energy company must prove that they have explicitly notified (by virtue of a specific provision that will be part of the deferral agreement that the end-users will need to sign to participate to the deferral of payments) the end-users that their obligation to repay the deferred amount of the energy bill is against the State (DBA) and not the relevant energy supplying company, the latter merely collecting the deferred amount of the energy bills on behalf of the State. The end-users will be also informed by virtue of a specific provision of the deferral agreement that the deferral of payments comes with their obligation to pay an interest rate to the DBA. In the event of the energy company's bankruptcy, all claims on deferred energy bills shall be transferred from the bankruptcy estate to the DBA.

(19) When transferring the claim to the DBA, the energy company must provide all the documentation set out in the implementing act. Denmark clarifies that the deferral of payments will always comply with the limits set in recital (29)(f), and that energy companies will still have to face a loss from the end-users that are not able to pay the amount of the energy bills which is not subject to deferral.

(20) Sub-measure 2 will be administered by the DBA.

2.4. Budget and duration of the measure

(21) The estimated budget of the sub-measure 1 is DKK 45 billion (approx. EUR 6 billion), out of which DKK 25 billion (approx. EU 3.4 billion) is estimated to be dedicated to undertakings and DKK 20 billion (approx. EUR 2.6 billion) is estimated to be dedicated to households. The estimated budget of sub-measure 2 is DKK 215 million (approx. EUR 29 million). Both sub-measures are funded by the State budget.

(22) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2023.

2.5. Beneficiaries

(23) The final beneficiaries of the measure are SMEs[9] and large enterprises. Specifically, the beneficiaries of the measure are:

(a) For sub-measure 1, eligible undertakings[10] registered in the Danish Central Business Register active in all sectors of the economy. Denmark clarifies that energy companies are not beneficiaries of this measure, as their role is solely to administer the measure for the State, and receive no advantage as a result of this sub-measure. Denmark also clarifies that households[11] are eligible for support under the sub-measure, but should not be considered

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[9] As defined in Annex I of the General Block Exemption Regulation (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market pursuant to Articles 107 and 108 of the Treaty (General Block Exemption Regulation) (OJ L 187, 26.6.2014, p. 1).

[10] According to the legal basis of the measure (implementing act), namely Article 2, paragraph 10 of the "*Order on cash flow loans to energy companies by freezing high energy bills for households, businesses*", the eligible undertakings are business enterprises or associations, including housing cooperatives and owners' associations with a CVR number, which have a direct customer relationship with an energy company and are:

a) a legal person with one or more contract numbers;

b) a legal person purchasing gas for its own consumption; or

c) a legal person that purchases heated water for its own end-use.

[11] According to the legal basis of the measure (implementing act), namely Article 2, paragraph 9 of the "*Order on cash flow loans to energy companies by freezing high energy bills for households, businesses*", the definition of households is one or more persons living at the same address, or an ownership, cooperative or rental association without a CVR number, which is:

a) an electricity customer who purchases electricity for himself or herself for his own household consumption, or an electricity customer who purchases electricity on behalf of one or more residential units that do not have a contract number;

b) a natural or legal person purchasing gas for his own consumption or a natural or legal person purchasing gas on behalf of one or more residential units which do not have a contract number; or

c) a natural or legal person who buys heated water for his own end-use and with whom a heating-company has entered into a direct customer-relationship.

as beneficiaries for the purpose of the State aid rules as they are not undertakings[12].

(b) For sub-measure 2, energy companies that supply gas, electricity, or district heating.

(24) Credit institutions or other financial institutions are excluded as eligible final beneficiaries.

(25) Denmark 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) Denmark confirms that the measure may 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 regulations[13]. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

(27) The measure is open to all sectors except the financial sector. It applies to the whole territory of Denmark.

2.7. Basic elements of the measure

(28) The measure (sub-measures 1 and 2) provides liquidity support in the form of subsidised loans.

(29) The conditions that apply to the loans to undertakings under sub-measure 1, and to the loans under sub-measure 2 are the following:

(a) the loans relate to working capital needs;

(b) the loans are not granted to credit institutions or other financial institutions;

(c) the loans will be granted to the beneficiaries at reduced interest rates, which are at least equal to the base rate (one-year IBOR or equivalent as

[12] According to Denmark, such loans will be granted until 31 December 2023, will have a maturity of 6 years, and the households will have to pay an annual interest of 2%.

[13] 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).

published by the European Commission)[14] available on 1 October 2022 plus the credit risk margins as set-out in the table below:

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[15]	50bps[16]	100bps
Large enterprises	50bps	100bps	200bps

(d) the loans will benefit from a 1-year grace period. Denmark confirms that the interest will accrue from day one, and will be capitalised at least annually;

(e) the loan contracts will be signed by 31 December 2023 at the latest and the duration of the loans shall not exceed six years (including the one-year deferral period and the one-year grace period), considering the activities and the life cycle of the working capital needs of the beneficiary;

(f) the overall amount of the loans per beneficiary shall not exceed:

(i) for undertakings under sub-measure 1, the liquidity needs of the beneficiaries are determined from the moment of granting to the coming 12 months for SMEs and for the coming 6 months for large enterprises and are based on self-certification by the energy company (recital (16)). The energy company will determine the overall amount of the loan per beneficiary (i.e. end-user) as the difference between the maximum price of electricity, gas, and district heating set by the Danish authorities and the market price that the energy company will charge. The Danish authorities explain that using the option of point 64(e)(iii) of the Temporary Crisis Framework is necessary for the sub-measure 1 to facilitate the administration of the measure by the energy companies (who in the alternative would have to ensure that the thresholds in point 64(e)(i) and point 64(e)(ii) of the Temporary Crisis Framework are not breached at the level of each individual end-user that make use of the measure). Denmark also explains that applying point 64(e)(iii) of the Temporary Crisis Framework is essential for sub-measure 1, as, given the current crisis and its consequences on the energy market, energy prices are highly volatile and their

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14 Base rates calculated in accordance with the Commission’s Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

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

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

development cannot be predicted, and the deferred energy bill amounts cannot be defined a priori, but will only be clarified in the following months, based on the development of the energy prices. Moreover, the Danish authorities state that it is highly probable that the liquidity needs of the end-users exceed the limits of point 64(e)(i) and (ii) of the Temporary Crisis Framework. Under sub-measure 1 the subsidised loan for each beneficiary will be revalued and assessed at the time of each deferral (but no later than 31 December 2023), with any increase in the loan amount corresponding to the amount of the actual deferral, ensuring that it fully reflects the updated liquidity needs of the beneficiary, while respecting the limits of point 64(e)(iii) of the Temporary Crisis Framework (as ensured by the mechanisms described in recital (30)).

(ii) In addition, for the part of sub-measure 1 concerning undertakings, the amount of DKK 15 million (approx. EUR 2 million) per undertaking concerning electricity and gas bills collectively, and the amount of DKK 3.75 million (approx. EUR 500 000) per undertaking concerning district heating bills. The limits set out in the previous sentence can be cumulated.

(iii) For loans granted under sub-measure 2, the overall amount of loans per beneficiary cannot exceed 15% of the beneficiary's average total annual turnover over the last three closed accounting periods and can in any case not exceed the liquidity needs related to administrative costs directly connected with the deferral of payments. 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. The beneficiaries (energy companies) are required to submit documentary evidence of their liquidity needs related to administrative costs directly connected with the deferral of payments which will be verified by the granting authority (DBA) before granting the aid.

(iv) In addition, for loans granted under sub-measure 2, the amount of DKK 1 million (approx. EUR 134 500) per beneficiary. Denmark clarifies that in respect of the two maximum loan amounts referred to in this and the previous recital, the lower will always apply for each beneficiary.

(30) As regards the financing of sub-measure 1, the DBA will provide the energy companies administering the measure with the necessary liquidity. The energy companies will apply to the DBA on a monthly basis (but no later than 31 December 2023) for a loan in order to cover their liquidity needs arising from the deferral of payments that they offer to the end-users. The energy company will every month establish their liquidity need through self-certification using the actual invoices to end-users and their requests to make use of the deferral option. The DBA will check each request (on the basis of the information in the monthly

report, see recital (16)) to make sure that the requested amount is in line with what can be reasonably expected (including by comparing the requests from the different energy companies, assessing the proportion of clients that make use of the deferral option, and taking into account the evolution of the energy prices). Denmark also clarifies that the energy companies must at least once a year submit a report of the amount deferred by end-users to the DBA. Additionally, the DBA can ask energy companies to submit this report more often than once a year. Moreover, the DBA can ask to have the report audited. The Danish Authorities reserve the right to ask for reports more often where the number of end-users has increased significantly from month to month or the expected energy price for the coming month for a specific energy company differs significantly from the expected energy prices of other energy companies. In case an energy company would overestimate its liquidity needs, the DBA will make use of a claw-back mechanism entailing, among others, that the energy company must instantly repay (parts of) the transmitted loans. On this basis, Denmark considers that it can ensure that only genuine liquidity needs are covered and that the same liquidity needs are only covered once.

2.8. Cumulation

(31) The Danish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations[17], the General Block Exemption Regulation[18], Regulation 702/2014[19], or Regulation 1388/2014[20] provided the provisions and cumulation rules of those Regulations are respected.

(32) The Danish authorities confirm that aid under the notified measure may be cumulated with aid under cases SA.58515 (2020/N) and SA.59414 (2020/N) (and their amendments) approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current

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[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 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).

[19] 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).

[20] 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).

COVID-19 outbreak[21] (COVID-19 Temporary Framework) provided the respective cumulation rules are respected.

(33) The Danish authorities confirm 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.

(34) The Danish authorities confirm that for the same underlying loan principal aid granted under Section 2.3 of the Temporary Crisis Framework will not be cumulated with aid granted under Section 2.2 of that framework and vice versa. For different loans, aid granted under Section 2.3 may be cumulated with aid granted under Section 2.2 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 64(e) of the Temporary Crisis Framework.

(35) The Danish authorities confirm that when the overall amount of the loan is calculated on the basis of liquidity needs of the beneficiary (point 64(e)(iii) of the Temporary Crisis Framework), the same beneficiary cannot cover with loans under the notified aid measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework.

(36) A beneficiary may benefit in parallel from multiple schemes under Section 2.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 64(e) of the Temporary Crisis Framework.

2.9. Monitoring and reporting

(37) The Danish authorities confirm that they 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 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting)[22].

3. ASSESSMENT

3.1. Lawfulness of the measure

(38) By notifying the measure before putting it into effect, the Danish authorities have respected their obligations under Article 108(3) TFEU.

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21 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 112I, 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 340I, 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).

22 Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For loans, the nominal value of the underlying instrument shall be inserted per beneficiary.

3.2. Existence of State aid

(39) 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.

(40) With respect to the part of sub-measure 1 that concerns loans to households, as defined by Denmark in recital (7)(a), the Commission notes that households do not qualify as undertakings (see recital (23)(a)).

(41) It is clear from Article 107(1) TFEU that State aid can only be provided to undertakings. Since the households do not qualify as undertakings, the liquidity support provided to them cannot be considered as State aid.

(42) In the light of all the foregoing, the Commission concludes that the part of sub-measure 1 concerning aid to households does not involve aid pursuant to Article 107(1) TFEU. Thus, only the part of sub-measure 1 concerning the provision of subsidised loans to undertakings will be part of the compatibility assessment on the basis of Article 107(3)(b) TFEU, and the relevant provisions of the Temporary Crisis Framework. The measure is imputable to the State, since it is administered by the DBA, which is a public authority under the Danish Ministry of Industry, Business and Financial Affairs (recital (13)), and is based on: a) the law regarding the administration of liquidity support in the form of loans to certain energy undertakings' deferral of higher energy prices ("*Lov om likviditetslån m.v. i forbindelse med indefrysningsordning for høje energiregninger og til energiintensive virksomheder m.v.*"), and b) the law regarding the frame of the scheme ("*Lov om en indefrysningsordning for høje energiregninger*"). An implementing act will be adopted by the Ministry of Industry, Business and Financial Affairs (recital (11)). The measure is financed through State resources, since it is financed by public funds (recital (21)).

(43) The measure confers an advantage on its beneficiaries, in the form of subsidised interest rates (recital (10)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions. Energy companies are not beneficiaries of sub-measure 1 (but only of sub-measure 2), as their role is solely to administer the measure by acting for the State, and receive no advantage as a result of this sub-measure (recitals (7)(a) and (23)). In particular, the Commission notes that the financing mechanism as explained in recitals (16) and (30) does not confer any advantage on the energy companies.

(44) The advantage granted by the measure is selective, since for sub-measure 1 it is awarded only to undertakings (excluding undertakings that are part of the financial sector) that acquire electricity, gas, or district heating from energy companies, and for sub-measure 2 it is only awarded to energy companies that supply electricity, gas, or district heating (recital (10)).

(45) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(46) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.

3.3. Compatibility

(47) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(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*".

(49) 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 by 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. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Denmark. 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.

(50) The measure aims at facilitating the access of households and undertakings to external finance targeted to cope with high energy prices and at a time when a wide range of economic sectors are affected, and the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Denmark.

(51) The measure (sub-measures 1 and 2) is one of a series of measures conceived at national level by the Danish authorities to remedy a serious disturbance in their economy. The importance of the sub-measure 1 to dampen (on a temporary basis) the impact of the severe increase in natural gas and electricity prices by enabling deferral of part of the energy bills is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Danish economy. Regarding sub-measure 2, the proposed measure is necessary to cover, by means of a subsidised loan, the costs directly related to their role of administrators of the payment deferral scheme, and proportionate, as it covers costs to adjust IT-systems that are necessary to implement the measure but that will have no value for the energy companies after the expiry of the measure (recital (7)(b)). Furthermore, the measure (sub-measures 1 and 2) has been designed to meet the requirements of a specific category of aid ("*Aid in the form of subsidised loans*") described in Section 2.3 of the Temporary Crisis Framework.

(52) The Commission accordingly considers that the measure (sub-measure 1 for the part concerning loans to undertakings, and sub-measure 2) is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework. In particular:

(a) Loans under the measure granted in response to the current crisis will not be granted to credit institutions or other financial institutions (recital (29)(b)). The measure therefore complies with point 64(a) of the Temporary Crisis Framework.

(b) The applicable interest rates for loans granted under the measure are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) available on 1 October 2022 plus a credit margin of 0.25% to 1% for SMEs, and 0.5% to 2% for large enterprises (recital (29)(c)). The measure therefore complies with point 64(b) of the Temporary Crisis Framework.

(c) The loan contracts are signed by 31 December 2023 at the latest and are limited to a maximum maturity of six years (recital (29)(e)). The measure therefore complies with point 64(d) of the Temporary Crisis Framework.

(d) The maximum loan amount per beneficiary granted under the measure is limited in line with point 64(e) of the Temporary Crisis Framework (recital (29)(f)). The Danish authorities explain that using the option of point 64(e)(iii) of the Temporary Crisis Framework is necessary for the part of sub-measure 1 concerning undertakings, to facilitate the administration of the measure by the energy companies (who in the alternative would have to ensure that the thresholds in point 64(e)(i) and point 64(e)(ii) of the Temporary Crisis Framework are not breached at the level of each individual end-user that make use of the measure). Denmark also explains that applying point 64(e)(iii) of the Temporary Crisis Framework is essential for sub-measure 1, as, given the current crisis and its consequences on the energy market, energy prices are highly volatile and their development cannot be predicted, and the deferred energy bill amounts cannot be defined a priori, but will only be clarified in the following months, based on the development of the energy prices. Moreover, it is highly probable that the liquidity needs of the beneficiaries exceed the limits of point 64(e)(i) and (ii) of the Temporary Crisis Framework. The Commission considers that, given that the subsidised loan for each beneficiary will be revalued and assessed at each deferral, the amount of the loan will correspond to the updated liquidity needs of the beneficiary (be it 6 months for large enterprises and 12 months for SMEs). The Commission notes that the deferrals are based on the actual energy bills and will always respect the limits of point 64(e)(iii) of the Temporary Crisis Framework (as ensured by the mechanisms described in recital (30)). The Commission also notes that: (i) the liquidity needs of the beneficiaries will be established through self-certification (specifically, the energy company will determine the overall amount of the loan per beneficiary as the difference between the maximum price of electricity, gas, and district heating set by the Danish authorities and the market price that the energy company will charge); (ii) each deferral (including its reevaluation) will take place by 31 December 2023 at the latest; and (iii) adequate safeguards are in place ensuring that the same liquidity needs will only be covered once (recitals (29)(f)(i) and (30)). Regarding sub-measure 2, Denmark confirms that the overall amount of loans per beneficiary will not exceed the limits set out in point 64(e)(i) of the Temporary Crisis Framework (recital (29)(f)). The Danish authorities confirm that the same beneficiary cannot cover with loans under the measure the liquidity needs already covered by aid measures approved by the Commission under the COVID-19 Temporary Framework (recital (31)). The measure therefore complies with point 64(e) of the Temporary Crisis Framework.

(e) Loans granted under the measure relate to working capital needs (recital (29)(a)). The measure therefore complies with point 64(f) of the Temporary Crisis Framework.

(f) The cumulation rules set out in point 63 of the Temporary Crisis Framework are respected (recitals (33) to (35)).

(53) The Danish authorities confirm that, pursuant to point 46 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 (recital (8)).

(54) The Danish authorities confirm that, pursuant to point 47 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 (recitals (25) and (26)).

(55) The Danish authorities confirm that the monitoring and reporting rules laid down in Section 3 of the Temporary Crisis Framework will be respected (recital (37)). The Danish 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 (recital (33)).

(56) 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 it meets 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

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION