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Subject: State Aid SA.104439 (2022/N) – Austria
TCF: Energy cost subsidy for enterprises

Excellency,

1. PROCEDURE

- (1) By electronic notification of 30 September 2022, Austria notified an aid measure in the form of limited amounts of aid and an aid measure for additional costs due to exceptionally severe increases in natural gas and electricity prices to support energy-intensive undertakings affected by the rise in energy prices caused by Russia's aggression against Ukraine (*Energiekostenzuschuss für Unternehmen*; 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. The notification was complemented with further information submitted on 18 October 2022.
- (2) On 11 October, 19 October and 7 November 2022, Austria provided further information by email, in reply to queries from the Commission of 7 October, 18 October and 4 November 2022 respectively.

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 (OJ C 426, 9.11.2022, p. 1), which replaces the previous versions.

Seiner Exzellenz Herrn Alexander Schallenberg
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- (3) Austria 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) Austria considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken for example by Russia (the “current crisis”) so far affect the real economy of the country. The current crisis has created significant economic uncertainties, disrupted trade flows and supply chains, and it has led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. As an example of the uncertainties faced, the Austrian Purchasing Managers’ Index (Einkaufsmanagerindex) was reduced to 46.6 in October 2022, i.e. below the growth threshold of 50 for the third consecutive month.
- (5) In particular, the current crisis affects the Austrian 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 shock to world trade; and (iii) uncertainty leading to lost investment and financial stress³.
- (6) The Austrian economy is facing high inflation that in September reached 10.5 %⁴. Part of the inflation is the consequence of electricity and natural gas price increase. Regarding wholesale electricity prices in Austria, according to data published by the Austrian Energy Agency (Österreichische Energieagentur) in November 2022, the Austrian electricity price index (ÖSPI) is likely to rise by 7.6 % in December 2022 compared with the previous month. Compared to the same month of year 2021, the ÖSPI will likely be 336.6 % higher. The baseload price (660.44 index points) will likely rise by 6.5 % compared to the previous month. Year-on-year, this signifies an increase of 321.8 %. The peak load price (624.98 index points) is expected increase by 10.1 % month-on-month and 374.1 % year-on-year⁵.
- (7) As regards gas wholesale prices, according to data published by the Austrian Energy Agency (Österreichische Energieagentur) in October 2022, and while the Austrian Gas Price Index (ÖGPI) declined by 6.3 % for November 2022 compared with October 2022, the index was 188.0% higher in November 2022 compared with the same month in year 2021⁶.

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

³ According to the Austrian Institute of Economic Research (WIFO), business uncertainty remains high as a result of uncertainty about gas supplies from Russia and strong increases in energy prices. This is also evidenced by the WIFO business cycle test, which has declined in virtually all components since April 2022.

⁴ <https://www.energyagency.at/aktuelles/epi-september-2022>.

⁵ <https://www.energyagency.at/aktuelles/oespi-dezember-2022>.

⁶ <https://www.energyagency.at/aktuelles/oegpi-november-2022>.

- (8) The Austrian authorities explained that among the most affected are the energy-intensive industrial undertakings, i.e. undertakings for which natural gas and electricity represent a significant part of their production costs and which have great difficulty in passing the increased energy costs on to their customers in full.
- (9) Austria argues that the measure is designed to mitigate the impact of the rapidly rising electricity and natural gas prices on energy-intensive undertakings, help stabilise their operations and give them time to adjust to the new reality of high energy prices.
- (10) Austria 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 European Economic Area (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 sections 1, 2.1 and 2.4 of the Temporary Crisis Framework, as it is in force since 28 October 2022⁷.

2.1. The nature and form of aid

- (12) The measure provides aid in the form of direct grants for:
 - (a) Limited amounts of aid under section 2.1 of the Temporary Crisis Framework (“Sub-Measure 1”). Sub-Measure 1 corresponds to the Basic level (*Basisstufe 1 (Stufe 1)*) of the Ministerial Guidelines referred to in recital (13)(b);
 - (b) Additional costs due to exceptionally severe increases in natural gas and electricity prices under section 2.4 of the Temporary Crisis Framework (“Sub-Measure 2”). Sub-Measure 2 corresponds to Calculation levels 2 to 4 (*Berechnungsstufen (Stufe 2 bis Stufe 4)*) of the Ministerial Guidelines referred to in recital (13)(b).

2.2. Legal basis

- (13) The legal basis for the measure (the “national legal basis”) is comprised of:
 - (a) the Federal Law on an Energy Cost Subsidy for Energy Intensive Enterprises (Enterprises-Energy Cost Subsidy Law (*Bundesgesetz über einen Energiekostenzuschuss für energieintensive Unternehmen (Unternehmens-Energiekostenzuschussgesetz)*), published on 27 July 2022 on the Federal Gazette (UECB, BGBl. I. No 177/2022), as amended (the “Federal Law”).
 - (b) the Guidelines of the Federal Minister for Labour and Economy in agreement with the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and Federal Minister for Finance (*Energiekostenzuschuss für Unternehmen - Richtlinie des Bundesministers für Arbeit und Wirtschaft im Einvernehmen mit der*

⁷ In line with recital (82) of the Temporary Crisis Framework.

Bundesministerin für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie und Bundesminister für Finanzen; the “Ministerial Guidelines”), for which a draft has been submitted to the Commission, which lays down the details of the measure.

- (14) Pursuant to Section 7 of the Federal Law, the relevant provisions will enter into force and aid will be granted only after the notification of the Commission’s decision approving the notified measure to the Austrian authorities. The Austrian authorities also confirmed that the draft Ministerial Guidelines will only enter into force after the notification of the Commission’s decision approving the measure and will be published on the website of the granting authority⁸.

2.3. Administration of the measure

- (15) The Austrian Promotional Bank - Austria Wirtschaftsservice Gesellschaft mbH (the “granting authority” or “AWS”)⁹ is responsible for administering the measure.

2.4. Budget and duration of the measure

- (16) The estimated budget of the measure is EUR 1.1 billion in total. The Austrian authorities explained that the aid will be granted on the basis of the “first come first served” principle, i.e. when the respective budget limitation is met, no further aid will be granted.
- (17) The measure will be financed by the general State budget.
- (18) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure to the Austrian authorities until no later than 30 June 2023.

2.5. Beneficiaries

- (19) The final beneficiaries of the measure are SMEs¹⁰ and large enterprises¹¹ active in Austria that are affected by the crisis.
- (20) Undertakings in the following sectors are excluded as eligible final beneficiaries from the measure¹²:

⁸ <https://www.aws.at/>

⁹ AWS is 100 % owned by the Republic of Austria. The Austrian Federal Ministry for Labour and Economy (BMAW) and the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK) act as its owner’s representatives.

¹⁰ As defined in Annex I to 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, 26.6.2014, p. 1).

¹¹ As defined in Article 2 point 24 of the 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, 26.6.2014, p. 1).

¹² The reference is made to the national classification system. Since 2008, the ÖNACE 2008 Classification of Statistik Austria is applied in Austria. The Austrian authorities explained that this classification is based on the NACE classification.

- a) Energy production (ÖNACE 2008 identifier D 35)
 - b) Oil-processing (ÖNACE 2008 code C 19.2)
 - c) Extraction of oil and natural gas (ÖNACE 2008 codes B 6.1 and B 6.2)
 - d) Provision of services for the extraction of oil and natural gas (ÖNACE 2008 code B 9.1)
 - e) Banking and other financing activities (ÖNACE 2008 identifier K 64)
 - f) Real estate
 - g) Primary agricultural and forestry production and fisheries and aquaculture
- (21) Furthermore, the following undertakings will not be eligible under the measure:
- a) enterprises which according to the “European System of Accounts” (ESA 2010) are recorded by Statistik Austria as a “State unit” with the identifier S.13 (or, by analogy with ESA 2010, enterprises that can be classified as a foreign government unit), with the exception of enterprises or parts of enterprises which are in competition with other enterprises active in the market and which do not carry out public authority functions
 - b) enterprises created after 1.1.2022 are not eligible for Sub-Measure 2 but they may receive aid under the basic level of Sub-Measure 1
 - c) local and regional authorities, including for their business activities
 - d) the non-business sectors of non-profit associations within the meaning of Section 34 of the BAO (Bundesabgabenordnung (Austrian Fiscal Federal Code))
 - e) political parties within the meaning of Section 2(1) of the Political Parties Law (Parteiengesetz) and undertakings which are owned by majority by political parties pursuant to Section 2(1) of the Political Parties Law (Parteiengesetz)
 - f) inter-community and non-community liberal professions
 - g) applicants which receive or have received subsidies from public funds for the same energy costs as the ones compensated for under the measure¹³
 - h) applicants which are subject to an outstanding recovery order following a decision of the European Commission declaring aid illegal and incompatible with the internal market
 - i) applicants against which insolvency proceedings are pending or against whose director/member such proceedings are pending at the time of the application or

¹³ Under the measure shall not be eligible the electricity costs of an undertaking for which support is granted under the Electricity Price Cost Compensation Law 2022 (Strompreiskosten Ausgleichsgesetz 2022), SAG 2022.

which meet the conditions laid down by law for the opening of insolvency proceedings at the request of the creditors

j) undertakings which do not comply with:

- the Federal Law on the import, export and transit of war material (Bundesgesetz über die Ein-, Aus- und Durchfuhr von Kriegsmaterial, BGBl. 540/1977), as amended; or
- the 2013 Safety Control Law (Sicherheitskontrollgesetz, BGBl. I No 42/2013), as amended; or
- other Austrian legislation, the infringement of which is punishable by a court

k) undertakings that do not comply with the energy saving commitments set out in section 5.1.2 of the Ministerial Guidelines from the date of the granting of the aid until 31 March 2023.

(22) In addition, the Austrian authorities will apply specific eligibility conditions for each of Sub-Measure 1 and Sub-Measure 2. More precisely, for Sub-Measure 1 (which corresponds to the Basic level of the Ministerial Guidelines), beneficiaries must qualify as energy-intensive businesses, as defined in Article 17(1)(a) of the Energy Taxation Directive¹⁴ (whose purchase costs of energy and electricity¹⁵ amount to at least 3.0 % of the production value or where the national energy tax to be paid is at least 0.5 % of the value added), on the condition that their energy, electricity and fuel purchase costs do not exceed EUR 16 million. However, beneficiaries whose turnover does not exceed EUR 700 000 can be eligible under Sub-Measure 1 even if they do not qualify as energy-intensive businesses.

(23) For Sub-Measure 2, beneficiaries are divided into three categories, for which different eligibility conditions apply:

a) Category I (which corresponds to the Calculation level 2 of the Ministerial Guidelines)

Beneficiaries are eligible for aid under Category I if they qualify as energy-intensive businesses within the meaning of the first limb of Article 17(1)(a) of the Energy Taxation Directive¹⁶, i.e. where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0 % of the production value, based on data from the financial accounting reports

¹⁴ 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).

¹⁵ The energy and electricity costs taken into account are specified in the national legal basis. Under Sub-Measure 1, fuel purchase costs are also added to the energy purchase costs and in this case only the method based on the production value can be used for the calculation of energy intensity.

¹⁶ 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).

for the calendar year 2021, and in the case these are not available, based on data from the latest available accounts¹⁷.

b) Category II (which corresponds to the Calculation level 3 of the Ministerial Guidelines)

Beneficiaries are eligible for aid under Category II if, in addition to meeting the definition energy-intensive business under Category I, they also incur operating losses in the relevant month of the eligible period¹⁸ (see recital (38)), whereby the increase in the eligible cost as defined in recitals (40) to (45), must amount to at least 50 % of the operating loss in the relevant month of the eligibility period.

c) Category III (corresponds to the calculation level 4 of the Guidelines)

Beneficiaries are eligible for aid under Category III if, in addition to meeting the eligibility requirements for Category II, they are active in one of the sectors or sub-sectors listed in the national legal basis, which reproduces exactly Annex I of the Temporary Crisis Framework, as it was in force before its replacement by the new version of 28 October 2022 ('the previous Temporary Framework')¹⁹.

- (24) For the same eligible period, the beneficiary can qualify either for Sub-Measure 1 or for Sub-Measure 2 but not for both.
- (25) Austria 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) Austria 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 regulations²⁰. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

¹⁷ The Austrian authorities explained that due to the Covid crisis, the usual deadlines for annual reports were extended. For 2021, this means that companies can submit their reports until 31 December 2022. For this reason, there might be companies with a financial year based on the 2021 calendar year already, which cannot prove the energy intensity based on an annual report. The same applies to undertakings whose financial year is not the same as the calendar year. The use of an older report is not expected to bring any benefit to the applicant as energy prices were lower in 2020 compared to 2021.

¹⁸ This condition is met when EBITDA (earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments) in the relevant month of the eligible period is negative.

¹⁹ A beneficiary will be considered as active in a listed sector or subsector according to the beneficiary's classification in the sectoral national accounts or if one or several of the activities it carries out and which are included in Annex I generated more than 50 % of its turnover or production value in 2021.

²⁰ 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).

- (27) Austria estimates that around 30 000 to 50 000 beneficiaries will be eligible for aid under the measure.

2.6. Sectoral and regional scope of the measure

- (28) The measure is open to all sectors except those listed in recital (20). Credit institutions or other financial institutions are excluded as eligible final beneficiaries. The measure applies to the whole territory of Austria.

2.7. Basic elements of the measure

- (29) The measure provides support in the form of limited amounts of aid (Sub-Measure 1), and aid for additional costs due to exceptionally severe increases in natural gas and electricity prices (Sub-Measure 2) under sections 2.1 and 2.4 of the Temporary Crisis Framework, respectively. The aim of the measure is to ensure liquidity for undertakings which face economic challenges under the current crisis, and to mitigate the consequences of exceptionally high energy costs increases for energy-intensive businesses.

2.7.1. Sub-Measure 1

- (30) Sub-Measure 1 provides limited amounts of aid in the form of direct grants.
- (31) The eligible costs are the additional costs borne by the applicants for electricity, natural gas and fuel for their own consumption, during the period running from 1 February to 30 September 2022 (the “eligible period”).
- (32) The eligible costs for electricity and natural gas consumption are the product of (i) the number of units of natural gas and/or electricity procured by the applicant as a final consumer from external suppliers²¹ in the period between 1 February 2022 and 30 September 2022 at the latest and (ii) the increase in the price that the applicant pays per unit consumed (measured in EUR/kWh). The increase in the energy price is the difference between the average unit energy price paid by the applicant during the eligible period and the average unit energy price that the applicant paid in the period from 1 January to 31 December 2021 (the ‘reference period’).
- (33) The eligible costs for natural gas and electricity are calculated, for the whole eligible period for which aid is requested, according to the following formula:
 $(p(t) - p(\text{ref})) * q(t)$ ²².
- (34) The eligible cost for fuel consumption is the product of the number of units consumed by the beneficiary during the eligible period multiplied by the amount of subsidy per litre of fuel (in EUR), where the amount of the subsidy per litre is the

²¹ Or from another entity belonging to the same undertaking, in which situation, the price taken into consideration must be to the price charged by an external supplier.

²² More specifically, $p(t)$ denotes the average unit price of natural gas and/or electricity in EUR/MWh borne by the undertaking during the whole eligible period; $p(\text{ref})$ denotes the average unit price of natural gas and electricity in EUR/kWh borne by the undertaking during the reference period; $q(t)$ denotes the amount of natural gas and/or electricity consumed by the beneficiary in the relevant month of the eligible period.

difference between the average net price paid by the beneficiary per litre during the eligible period and 60 cents per litre²³. Consumption must be demonstrated on the basis of invoices.

- (35) The aid intensity does not exceed 30 %²⁴ of the eligible costs.
- (36) The overall nominal value of the grants will not exceed EUR 400 000 per undertaking at any given point in time. Austria confirms that all figures used are gross, that is, before any deduction of tax or other charges.

2.7.2 Sub-Measure 2

- (37) Sub-Measure 2 provides aid in form of direct grants to energy-intensive businesses to alleviate the exceptionally severe increases in the price of natural gas and electricity. The aim of the measure is to mitigate the consequences of 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 those undertakings are unable to cope.
- (38) The measure covers the period running from 1 February to 30 September 2022 (“the eligible period”).
- (39) Austria explained that requests for aid under Sub-Measure 2 will be made at the level of legal entity. Austria further clarified that this means that the qualification as energy-intensive business, 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).
- (40) The eligible costs are calculated by comparing the average price per unit consumed of natural gas and electricity in each month of the eligible period in 2022 and the average unit price over the reference period, which runs from 1 January 2021 to 31 December 2021 (“reference period”). However, under Category I (see recital (49)), the applicant can choose between a calculation per month and a calculation for the whole eligible period.
- (41) The eligible costs are calculated based on the increase in natural gas and electricity costs. The eligible cost is the product of the number of units of natural gas and/or electricity procured by the applicant as a final consumer from external suppliers in a period between 1 February 2022 and 30 September 2022 at the latest and the increase in the price that the applicant pays per unit consumed (measured in EUR/kWh).
- (42) That price increase shall be calculated as the difference between the unit price paid by the applicant in a given month in the eligible period and the double (200 %) of

²³ For the purpose of calculating the average net price of the eligible period, the net average prices charged for petrol and diesel shall be a weighted average. Net price is defined as the price per unit of quantity excluding taxes, but including non-deductible input tax in accordance with Section 12 of the Turnover Tax Act, which relates to the net price.

²⁴ The aid amount is at all times capped at EUR 400 000 (see recital (36)). Therefore, the aid intensity can be lower than 30 % if the amount of eligible costs is so high that the cap on the absolute amount of aid would otherwise be exceeded.

the unit price paid by the applicant on average for the reference period from 1 January 2021 until 31 December 2021.

- (43) The eligible costs are calculated, for each month of the eligible period for which aid is requested, according to the following formula: $(p(t) - p(\text{ref}) * 2) * q(t)$ ²⁵.
- (44) The number of eligible electricity and natural gas units per month of production capacity is capped at 70 % of the beneficiary's consumption of the same month of the 2021 reference period²⁶.
- (45) Only final consumption is counted, with sales and own production and generation being excluded. The eligible costs must be demonstrated by the applicant, through the corresponding invoices. If the beneficiary purchases natural gas or electricity from an affiliated entity or entity that is part of the same group, the price to be taken into account is the price paid by that entity to third parties. Furthermore, the measure includes a clause to exclude speculative behaviour according to which the unit price of consumption covered by a contract concluded after 1 February 2022 is not taken into account for the calculation of the eligible costs if they are higher than the unit price of the energy supply contracts existing immediately prior to and concluded before 1 February 2022 or the financial products linked to the energy supply of the beneficiary (e.g. purchase options). However, a mere change of contractual arrangement or supplier without an increase in the price charged to the beneficiary is not captured by this provision.
- (46) Austria confirms that all figures used are gross, that is, before any deduction of tax or other charges.
- (47) Austria confirms that where an undertaking is active in the processing and marketing of agricultural products, the aid is not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.
- (48) As explained in recital (23), aid under Sub-Measure 2 can be granted for three categories of beneficiaries, for which different conditions apply:

Category I

- (49) For Category I, the aid intensity will not exceed 30 % of the eligible costs and the total amount of aid will not exceed EUR 2 million per undertaking at any given point in time.

²⁵ More specifically, $p(t)$ denotes the unit price of natural gas and/or 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; $q(t)$ denotes the amount of natural gas and electricity consumed by the beneficiary in the relevant month of the eligible period.

²⁶ For Category I, instead of the monthly increase in the price of energy, the weighted average price increase of the total eligible period may also be used for the calculation. In such a case, the 70 % consumption ceiling must be determined on the basis of the whole consumption from February 2021 to September 2021.

Category II

- (50) For Category II beneficiaries, the aid intensity and the total amount of aid may be increased where the applicant incurs operating losses²⁷ and the increase in the eligible costs represents at least 50 % of those operating losses in the relevant month of the eligible period. In that case, the aid intensity will not exceed 50 % of the eligible costs and the aid amount will not exceed 80 % of the operating losses of the beneficiary.
- (51) The total amount of aid may not exceed EUR 25 million per undertaking at any given point in time
- (52) Beneficiaries of aid under Category II are required to carry out an energy audit within the meaning of Article 8 of Directive 2012/27/EU on energy efficiency²⁸, either in the form of a stand-alone energy audit or as part of a certified energy management or environmental management system, such as the EU environmental management and audit system, and to implement the recommendations in the audit report within a reasonable timeframe, provided that the payback period for the relevant investments does not exceed three years and the costs of the investments are proportionate.

Category III

- (53) For Category III beneficiaries, the aid intensity and the total amount of aid may be further increased where the applicant is active in sectors or subsectors particularly exposed to higher energy prices referred to in Annex I of the Temporary Crisis Framework, as it was in force before being replaced by the new version of 28 October 2022, incurs operating losses, and the increase in its eligible costs amounts to at least 50 % of the operating losses in the relevant month of the eligible period.
- (54) In such cases, the aid intensity will not exceed 70 % of the eligible costs and the aid amount will not exceed 80 % of the operating losses of the beneficiary.
- (55) The total amount of aid may not exceed EUR 50 million per undertaking at any given point in time.
- (56) Beneficiaries of aid under Category III are required to carry out an energy audit within the meaning of Article 8 of Directive 2012/27/EU on energy efficiency²⁹, either in the form of a stand-alone energy audit or as part of a certified energy management or environmental management system, such as the EU environmental management and audit system, and to implement the recommendations in the audit report within a reasonable timeframe, provided that the payback period for the

²⁷ Negative EBITDA (earnings before interest, taxes, depreciation and amortization, excluding one-time impairment losses) in the relevant month of the eligible period.

²⁸ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

²⁹ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

relevant investments does not exceed three years and the costs of the investments are proportionate.

2.8. Cumulation

- (57) Austria confirms that aid granted under the measure may not be cumulated with any other aid for the same eligible costs under *de minimis* Regulations³⁰ or the General Block Exemption Regulation³¹ or any other EU state aid rules.
- (58) Austria confirms that aid granted under Sub-Measures 1 and 2 may not be cumulated with aid granted³² under the COVID-19 Temporary Framework³³.
- (59) Austria confirms that aid granted under Sub-Measures 1 and 2 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.
- (60) Aid under point 66 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the overall cap of EUR 4 million per undertaking is not exceeded. Aid under point 67 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the ceiling laid down in point 67(b) or 67(c), whichever applies, is not exceeded.

2.9. Claw back mechanism, monitoring and reporting

- (61) Austria 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 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 for the aid, and in particular the

³⁰ 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).

³¹ 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).

³² These include the following measures SA.100220, SA.100831, SA.100853, SA.100991, SA.101013, SA.101086, SA.101114, SA.101115, SA.101232, SA.102132, SA.103636, SA.56840, SA.56981, SA.57148, SA.57291, SA.57312, SA.57340, SA.57345, SA.57371, SA.57520, SA.57539, SA.57640, SA.57928, SA.58237, SA.58360, SA.58385, SA.58640, SA.58661, SA.59320, SA.59710, SA.59930, SA.60117, SA.60290, SA.60321, SA.60521, SA.60599, SA.60655, SA.61210, SA.61614, SA.62010, SA.62288, SA.62419, SA.62569, SA.63287, SA.63291, SA.63437, SA.63649, SA.63692, SA.63708, SA.63825, SA.64490, SA.64585 which have been published in the Commission's State aid register available at https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3.

³³ 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).

eligible cost bases. Therefore, there will be no estimate of eligible costs and an ex-post correction mechanism is not necessary.

- (62) Austria 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 granted under Sub-Measures 1 and 2 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting³⁴).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (63) By notifying the measure before putting it into effect, the Austrian authorities have respected their obligations under Article 108(3) TFEU (recital (14)).

3.2. Existence of State aid

- (64) 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.
- (65) The measure is imputable to the State, since it is administered by Austrian Promotional Bank - Austria Wirtschaftsservice Gesellschaft mbH (see recital (15)) and it is based on the Federal Law on an Energy Cost Subsidy for Energy Intensive Enterprises (Enterprises-Energy Cost Subsidy Act) and the Guidelines of the Federal Minister for Labour and Economy in agreement with the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology and Federal Minister for Finance (see recital (13)). The measure is financed through State resources, since it is financed by public funds (see recital (17)).
- (66) The measure confers an advantage on the beneficiaries in the form of direct grants (see recital (12)). The measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (67) 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 section 2.5). Furthermore, the Commission notes that several sectors are excluded from the measure (see recital (20)).
- (68) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Austrian authorities do not contest that conclusion.

³⁴ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.

3.3. Compatibility

- (69) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it is compatible with the internal market.
- (70) 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*”.
- (71) 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, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Austria. 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.
- (72) The Commission notes that the Temporary Crisis Framework in force has replaced, as from the date of its adoption on 28 October 2022, the Temporary Crisis Framework adopted on 23 March 2022, as amended on 20 July 2022 (“previous Temporary Crisis Framework”). As specified in its point 82, the Commission applies the provisions of the Temporary Crisis Framework to all measures notified as of 28 October 2022, as well as to measures notified prior to that date. This applies to the measure under discussion.
- (73) The measure aims at remedying a serious disturbance in the economy of Austria. Sub-Measure 1 aims to facilitate the access of undertakings to liquidity at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed. Sub-Measure 2 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 Austrian economy.
- (74) The measure is part of a series of measures conceived at national level by the Austrian authorities to remedy a serious disturbance in the Austrian economy. The importance of the measure to ensure liquidity for undertakings during the current crisis and to compensate for the severe increase in natural gas and electricity prices 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 Austria. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid” and “Aid for additional costs

due to exceptionally severe increases in natural gas and electricity prices”) described in sections 2.1 and 2.4 of the Temporary Crisis Framework.

- (75) 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.

3.3.1. Sub-Measure 1

- (76) The aid takes the form of direct grants (see recital (12)).
- (77) The overall nominal value of the direct grants will not exceed EUR 400 000 per undertaking. All figures used are gross, that is, before any deduction of tax or other charges (see recital (36)). Sub-Measure 1 therefore complies with point 55(a) of the Temporary Crisis Framework.
- (78) Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (16). Sub-Measure 1 therefore complies with point 55(b) of the Temporary Crisis Framework.
- (79) Aid will be granted under the measure no later than 30 June 2023 (see recital (18)). The measure therefore complies with point 55(c) of the Temporary Crisis Framework.
- (80) Aid will be granted only to undertakings affected by the crisis (see the categories of eligible undertakings and the eligibility criteria in section 2.5 and the modalities for the calculation of eligible costs in recitals (31) to (34)). Sub-Measure 1 therefore complies with point 55(d) of the Temporary Crisis Framework.
- (81) Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (see recital (47)). Sub-Measure 1 therefore complies with point 55(e) of the Temporary Crisis Framework.

3.3.2. Sub-Measure 2

- (82) Aid will be granted under the measure no later than 30 June 2023 (see recital (18)). The measure therefore complies with point 66(a) of the Temporary Crisis Framework.
- (83) The aid takes the form of direct grants (see recital (12)). The nominal value of the grant does not exceed the applicable aid intensity and aid ceilings laid down in point 66(f), 67(b) and 67(c) of the Temporary Crisis Framework (see recitals (49), (50), (51), (54) and (55)). All figures used are gross, that is, before any deduction of tax or other charge (see recital (46)). Sub-Measure 2 therefore complies with points 66 (b) of the Temporary Crisis Framework.
- (84) Aid is granted under Sub-Measure 2 on the basis of a scheme with an estimated budget (see recital (16)). As described in section 2.5, the scope of Sub-Measure 2 covers a large number of sectors except for credit and financial institutions and various other sectors listed in recital (20). As described in recital (23), only energy-intensive businesses can benefit from aid under Sub-Measure 2. By limiting the

granting of aid to energy intensive businesses, Austria aims to target entities and sectors of the economy most likely to be severely affected by the increase in energy costs. Given the importance of energy-intensive businesses to the Austrian and Union economy, the Commission considers that Sub-Measure 2 is designed broadly and does not lead to an artificial limitation of potential beneficiaries. Sub-Measure 2 therefore complies with point 66(d) of the Temporary Crisis Framework.

- (85) The eligible costs are calculated based on the beneficiary's consumption of natural gas and electricity during the eligible period running from 1 February to 30 September 2022 (see recitals (40) to (43)), in line with a formula that is more restrictive than the one provided in point 66(e) of the Temporary Crisis Framework because it uses a factor of 2 instead of 1,5 to determine the part of the cost increase in the eligible period compared to the reference period that is eligible for aid. The consumption that can be taken into account to determine the amount of eligible costs must not exceed 70 % of the beneficiary's consumption in the same period in 2021 (see recital (44)). The measure therefore complies with point 66(e) of the Temporary Crisis Framework.
- (86) Aid granted under Sub-Measure 2 may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided that the applicable aid ceilings per undertaking are not exceeded (see recital (60)). The measure therefore complies with point 66(g) of the Temporary Crisis Framework.
- (87) Under Category I, the overall aid per beneficiary will not exceed 30 % of the eligible costs and the overall aid per undertaking will not exceed EUR 2 million at any given point in time (see recital (49)). Sub-Measure 2 therefore complies with point 66(f) of the Temporary Crisis Framework regarding aid under Category I.
- (88) Aid under Category II will be granted only to beneficiaries qualifying as 'energy-intensive businesses' based on a definition that is in line with the one provided in point 67(b), footnote 95 of the Temporary Crisis Framework (see recital (23)). In addition, only energy-intensive businesses that incur operating losses (i.e. negative EBITDA) during the eligible period are eligible for aid (see recital (50)). For such beneficiaries, the overall aid intensity will not exceed 50 % of the eligible costs and the overall aid per undertaking will not exceed EUR 25 million at any given point in time (see recital (51)). Furthermore, since the aid cannot exceed 80 % of the incurred operating losses (see recital (50)), this means that the aid may not lead to an increase of EBITDA above 0 in the eligible period. Sub-Measure 2 therefore complies with points 67(b) and 67(d) of the Temporary Crisis Framework regarding aid under Category II.
- (89) Under Category III, beneficiaries qualifying as 'energy-intensive businesses' and active in one of the sectors or subsectors listed in Annex I to the previous Temporary Crisis Framework are eligible for increased aid intensities and thresholds described in recitals (23) c) and (53). The Commission notes that all sectors included in Annex I of the previous Temporary Framework are also covered by Annex I of the Temporary Crisis Framework. For such beneficiaries, the overall aid intensity will not exceed 70 % of the eligible costs (recital (54)) and the overall aid per undertaking cannot exceed EUR 50 million at any given point in time (recital (55)). Furthermore, since the aid cannot exceed 80 % of the incurred operating losses (recital (54)), this means that the aid may not lead to an increase of EBITDA above 0 in the eligible period. The measure therefore complies with points

67(c) and 67(d) of the Temporary Crisis Framework regarding aid under Category III.

3.3.3. *Common provisions on monitoring, cumulation, and relocation for both Sub-Measures*

- (90) The Austrian 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 (see recital (10)).
- (91) The Austrian 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 (see recital (26)).
- (92) The Austrian authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (see section 2.9). The Austrian 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 (57) to (60)).
- (93) 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President