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**Subject: State Aid SA.104958 (2022/N) – France**  
**TCF: Aid measures for the additional costs of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict (amendments to SA.103280)**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 9 December 2022, France notified amendments (the “notified amendments”) to an existing aid scheme (the “existing aid scheme”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”) <sup>(1)</sup>. The Commission approved the existing aid scheme in case SA.103280 “TCF: Aid measures for the additional costs of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict” (the “initial decision”). The Commission further approved an amendment of the existing aid scheme in case SA.104325 “TCF: Amendments to SA.103280 (2022/N) Aid measures for the additional costs of natural gas and

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<sup>(1)</sup> 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 426, 9.11.2022, p.1) This Temporary Crisis Framework replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ 131 I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) (‘previous Temporary Crisis Framework). The previous Temporary Crisis Framework is withdrawn with effect from 27 October 2022

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electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict” (the “amendment decision”).

- (2) France exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 <sup>(2)</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) The objective of the existing aid scheme is to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken by Russia as described in section 2 of the initial decision.
- (4) France wishes to amend the existing aid scheme as follows:
- (a) the eligible period is extended until 31 December 2023. As the amount of aid granted is based on energy invoices, and no advance payments are made, aid may be granted until 31 March 2024.
  - (b) the eligibility costs calculation formula described in recital (35) of the initial decision is modified as follows:
    - the costs of gas-based heating and of electricity-based cooling are also taken into account in the calculation of the eligible costs (applicable for eligible costs incurred from 1 March 2022 onwards);
    - the eligible costs are calculated based on the difference between the unit price paid by the entity in a given month in the eligible monthly period and 150 % (as opposed to 200% in the initial decision) of the unit price paid by the entity during the reference period 2021, according to the following formula:  $(P(t) - p(\text{ref}) \times 1.5) \times q(t)$ . This amendment will be applicable for eligible costs incurred from 1 September 2022 onwards.
  - (c) the submeasure described in section 2.7.2 of the initial decision is amended as follows (applicable for eligible costs incurred from 1 September 2022 onwards):
    - the maximum aid intensity is increased from 30% of the eligible costs to 50% of the eligible costs;
    - the individual aid limit at any given point in time is increased from EUR 2 million to EUR 4 million per undertaking;

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

- demonstrating operating loss or EBITDA decrease, as described in recital (41) of the initial decision, is no longer an eligibility requirement under this submeasure;
  - under this submeasure, an energy-intensive business is defined as a legal entity whose purchases of energy products in 2022 amount to at least 3 % of its 2021 turnover, based on data from the financial accounting reports for the calendar year 2021.
- (d) the submeasures described in section 2.7.3 and 2.7.4 of the initial decision are amended as follows (applicable for eligible costs incurred from 1 September 2022 onwards):
- the eligibility conditions are extended so that energy-intensive consumers that demonstrate an EBITDA decrease of at least 40% compared the eligible period (excluding aid) <sup>(3)</sup> are also eligible to these submeasures;
  - an energy-intensive business is by default defined as a legal entity whose purchases of energy products amount to at least 3 % of its turnover, based on data from the financial accounting reports for the calendar year 2021. Alternatively, an applicant may also use data from the first semester of 2022 and may qualify as ‘energy-intensive business’ if its purchases of energy products amount to at least 6 % of the turnover;
  - under the submeasure described in section 2.7.3 of the initial decision, the maximum aid intensity is increased from 50 % of the eligible costs to 65 % of the eligible costs and the individual aid limit at any given point in time is increased from EUR 25 million to EUR 50 million per undertaking;
  - the list of sectors and subsectors eligible to the submeasure described in section 2.7.4 of the initial decision is extended so that all sectors and subsectors listed in Annex I of the Temporary Crisis Framework are eligible;
  - under the submeasure described in section 2.7.4 of the initial decision, the maximum aid intensity is increased from 70 % of the eligible costs to 80 % of the eligible costs and the individual aid limit at any given point in time is increased from EUR 50 million to EUR 150 million per undertaking;
  - under both submeasures, the beneficiary’s EBITDA in the eligible period, including the overall aid, may not exceed 70 % of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.

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(3) The EBITDA of the eligible period will be compared with the EBITDA of the reference period based on monthly or yearly values, as described in the initial decision.

- (5) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered, France confirms that aid granted under the previous and current Temporary Crisis Framework cannot exceed the aid ceilings provided by the current Temporary Crisis Framework for the same eligible period (including ceilings provided by section 2.4).
- (6) The legal basis for the notified amendments is a project amending decree n°2022-967. The legal basis lays down that the measure will not be implemented before it is approved by the European Commission (“standstill provision”).
- (7) Aid may be granted under the existing aid scheme, as amended, as from the notification of the Commission’s approval of the notified amendments.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (8) By notifying the amendments before putting them into effect, the French authorities have respected their obligations under Article 108(3) TFEU (see recital (6) and (7)).

#### **3.2. Existence of State aid**

- (9) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and be liable to affect trade between Member States.
- (10) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (61) to (65) of the initial decision and confirmed in recitals (10) to (11) of the amendment decision. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.3. Compatibility**

- (11) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of section 1 and section 2.4 of the Temporary Crisis Framework for the reasons set out in recitals (66) to (98) of the initial decision. The Commission therefore refers to the respective assessment of the initial decision. The Commission notes that that assessment remains valid although the Temporary Crisis Framework has in the meantime been replaced by the version referred to in recital (1) of this Decision, inasmuch as the conditions of sections 1 and 2.4 of the previous Temporary Crisis Framework that are

relevant for the initial decision have not been modified in the current version of that Framework <sup>(4)</sup>.

- (12) The notified amendments do not affect the conclusion that the measure is compatible with the internal market pursuant to Article 107(3)(b) TFEU. In particular:
- (a) As regards to the extension to the period within which the aid can be granted until 31 March 2024 (see recital (4)(a)), and considering that aid is only granted following an ex-post verification of the supporting documents, the amendment complies with point 66(a) and footnote 87 of the Temporary Crisis Framework.
  - (b) as regard to the extension of the eligibility period until 31 December 2023 (see recital (4)(a) of this decision), the amendment complies with point 66(e) of the Temporary Crisis Framework.
  - (c) as regard to the modification of the eligible cost formula (see recital (4)(b) of this decision):
    - in the initial decision, French authorities limited the calculation of eligible costs to electricity and gas consumption. The notified amendments extend the scope of the eligible costs considered to gas-based heating and electricity-based cooling (applicable for eligible costs incurred from 1 March 2022 onwards). The Temporary Crisis Framework stipulates that costs related to the consumption of natural gas (including as feedstock), electricity, and heating and cooling may be taken into account in the calculation of the eligible costs. The amendment therefore complies with point 66(e) of the Temporary Crisis Framework;
    - by calculating the eligible costs based on the difference between the unit price paid by the entity in a given month in the eligible monthly period and 150 % (as opposed to 200 % in the initial decision) the unit price paid by the entity on average for the reference period 2021, the notified amendments aim at replicating the eligible cost formula adjusted in the current version of the Temporary Crisis Framework. The amendment therefore complies with point 66.e) of the Temporary Crisis Framework;
  - (d) as regard to the amendments of the submeasure described in section 2.7.2 of the initial decision (see recital (4)(c) of this decision) and assessed under point 66 of the Temporary Crisis Framework:
    - the increase of the aid intensity per beneficiary from 30% of the eligible costs to 50% of the eligible costs complies with point 66(f);
    - the increase of the individual aid limit at any given point in time from EUR 2 million to EUR 4 million per undertaking complies with point 66(f) of the Temporary Crisis Framework;

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<sup>(4)</sup> See in this regard Annex II (Correlation Table) to the Temporary Crisis Framework.

- demonstrating operating loss or EBITDA decrease is not a requirement under point 66 of the Temporary Crisis Framework. Therefore, removing these conditions from eligibility conditions under this submeasure complies with point 66 of the Temporary Crisis Framework.
  - the measure is limited to energy intensive-businesses, which is not required by the Temporary Crisis Framework. The submeasure is therefore more restrictive than the Temporary Crisis Framework under objective and transparent criteria. The Commission concludes that this amendment does not lead to an artificial limitation of potential beneficiaries and therefore complies with point 66(d) of the Temporary Crisis Framework;
- (e) as regard to the amendments of the submeasure described in sections 2.7.3 and 2.7.4 of the initial decision (see recital (4)(d) of this decision) and assessed under point 67(b), 67(c) and 67(d) of the Temporary Crisis Framework:
- allowing energy-intensive businesses that demonstrate an EBITDA decrease of at least 40% compared the eligible period (excluding aid) as eligible beneficiaries complies with points 67(b) and 67(c) of the Temporary Crisis Framework;
  - France defines, under these submeasures, an energy-intensive business according to the two options detailed in footnote 95 of the Temporary Crisis Framework. The associated amendments are therefore compliant with points 67(b) and 67(c) of the Temporary Crisis Framework;
  - the notified amendments increase, for the submeasure described in section 2.7.3 of the initial decision, the maximum aid intensity per beneficiary to 65 % of the eligible costs and the individual aid limit at any given point in time to EUR 50 million per undertaking. This amendment complies with point 67(b) of the Temporary Crisis Framework;
  - the notified amendments extend the list of sectors and subsectors eligible to the submeasure described in section 2.7.4 of the initial decision to all sectors and subsectors listed in Annex I of the Temporary Crisis Framework. The amendment therefore complies with point 67(c) of the Temporary Crisis Framework;
  - the notified amendments increase, for the submeasure described in section 2.7.3 of the initial decision, the maximum aid intensity to 80 % of the eligible costs and the individual aid limit at any given point in time to EUR 150 million per undertaking. This amendment complies with point 67(c) of the Temporary Crisis Framework;
  - under both submeasures, the beneficiary's EBITDA in the eligible period, including the overall aid, may not exceed 70 % of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase

of EBITDA in the eligible period above 0. Both submeasures therefore comply with point 67(d) of the Temporary Crisis Framework.

- (13) Apart from the notified amendments, France confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered (see recital (5)).
- (14) France confirms that aid granted under the previous and current Temporary Crisis Framework cannot exceed the aid ceilings provided by section 2.4 of the current Temporary Crisis Framework for the same eligible period (see recital (5)).
- (15) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Crisis Framework. The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision.

#### **4. CONCLUSION**

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

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

Yours faithfully,

For the Commission

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Executive Vice-President