EUROPEAN COMMISSION

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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: **State Aid SA.102428 (2022/N) – Hungary**
TCTF – RRF: Aid for energy storage facilities for the integration of weather variable renewable energy sources

Excellency,

1. PROCEDURE

(1) By electronic notification of 17 August 2022, Hungary notified an aid scheme for energy storage facilities for the integration of weather variable renewable energy sources in the Hungarian electricity system (title under national law '*Villamos energia tárolói bevételkompenzációs rendszer', Electricity storage grant and revenue compensation system*), the 'measure' or the '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') ([1]). The Commission requested additional information on

([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 426, 28.10.2022, p. 1).

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10 October 2022, which were provided by the Hungarian authorities on 5 February 2023.

(2) On 5 February 2023, Hungary submitted an amended version of the measure in line with the requirements of the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the 'Temporary Crisis and Transition Framework') ([2]). The Commission requested additional information on 15 March, on 12 and 18 April and on 24 May 2023. The Hungarian authorities provided the requested information on 5, 14 and 18 April 2023 and on 26 May 2023.

(3) Hungary 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 ([3]) and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Background and objectives

(4) Hungary considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia have economic repercussions on the entire internal market ('the current crisis'). The increase in the prices of energy caused by the current crisis proved the urgency to quickly reduce dependency on fossil fuels imports and accelerate the energy transition, by expanding the availability of renewable energy in a cost-effective way in line with the REPowerEU Plan. The measure also intends to deploy renewable energy generation projects that are needed for the transition towards a net-zero economy in line with the Green Deal Industrial Plan ([4]).

(5) The Hungarian reliance on natural gas imports from Russia means that the energy sector faces unprecedented hardships, as Hungary strives to maintain balance of supply and affordability for consumers. To reach a steady supply of electricity and continue on the path of decarbonisation, Hungary wishes to step up the expansion of renewable based generation capacities, which support the diversification of the energy supply, decrease import dependency and provide clean source of electricity. One of the steps envisaged to reduce Hungary's reliance on fossil fuels – notably natural gas imported from Russia – is additional

([2]) Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3. This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), ('Temporary Crisis Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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

([4]) COM(2023) 62 final, Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions, A Green Deal Industrial Plan for the Net-Zero Age, 1.2.2023.

grid-connected photovoltaic (‘PV’) power generation. The most critical impediment to fast increase of renewable capacities is the shortage of flexible supply.

(6) The measure aims at enhancing the flexibility of the Hungarian electricity system by supporting new electricity storage investments in order to facilitate smooth integration of high capacity of variable RES in the Hungarian electricity system. Energy storage has a high potential to accommodate rapid changes in electricity supply and demand, to cater large intraday ramping and deceleration in residual load, and to provide frequency regulation and inertia services to ensure safe and stable operation of the electricity grid. Expanding these capabilities is indispensable to further expand renewable electricity generation in Hungary.

(7) Hungary explains that despite the growing demand, there is high uncertainty regarding the attainable income of new storage solutions that hinders investments. Although the Russian war of aggression against Ukraine has amplified price levels and resulted in excessive price volatility, and consequently the revenues an existing storage facility would be able to realise is high, it is difficult to assess how long the elevated price and volatility level will last. The business case for storage facilities has also deteriorated as the Russian war of aggression against Ukraine has contributed to the sharp rise in the prices of modern energy storage solutions. The Russian war of aggression against Ukraine has a detrimental effect on the funding costs as well and resulted in much tighter credit lines for potential investors. The heavy investment need, the rise in funding costs and the uncertain revenue potential might hinder storage investments in the next few years. Without storage investments, the potential to integrate new renewables would be seriously constrained. Therefore, in order to unlock the renewable potential, the measure is designed to support the actual and potential future energy market participants with the procurement of electricity storage devices. Hungary’s intention to encourage the use of energy storage facilities in order to integrate renewable electricity generation is also stated in its national energy and climate plan (‘NECP’) ([5]).

(8) Hungary 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 (‘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)(c) TFEU, in light of sections 1 and 2.5 of the Temporary Crisis and Transition Framework.

2.2. The nature and form of aid

(10) The measure aims to support the installation of at least 800 MW/1600 MWh of new electricity storage capacity, which shall be active in both the wholesale and balancing markets to contribute to the measure’s objectives.

([5]) See e.g. pages 57 and 89 of the Hungarian NECP: https://energy.ec.europa.eu/system/files/2022-08/hu_final_necp_main_en.pdf.

(11) The measure provides for two forms of aid to be granted cumulatively to the supported projects: i) direct grants to support the initial investment, fixed at EUR 350 000/MW (disbursement in HUF) for every supported project (the 'investment grant'); and ii) annual support for operation for a 10-year period in the form of a two-way contract for difference ('CfD') to cover the balance of any residual funding gap, after the payment of the investment grant (the 'annual support').

(12) The investment grant for the financing of capital expenditure will be paid during the construction period of each supported project, while the annual support, on a per MW basis (disbursement in HUF), will be paid over a 10-year period as of the commencement of operation of the project.

(13) The amount of the operating support will be calculated on a monthly basis, as the difference between the amount of revenues tendered by each project as necessary for its financial viability ('Bid Revenues', see section 2.8.1) and the so-called reference revenues that each project is expected to earn from its participation in the various electricity markets ('Market Revenues'). The annual support will be subject to regular monitoring, review, and adjustment by the Hungarian Energy and Public Utility Regulatory Authority [6] ('MEKH') to prevent overcompensation.

(14) The reference revenues will be calculated by MEKH based on a benchmark revenue characterising the storage facilities of similar size and capacity. The benchmark revenue calculation will take into account both wholesale and balancing market revenues.

(15) Before the tenders, MEKH will organise market consultations and study the emerging European experience on what level of balancing market activity can be expected, to establish a reliable benchmark. Due to the high uncertainty and lack of information, MEKH will retain the right to update the revenue benchmark, if the observed behaviour of storage facilities significantly deviates from the actual benchmark to avoid overcompensation of the beneficiaries. Hungary confirmed that if the average of the actual revenues is at least 20 % higher or lower than the revenue benchmark, MEKH will assess and update the benchmark for the following year. The benchmark revenue composition will be fixed for at least one year, and MEKH will continuously monitor the behaviour of the storage operators, their bidding patterns on the balancing capacity market and the frequency of their activation as a balancing energy provider. If necessary, storage facilities will be clustered according to their technical characteristics, size and capacity.

(16) As part of the tender documentation, MEKH will propose an initial indicative benchmark to be refined based on consultation feedback. The initial proposal for the consultation will set the initial benchmark activity as a composition of one price arbitrage cycle on the wholesale market from dawn to evening peak (80%

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[6] The Hungarian law Act XXII of 2013 designates the MEKH as the Hungarian regulatory authority in line with footnote 120 TCTF, and pursuant to Art 57(1) of Directive (EU) 2019/944. See https://www.mekh.hu/download/c/1b/10000/act_xxii_of_2013_on_the_hungarian_energy_and_public_utility_regulatory_authority.pdf

depth of discharge) and offer of four hours of balancing capacity in peak hours (80% of charging capacity).

(17) The revision of the benchmark will be based on market needs, taking into account the changes in optimisation of the storages. The supported storages will be ranked by profitability, and only the median and better storages will be considered when setting the new benchmark. Hungary submitted that this approach minimises the risk of intentional loss-making prior to the review in order to maintain a higher annual support in the following period. The storage operators are free to optimise their activity according to price signals, and they can retain the additional revenue earned from exceeding the benchmark. As a result, Hungary submits that the aid will preserve operating incentives and price signals.

(18) The benchmark prices will be set as monthly averages on the relevant markets, such as day ahead, intraday, balancing and capacity markets for electricity. This incentivises storage operators to bid in hours when their earning is the highest, and there is no bidding obligation in hours when the price does not cover marginal costs. As the price is set as an average, taking into account the accepted bids of other players in case of capacity markets, or based on marginal pricing in case of energy markets, storage facilities are not incentivised to offer lower price than market average.

(19) Hungary submitted that the combination of the investment grant with the annual support is an appropriate instrument to achieve simultaneously several objectives, all crucial to allow the immediate implementation of investments in storage. More specifically,

(a) cover the funding gap that remains after granting the investment grant;

(b) hedge against the volatility of market revenues, which cannot be reliably predicted over the lifetime of the projects, enhancing critically the bankability of the projects;

(c) avoid overcompensation and windfall profits in case of unexpectedly high market revenues, as CfD acts as a claw-back mechanism as regards any excess market revenues; andprovide a mechanism incentivising effective market participation.

2.3. National legal basis

(20) The legal basis for the measure is a modification of the Act Nr. LXXXVI from 2007 on electricity which will set the national legal basis for the grant of State aid for the establishment of electricity storage facilities pursuant to the Commission's prior approval of such aid. The modification will be adopted following the Commission's decision.

(21) Further implementing measures to be adopted:

(a) a ministerial decision dealing with the principles applied to the determination of the annual support and the allocation of its funding to a Storage Support Account;

(b) a decision of MEKH laying down the detailed methodology for the determination of the amount of the annual support for the supported projects and the application of the regulatory incentives and disincentives for the effective participation of the facilities in the electricity markets and for the operation of the facilities such that maximises system benefits;

(c) modifications to the Electricity Market Regulations and Network Codes to implement all necessary details for the application of the scheme.

(22) Other relevant technical references:

(a) Government Decree Nr. 273/2007. (X. 19.) on the implementation of the provisions of the Act Nr. LXXXVI. from 2007 on electricity; and

(b) Section 3(3) of Government Decree 37/2011. (III.22.) on national State aid procedures and the regional aid map.

(23) The Hungarian authorities confirmed that the call for proposals will be published only after the Commission's approval of the scheme, and that hence any aid will only be granted in respect of the standstill obligation.

2.4. Budget, financing, and duration of the measure

(24) The estimated budget of the measure is EUR 1.134 billion (approx. HUF 436 billion ([7])) to support the installation of at least 800 MW/1600 MWh of new electricity storage capacity. From this budget, approximately EUR 280 million (HUF 108.6 billion) for the investment grant will be funded by the Recovery and Resilience Facility ('RRF') (approx. EUR 161.5 million; HUF 62 billion) and the Modernisation Fund (approx. EUR 121.5 million; HUF 46.6 billion). The remaining budget of approx. EUR 857 million (HUF 329 billion) for the annual support for 10 years of operation will be paid from the Storage Support Account to be created similarly to the feed-in-tariff and premium system and will be paid via a levy imposed on electricity users ([8]).

(25) The Hungarian authorities explained that the levy will be a mandatory charge that will be imposed, through a legislative measure, on consumers that are not entitled to universal service ([9]), proportional to the amount of electricity they buy. Balancing groups will be only intermediaries between the transmission system operator ('TSO') (MAVIR ZRt.) and the consumers. The balancing groups will pass-through the charge. The Storage Support Account will be under the control of the TSO. MEKH will supervise how the TSO is operating the Account and will set the benchmark revenue which is the basis for calculating the annual support.

([7]) According to the Hungarian authorities, the exchange rate between EUR and HUF based on last 30 days average from 14 March 2023 to 14 April 2023 was 384 HUF/EUR.

([8]) Hungary noted that the Storage Support Account will work like the METÁR RES Special Account which finances the RES scheme in Hungary (see Commission decision of 11 July 2017 in State Aid SA.44076 – Hungary Aid for electricity production from renewable energy sources (METÁR), OJ C 198, 8.6.2018, p. 1).

([9]) According to the Hungarian regulations, households and micro-enterprises are entitled to universal service and are therefore excluded from the duty to pay the levy.

(26) 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 2025.

2.5. Administration of the measure

(27) As regards the investment grant, the aid financed by the RRF will be administered by the RRF National Authority operating under the Ministry for Regional Development, while the aid financed by the Modernisation Fund will be administered by the Managing Authority responsible for the Modernisation Fund in Hungary.

(28) Concerning the annual support, the managing authority will be the MEKH, which will set the monthly reference revenue for the CfD based on market monitoring and will also be responsible for setting the contractual terms between parties. The contractual party (financial intermediary) is the TSO.

(29) From an operative point of view, the Deputy State Secretary for the implementation of the RRF under the State Secretariat for Funds from the European Union will be responsible for organising the tenders, for setting all the technical parameters included in the tender documentation, and for checking if applicants meet the eligibility criteria, with the assistance of the Ministry for Energy. MEKH will determine the methodology of the benchmark revenue and set the size of the levy to finance the scheme. The Hungarian transmission system operator MAVIR will be responsible for the administration of the annual support.

2.6. Beneficiaries

(30) The final beneficiaries of the measure are undertakings active in the energy sector in Hungary. Credit institutions or other financial institutions are excluded as eligible final beneficiaries.

(31) Hungary confirmed 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.

(32) Hungary confirmed 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 ([10]). In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

([10]) For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.7. Sectoral and regional scope of the measure

(33) The measure is open to undertakings active in the energy sector in Hungary. The measure applies to the whole territory of Hungary.

2.8. Basic elements of the measure

2.8.1. The tender process

(34) The storage projects to be supported by the scheme will be selected through a competitive tender process.

(35) The tender rules will be defined ahead of each tender round. The Hungarian authorities confirmed that all criteria related to the competitive tender process will be defined ex-ante (at least one month before the tender) in the call for proposals and/or its annexes. In addition, the scheme, once approved by the Commission, will be published to allow all interested parties to prepare their projects.

2.8.1.1. Eligibility

(36) All electricity storage technologies are eligible under the scheme. Considering current market trends and availability of technologies and their support services in Hungary, the Hungarian authorities expect that the majority of the proposals will be battery storage projects using Li-ion battery technology and – to a lower extent – flow batteries. The Hungarian authorities confirmed that they neither encourage nor discourage the use of any specific technology, and that the scheme contains no rules that would limit technology neutrality.

(37) The Hungarian authorities confirmed that the aid will be granted to newly installed or repowered storage capacities where repowering means the full or partial replacement of installations and equipment for the purposes of replacing capacity or increasing the efficiency or capacity of the installation, in line with points 77(l) and 78(l) of the Temporary Crisis and Transition Framework.

(38) No support will be granted in cases where the start of works on the project took place prior to 20 July 2022.

(39) According to the Hungarian authorities they aim to signal to the energy market, that a diverse technological pool is beneficial for competition as well as the electricity system. Therefore, they would like to allocate a certain budget of each tender to technology groups with different technical lifetimes, which they call "application windows". There will be three application windows within each of the two tenders for electricity storage technologies with an indicative budget of EUR 100 million for the technology group with a maximum lifetime of 10 years, an indicative budget of EUR 42 million for the technology group with 10 to 29 years, and an indicative budget of EUR 13 million for the technology group with 30 or more years respectively. The call for applications would be the same for all technology groups, but with potentially different prices per technology group. Thus, competition would take place within these technology groups and not between them.

(40) Unused budget in any technology group can be reallocated to other groups. As the maximum price set in the call for applications is the same for all groups, less

applications are expected for the groups with longer technical lifetime, which is reflected in the lower allocated budgets to avoid a lack of competition in any technology group. The Hungarian authorities explained that there are many technologies available in the EU, which are not available wide-scale or not embedded in the market as much as Li-ion battery storage and that this subdivision would allow such optimal and innovative technologies more inclusivity in the tenders, thus encouraging lifetime cost effectiveness aspect of investments.

(41) The Hungarian authorities confirmed that the annual support will be paid over a 10-year period, regardless of the operating lifetime of the projects with longer maximum lifetime. According to calculations provided by the Hungarian authorities, the profitability without the annual support will be very low with substantial downside risk for the operators with longer technical lifetime. Therefore, Hungary considers the risk of overcompensation to be low, rendering a claw-back not necessary beyond the 10 years of annual support.

(42) Hungary submitted that the exact eligibility criteria applicable to each tender will be set well in advance ahead of the tender. Such criteria will include the following:

(a) A minimum requirement of two hours of power capacity, to exclude severe functionality limitations due to energy capacity related constraints. Storage facilities with a higher power capacity can participate at the tender, but they will not be renumerated for the additional energy capacity.

(b) An automatic Frequency Restoration Reserve ('aFRR') accreditation from the TSO before start of the operation of the supported storage facility, to be able to provide balancing services. Storages can qualify for aFRR accreditation in a stand-alone operation mode or as part of an aggregator to facilitate small storage facilities.

(c) Bid bonds and performance bonds, to minimise the risk of non-performance and ensure that only mature projects participate.

(d) At least a ten-year operation of the supported storage facility, to increase the added value of the scheme to the energy infrastructure.

(43) There is no *ex-ante* limitation on the size of the projects (besides the anti-concentration rules described in recital (58)).

2.8.1.2. Tendered capacity and timing

(44) Hungary submitted that at least 800 MW of new storage capacity are needed in the Hungarian electricity system to unlock grid integration opportunity for at least 4 GW of new intermittent renewable generation capacity. This is for various reasons. First, Hungary faces a special challenge in maintaining and expanding balancing capacity supply when all the TSOs join the PICASSO ([11]) aFRR

([11]) The Platform for the International Coordination of Automated Frequency Restoration and Stable System Operation (PICASSO) is the implementation project endorsed by all TSOs through the ENTSO-E Market Committee to establish the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation or aFRR-Platform, pursuant to balancing platform and introduce standard European balancing energy products. Second, the renewable penetration that took off in Hungary in 2019 generated significantly higher balancing needs than traditional generators, which resulted in the TSO gradually increasing the amount of booked automatic and manual FRR (frequency restoration reserve) balancing capacity. Hungary expects the number of commercial PV installations and of household and industrial rooftops to increase in the future and thus significantly higher volumes of new-built storage facilities are needed to ensure supply keeps track with the growing demand. Third, the new PV capacity increases the average size of the afternoon ramp of residual demand in the summer season. As the import dependency has already reached high levels in the evening hours, Hungary targets to provide at least 50% of the evening ramp by storage facilities.

(45) Furthermore, Hungary pointed out to the Ten-year development plan ('TYNDP') prepared by Entso-e (2022 edition), which identifies Hungary as one of the five EU countries with the highest need for storage investment and for additional investments in decarbonised peaking units ([12]).

(46) Hungary submitted that there are already storage projects with a total capacity of over 800 MW that can bid for support under the scheme: in the last round of the grid access procedure ([13]) there were 133 applicants of a total 650 MW, and there are other three large projects with a total capacity of 170 MW to be installed at existing power plant sites without new grid access. Hungary expects further storage projects to request grid access during the 2023 grid access procedure and potentially further applicants to emerge at the tenders. Therefore, Hungary submits that all together there is about 1200 MW of potential storage projects, which implies that a competitive bidding process can be achieved.

(47) Based on the considerations in recital (46), Hungary expects 6-20 successful beneficiaries from various segments of the energy sector (suppliers, generating companies, existing and future PV owners, existing and future aggregators) and from various sizes (small, medium sized as well as large companies).

(48) The Hungarian authorities do not have specific data regarding the maturity of the potential storage projects, but they will update the information about the relatively mature projects with available grid access before the tenders. In order to avoid undersubscribed tenders, the selection procedure will be organised in two or three tender rounds. The number of rounds and the exact tendered capacity of each round will depend on the availability of mature projects and the restrictions imposed by the timeline under the RRF and the Modernisation Fund. The oversubscription rule applied to the tenders shall ensure the competitiveness of the tenders (see recital (57)).

(49) Hungary currently envisages the following timetable:

Article 21 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EB GL). (https://www.entsoe.eu/network_codes/eb/picasso/)

([12]) Available here: https://eepublicdownloads.blob.core.windows.net/public-cdn-container/tyndp-documents/TYNDP2022/public/system-needs-report.pdf, page 8.

([13]) The grid access procedure is a regular process for new projects to request connection and access to the electricity network.

(a) Q2 2023 – Publishing the call for proposals.

(b) 1st round: Q3 2023 – Submission of aid requests; Q4 2023 – Selection of proposals and signing of grant contracts; Q2 2026 at the latest – Completion of projects.

(c) 2nd round: Q2 2024 – Submission of aid requests; Q3 2024 – Selection of proposals and signing of grant contracts; Q2 2027 – Completion of projects.

(50) The projects will have to be completed and put in operation within 36 months of the signing of the grant contract. If this deadline is not met, 5% of the amount of aid awarded must be reimbursed or reduced per month after the first three months of delay, increasing to 10% per month of delay after the sixth month, unless the delay is due to factors outside the control of the aid beneficiary, and could not reasonably have been foreseen. These criteria will be set out in the call for proposals.

2.8.1.3. Selection of the beneficiaries

(51) The projects to be supported by the scheme will be selected based on a least cost criterion, i.e. on the basis of the lowest amount of the annual guaranteed revenues for the foreseen 10-year period of annual support (Bid Revenue) requested by each project in terms of aid per unit of capacity installed (in EUR/MW/year). They will be selected in an ascending order, i.e. starting from the minimum bid and then moving upwards to select the next lowest bid, until the tendered capacity is exhausted. The Bid Revenue of each project will correspond to the amount offered by the successful bidders, on a 'pay-as-bid' basis.

(52) The Hungarian authorities confirmed that the investment grant is part of the tender process. The investment grant and the annual support will be allocated in the same tender procedure. All projects selected through the tender process will receive an equal amount of investment grant (350 000 EUR/MW), which will be known to the participants before commencement of the tender process. Only projects selected by Bid Revenue may receive the investment grant. Hungary also confirmed that the aid intensity of the investment grant will not exceed 45 % of the total eligible investment costs. According to Hungary, the eligible costs cover in particular the procurement of energy storage systems, the installation of energy storage systems, the implementation of the grid connection, the costs for planning and project management and the accreditation of storage units. Power generators, employment costs and rent costs, among others, are explicitly excluded and cannot be considered as eligible costs.

2.8.1.4. Maximum and minimum price

(53) A lowest-price threshold will be set in advance of each tender, to protect against under-bidding strategies that would exclude other stakeholders from the tender. The lowest-price threshold will be set by the Ministry of Energy on the basis of market monitoring (and in the case of the second tender – experience from the first), but it will not be less than 10% of the maximum price threshold described in recital (55).

(54) The last successful project of each tender will be allowed to lead to a cumulative capacity exceeding the tendered capacity up to a certain margin that will be decided (in the range 5-10%), in order to allow for cost optimal projects to be selected.

(55) A maximum price threshold will also be imposed in advance of each tender, to protect against tacit collusion. This threshold will be calculated on the basis of a 10% project IRR for the reference project, after deducting the investment grant from the CAPEX expenditure.

2.8.1.5. Oversubscription and anti-concentration rules

(56) The scheme will introduce various rules to ensure that a sufficient number of independent entities will participate in the tender process.

(57) An oversubscription rule will apply to each tender round. After screening applicants based on the applicable eligibility criteria, the capacity of eligible projects will be determined. If this does not exceed the tendered capacity by more than 50%, the latter will be adjusted downwards, in order to ensure an oversubscription level of at least 50%. The Hungarian authorities confirmed that should the competitive bidding process suffer repeated undersubscription, all future schemes with these goals that are notified to the Commission will contain potential remedies for this problem.

(58) An anti-concentration rule will also apply to each tender round. An EUR 42 million maximum aid limit will apply on each single legal entity or group participating in a tender process. The aggregated maximum aid of a group shall be calculated in a way that legal entities belonging to same group, as defined in Article 2 of Directive 2013/34/EU, shall be aggregated. Hungary submitted that these anti-concentration rules will ensure that support will be granted under the measure to at least five independent beneficiaries.

2.8.1.6. Foreign projects

(59) The scheme will be primarily national in scope, but to some extent open to installations in the neighbouring EU Member States. Hungary explained that the supported storage facilities must be able to provide both wholesale and balancing services in the Hungarian electricity market, in view of the primary objective of the scheme to support the smooth integration of a high capacity of variable RES ([14]). This requires that the day-ahead, intra-day and balancing markets of Hungary and of the Member State, where the foreign project is located, are coupled and that it must be possible to exchange all system services of interest. Currently, Hungary is coupled with all five neighbouring EU Member States at the day-ahead and intraday markets, but no cross-border balancing capacity exchange has been established for the balancing markets. There are preliminary discussions with Austria to enable the aFRR balancing capacity exchange. Therefore, Hungary submits that if there is progress in launching a cross-border

([14]) See e.g. Commission decision of 21 March 2023 in SA.102761 RRF - State aid scheme aimed at developing the electricity storage capacities in Romania, OJ C 162, 5.5.2023, p. 10; and Commission decision of 5 September 2022 in SA.64736 RRF - Greece - Financial support in favour of electricity storage facilities, OJ C 387, 7.10.2022, p. 1.

balancing capacity exchange before the tender dates of the second tender round and of any subsequent rounds, the scheme will be open for projects in the relevant EU Member States (most likely Austria).

(60) In order to quantify the storage capacity of the scheme that will be open to projects in other EU Member States, Hungary would apply a methodology similar to the one included in the Hungarian RES scheme ([15]), as the purpose of both schemes is similar in supporting Hungary's targets for achieving a high RES penetration in the electricity system. Specifically, the volume of the storage capacity open for storage facilities operating in foreign projects located outside Hungary will be calculated in the following way. First, the transmission capacity set aside for balancing capacity exchange will determine the theoretical maximum of the participating projects, as it is the maximum of the balancing service that can be imported. The maximum value will be de-rated according to the share of renewables in total imports from the Member State concerned.

(61) Hungary confirms that the foreign projects will compete with domestic projects, participating in the same tenders under the same conditions applicable to domestic projects, as regards anti-concentration rules and all other participation requirements, i.e. including those concerning licensing maturity, provision of guarantees for participation and timely implementation thereafter, capability to provide relevant services. All the bids, from both domestic and foreign projects, will be ranked together and the projects will be selected based on a least cost criterion.

2.8.2. Funding gap analysis

(62) The Hungarian authorities provided estimations of the business plan for a reference project of electricity storage with a capacity of 6 MW to be realised under the scheme. The business plan includes estimations for the cost of investment, operation, financing, and taxes as well as revenues from energy arbitrage and the balancing markets. The main financial figures are summarised in Table 1 and described below.

Table 1: Funding gap calculation for a reference electricity storage project in Hungary

	Value in 2023 real terms
CAPEX [EUR/MW]	[…] [(*)]
Fixed investment grant [EUR/MW]	350 000
Capex payable [EUR/MW]	[…]
Grid access fee [EUR/MW]	75 000
Project lifetime [years]	10
Residual value at end of lifetime	[…]

([15]) See Commission decision of 11 July 2017 in State Aid SA.44076 – Hungary Aid for electricity production from renewable energy sources (METÁR), OJ C 198, 8.6.2018, p. 1.

*Confidential information.

[EUR/MW]	
Capacity to power ratio [hours]	2
OPEX	2.5 %
IRR	10 %
Cost of credit	7 %
Debt ratio	50 %
WACC	8.5 %
Inflation rate	2 %
Round trip efficiency	95 %
Availability	90 %
Annual income from energy arbitrage [EUR/a]	[…]
Annual income from aFRR balancing capacity [EUR/a]	[…]
Net present value of project at IRR without annual support but including the investment grant [EUR/MW]	[…]
Funding gap as NPV divided by total CAPEX plus grid access fees [EUR/MW]	52.9 %
Missing money [EUR/MW/a]	107 230

(63) According to the information submitted by the Hungarian authorities on the reference project, the average investment costs are to be expected around […] . With the fixed direct grant under the scheme of EUR 350 000 EUR/MW and expected costs for the grid connection of EUR 75 000, the net investment amounts to […]. The estimation assumes a remaining value after 10 years of operation of approx. […].

(64) For the financing costs, the business case estimation assumes an interest rate of 7 % for the credit and a debt ratio of 50 % while the expected internal rate of return ('IRR') for own funds of the beneficiaries is assumed to be 10 %. Consequently, the weighted average cost for capital ('WACC') is 8.5%.

(65) For operating expenses (such as maintenance) the business plan assumes annual costs of 2.5 % of the investment costs.

(66) According to the business case estimation, revenues are expected from energy arbitrage and providing capacity to the electricity balancing market. In the context of electricity storage, energy arbitrage is understood as the process of buying and storing electricity at times of high renewable generation and comparable low prices and selling electricity back to the grid in times of relative scarcity and higher prices. In the submitted business case calculation, the Hungarian authorities assume a significant decrease of the recently high price volatility in the

electricity market to levels seen prior to the impact on price volatility of the COVID pandemic and the impact of the Russian aggression against Ukraine from 2022. Based on an assumed price spread of […], the expected annual revenues from energy arbitrage are […] in 2023 real terms. From the balancing market […] are assumed as revenues from the aFRR capacity fees based on an hourly booking fee of […].

(67) Hungary submitted that, in the medium-term, electricity storage facilities in the Hungarian electricity market will not earn enough to recover their costs. The business plan estimation submitted by the Hungarian authorities leads to a resulting net present value ('NPV') of - […]. The numbers presented by Hungary result in a funding gap of approx. 53 % already including the investment grant. Without the investment grant the funding gap would be […].

(68) Therefore, in the absence of the aid, the storage investors would face a funding gap and limited bankability of storage investments. The Hungarian authorities submitted that without State intervention, the required investments in storage capacity are not expected to take place in a timely manner and size to achieve the objective of the measure. This would hamper the capacity of the grid to integrate potential future electricity generated by weather variable RES.

(69) As described in recitals (12) to (19), the annual support will be granted in the form of a two-way CfD and it will be subject to regular monitoring, review, and adjustment by MEKH to avoid overcompensation.

2.8.3. Compliance with 'do no significant harm' principle

(70) The Hungarian authorities confirmed that the scheme complies with the 'do no significant harm' principle. First, the investments to increase electricity storage capacities indirectly contribute to climate protection and reduction of greenhouse gas emissions, as they are deployed to integrate electricity produced by additional weather-dependent renewable energy generation units into the grid. Second, the electricity storage appliances at the end of their lifetime and any electronic waste generated by the investments will be disposed of in accordance with the applicable national rules on waste management activities related to battery and accumulator waste and on waste management activities related to electrical and electronic equipment. Finally, with regard to the criteria set by the objective of protecting and restoring biodiversity and ecosystems, the investments under this scheme will be subject to the same criteria that apply to the investments on ensuring a flexible and secure electricity grid for the integration of weather-dependent renewable energy sources.

(71) The Hungarian authorities confirmed that the granting authority will check if the applicants comply with the 'do no significant harm' principle and the applicable environmental legislation ([16]), as part of the eligibility check stage before the granting of the aid.

([16]) According to the Hungarian authorities, an eenvironmental impact assessment is not necessary for the installation of battery storage capacities but may be necessary for pumped hydro storage facilities.

2.9. Compliance with relevant provisions of Union law

(72) The Hungarian authorities confirm that the measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

(73) The Hungarian authorities confirm in particular that the provisions under EU law on ownership, development, management and operation of storage facilities, notably Articles 36 and 54 Directive 2019/944, will be complied with.

2.10. Cumulation

(74) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of the source of financing for the aided project.

(75) The Hungarian authorities confirmed that aid granted under the measure may not be cumulated with aid under the *de minimis* Regulations ([17]) or the General Block Exemption Regulation ([18]).

(76) The Hungarian authorities confirmed that aid under the measure may not be cumulated with aid under a measure approved by the Commission under the COVID-19 Temporary Framework ([19]).

(77) The Hungarian authorities confirmed that aid granted under the measure may not be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework.

(78) The Hungarian authorities confirmed that aid under the measure may not be cumulated with other aid for the same eligible costs. The investment grant can be cumulated with the annual support, in line with point 77(n) of the Temporary

([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), Commission Regulation (EU) 2022/2472 of 14 December 2022 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 327, 21.12.2022, p. 1) and Commission Regulation (EU) 2022/2473 of 14 December 2022 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 327, 21.12.2022, p. 82).

([19]) Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 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).

Crisis and Transition Framework, as such cumulation was already foreseen before the adoption of the Temporary Crisis and Transition Framework in the amended notification that was submitted by Hungary on 5 February 2023. The Hungarian authorities submitted that the cumulation of the investment grant with the annual support is necessary and that the selection criterion for the granting of both forms of aid is the Bid Revenue.

2.11. Monitoring and reporting

(79) The Hungarian authorities confirmed that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition 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 ([20])).

3. ASSESSMENT

3.1. Lawfulness of the measure

(80) By notifying the measure before putting it into effect, the Hungarian authorities have respected their obligations under Article 108(3) TFEU (recital (23))

3.2. Existence of State aid

(81) 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.

3.2.1. Imputability and State resources

(82) The measure is imputable to the State, since it is administered by the responsible Hungarian authorities (recitals (27)-(29)) and it is based on a national legal act and the related implementing acts (recitals (20)-(22)).

(83) As regards the State resources criterion, the Commission notes that the investment grant will be financed by the RRF and the Modernisation Fund, while the annual support will be financed through the Storage Support Account (recital (24)).

(84) The RRF and the Modernisation funds are considered as State resources since Member States have the discretion to decide on the use of those resources. Once awarded, the RRF and the Modernisation funds would be directly controlled by the Hungarian State and the granting authority would be the relevant Ministry.

([20]) 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.

(85) The annual support is intended to be financed from the Storage Support Account, which is itself financed through a levy to be imposed upon electricity users.

(86) According to settled case law, only advantages that are granted directly or indirectly through State resources are to be regarded as aid within the meaning of Article 107(1) TFEU. ([21]) The distinction between aid granted by the State and aid granted through State resources serves to bring within the definition of aid not only aid granted directly by the State, but also aid granted by public or private bodies designated or established by the State. ([22]) Thus, resources do not need to transit through the State budget to be considered as State resources. It is sufficient that they remain under public control. ([23])

(87) Indeed, the Court of Justice has held that funds financed through compulsory charges imposed by the legislation of the Member State, managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU even if they are managed by entities separate from the public authorities. ([24])

(88) In the present case, the Commission notes that, as described in recital (25), the Storage Support Account will be funded by means of a mandatory charge, which will be imposed upon electricity users through a legislative measure. Moreover, the State will control the Storage Support Account and will disburse the support to the eligible storage projects.

(89) Therefore, the resources are deemed under State control and qualify as State resources.

3.2.2. Economic Advantage

(90) The measure confers an advantage on its beneficiaries in the form of an investment grant and a 10-year CfD for their storage facilities (recital (11)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions, i.e. in the absence of the State intervention.

3.2.3. Selectivity

(91) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular to undertakings active in the electricity storage sector, excluding the financial sector (recital (30)).

([21]) Judgment of 12 January 2023, *DOBELES HES*, C-702/20, ECLI:EU:C:2023:1, paragraph 32.

([22]) Judgment of 22 March 1977, *Steinike & Weinlig*, 78/76, EU:C:1977:52, paragraph 21.

([23]) Judgment of 12 January 2023, *DOBELES HES*, C-702/20, ECLI:EU:C:2023:1, paragraph 39..

([24]) Judgments of 2 July 1974, *Italy* v *Commission*, 173/73, EU:C:1974:71, paragraph 16, and of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 25. See also judgment of 21 September 2019, *FVE Holýšov I s. r. o. and Others* v *Commission*, C-850/19 P, EU:C:2021:740, paragraph 46.

3.2.4. *Impact on competition and on trade between Member States*

(92) In accordance with settled case law ([25]), for a measure to impact competition and trade it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(93) The electricity market has been liberalised and electricity producers engage in trade between Member States. The electricity stored by the beneficiaries of the measure will generally be sold on the market where it will enter in competition with electricity from different sources (such as electricity from other RES and conventional sources). Moreover, Hungary is coupled with all five neighbouring EU Member States at the day-ahead and intraday time frame, while the cross-border balancing capacity exchange for the balancing markets is expected to be launched in the coming years (recital (59)).

(94) Therefore, 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.

3.2.5. *Conclusion regarding existence of State aid*

(95) In view of the above in this sub-section 3.2, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Hungarian authorities do not contest that conclusion.

3.3. Compatibility

(96) 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.

(97) Pursuant to Article 107(3)(c) TFEU, the Commission may declare compatible with the internal market 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect *trading conditions to an extent contrary to the common interest*'.

(98) The current crisis has demonstrated the urgent need to reduce dependency on Russian fossil fuels imports and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures in line with the REPowerEU Plan ([26]) and to accelerate the decarbonisation of European industry in order to achieve the Union's climate targets.

(99) The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission's view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU for a limited

([25]) Judgment of 30 April 1998, *Het Vlaamse Gewest* v *Commission*, T-214/95, EU:T:1998:77.

([26]) Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan (COM/2022/230 final).

period of time if it contributes to speeding up the rollout of renewable energy, storage and renewable heat in line with the REPowerEU Plan.

(100) The measure aims at enhancing the flexibility of the Hungarian electricity system by supporting new electricity storage investments in order to facilitate the smooth integration of high capacity of variable RES in the Hungarian electricity system (recital (6)). Furthermore, the measure has been designed to meet the requirements of the specific category of aid described in section 2.5 of the Temporary Crisis and Transition Framework.

(101) The Commission considers that the measure is necessary, appropriate and proportionate to reduce the dependency on imported fuels in the current context and can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU. In particular:

- The aid supports the accelerated rollout of renewable energy and energy storage relevant for the REPowerEU Plan. In particular, the measure supports all electricity storage ([27]) technologies and the Hungarian authorities confirmed that they neither encourage nor discourage the use of any specific technology and that the scheme contains no rules that would limit the technology neutrality (recital (36)). Therefore, the measure facilitates the development of economic activities that can contribute to reducing the Union's dependency on imports of fossil fuels and to achieving its climate and energy targets. The measure also complies with points 77(a)(ii) and 78(a)(ii) of the Temporary Crisis and Transition Framework.

- Hungary has demonstrated that the limited eligibility of the measure to electricity storage does not represent an artificial limitation and that discrimination on this basis is excluded. Indeed, the Hungarian authorities confirmed that all electricity storage technologies are eligible for the tendering process (recital (36)). The measure therefore complies with points 77(c) and 78(c) of the Temporary Crisis and Transition Framework.

- The investment grant will be granted in the form of direct grants, in line with point 77(e) of the Temporary Crisis and Transition Framework, during the construction of each storage facility. The annual support will be granted in the form of a two-way CfD, in line with point 78(e) of the Temporary Crisis and Transition Framework, for a period of 10 years after the supported storage facility starts operations. Whereas point 78(e) of the Temporary Crisis and Transition Framework sets out that the two-way CfD should be 'in relation to the energy output of the installation', storage facilities differ from renewable generation in so far as they have both energy intake and energy output, and their added value for the system thus lies in shifting the time of energy output, thereby increasing system flexibility. By defining the CfD in relation to the revenues of a reference installation providing energy arbitrage and balancing services, the measure

([27]) As set out in footnote 107 of the Temporary Crisis and Transition Framework, electricity storage means deferring the final use of electricity to a moment later than when it was generated, or the conversion of electrical energy into a form of energy which can be stored, the storing of such energy, and the subsequent reconversion of such energy into electrical energy.

therefore appropriately captures the added value of storage assets and avoids overcompensation in case of unexpectedly high revenues from storage activities. The size of the reference installation of 6 MW capacity is also plausible, given the already received requests for grid access in Hungary for storage facilities, which, on average, are close in size to that capacity. Considering the urgency of the challenge of reducing dependency on fossil fuel imports, the Commission considers that granting aid as well as the chosen aid instrument are appropriate to support the targeted economic activity.

- The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, unless any changes would be required to comply with Union law. As described in (recital (68)), in the absence of aid, market players would would face a funding gap and limited bankability of storage investments and thus without the State intervention, the required investments in storage capacity are not expected to take place in a timely manner and size to achieve the objective of the measure. This counterfactual scenario is considered realistic and does not entail a breach of Union law. Since in the absence of aid, the economic activity supported by the measure would not be undertaken, the Commission concludes that necessity of the aid and incentive effect are present. The Commission also notes that the IRR and WACC used for the reference project correspond to the profitability proposed in similar projects recently reviewed by the Commission ([28]). The measure therefore complies with points 77(p) and 78(o) of the Temporary Crisis and Transition Framework.

- Aid will only be granted under the scheme for investments for which works started as of 20 July 2022 in so far as such investments were eligible under the previous Temporary Crisis Framework (recital (38)). The measure therefore complies with points 77(o) and 78(n) of the Temporary Crisis and Transition Framework.

- Aid is granted under the measure on the basis of a scheme with an estimated capacity volume and budget (recital (24)). The measure therefore complies with points 77(b) and 78(b) of the Temporary Crisis and Transition Framework.

- Aid will be granted by 31 December 2025 at the latest and the installations must be completed and be in operation within 36 months after the date of granting (recitals (26) and (50)). In addition, the measure includes, as described in recital (50), an effective system of penalties in case this deadline is not met. The measure therefore complies with points 77(d) and 78(d) of the Temporary Crisis and Transition Framework.

([28]) See e.g. Commission decision of 21 March 2023 in SA.102761 RRF - State aid scheme aimed at developing the electricity storage capacities in Romania, OJ C 162, 5.5.2023, p. 10; and Commission decision of 5 September 2022 in SA.64736 RRF - Greece - Financial support in favour of electricity storage facilities, OJ C 387, 7.10.2022, p. 1.

- Hungary has submitted elements that confirm that the competitive bidding process allocating the aid will be open, clear, transparent, non-discriminatory and effectively competitive, based on objective criteria that are defined *ex ante* and that minimise the risk of strategic bidding and undersubscription (recitals (42) and (57)). In addition, the sole selection criterion used for ranking bids has been defined in terms of aid per unit of energy capacity (recital (51)). The assumptions for the funding gap analysis (recitals (62) to (69)) are in line with studies reviewed by the Commission in the context of recent decisions ([29]) on electricity storage and the price increase expected for Li-ion batteries ([30]). Hungary has submitted elements that confirm that the volumes of capacity tendered are set to ensure that the bidding process is effectively competitive (recitals (35) and (57)). Hungary has proven the plausibility that the volume tendered will match the potential offer of projects (recital (46)). In case of repeated undersubscription of competitive bidding processes, Hungary committed to introduce remedies for any future scheme that it notifies to the Commission for the same technology. Moreover, the aid does not exceed 100 % of the total investment costs (recital (52)). The measure therefore complies with points 77(f)(i), 77(i)(i) and 78(f)(i) of the Temporary Crisis and Transition Framework. Finally, the investment grant itself does not cover more than 45 % of the total investment costs, thus also looked at in isolation, it complies with the requirements under point 77(i)(ii)) of the Temporary Crisis and Transition Framework. On that basis, the Commission considers that the aid is limited to the minimum necessary. It can therefore be concluded that the aid is proportionate.

- As described in recitals (13)-(18), the aid is designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. In particular, beneficiaries are not incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative. The measure therefore complies with point 78(i) of the Temporary Crisis and Transition Framework.

- Hungary confirmed that aid under the measure will only be granted with respect to newly installed or repowered storage electricity storage capacities, and that for such repowered capacities, only the additional costs in relation to the repowered capacity are eligible for aid (recital (37)). The investment aid will be granted based on the installed capacity and thus independent of the energy output. The measure therefore complies with points 77(l) and 78(l) of the Temporary Crisis and Transition Framework.

- Hungary confirmed that aid under the measure, including both the investment grant and the annual support will not be cumulated with other aid for the same eligible costs (recital (78)). The Commission also notes that the cumulation of the investment grant with the annual support under

([29]) See e.g. Commission decision of 21 March 2023 in SA.102761 RRF - State aid scheme aimed at developing the electricity storage capacities in Romania, OJ C 162, 5.5.2023, p. 10.

([30]) See e.g., in IEA World Energy Investment 2022: https://www.iea.org/reports/world-energy-investment-2022/overview-and-key-findings.

the measure was already foreseen before the adoption of the Temporary Crisis and Transition Framework in the amended notification that was submitted by Hungary on 5 February 2023 (recital (78)). The measure therefore complies with points 77(m), 77(n) and 78(m) of the Temporary Crisis and Transition Framework.

- Hungary confirmed compliance with the 'do no significant harm principle'. Hungary confirmed that the storage appliances at the end of their lifetime, as well as any electronic waste, will be disposed in accordance with the applicable national rules on waste management and that the storage investments will be subject to criteria set for protecting and restoring biodiversity and ecosystems (recital (70)). The measure therefore complies with points 77(q) and 78(p) of the Temporary Crisis Framework.

(102) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market.[31]

(103) Any levy that has the aim of financing a State aid measure and forms an integral part of that measure needs to comply in particular with Articles 30 and 110 TFEU ([32]).

(104) According to case law, for a levy to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the charge is necessarily allocated for the financing of the aid and has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market ([33]). In particular, the charge at issue must be levied specifically and solely for the purpose of financing the aid at issue ([34]).

(105) In the present case, the operational support will be partly financed by a levy, which will be imposed, through a legislative act, upon electricity users. Differently, the investment grant will be funded through the RRF (recital (24)).

(106) The Commission notes that the Support Storage Account will finance the annual support for the storage facilities supported under the scheme in a similar way to the RES support (recital (24)).

(107) As the Commission cannot exclude the existence of a hypothecation link between the levy and the aid awarded, the Commission will assess the compatibility of the levy with Articles 30 and 110 TFEU.

([31]) Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paras, 96 *et seq.*

([32]) Judgment of 17 July 2008, Essent Netwerk Noord and Others, C-206/06, EU:C:2008:413, paragraphs 40 to 59. For the application of Articles 30 and 110 TFEU to tradable certificates schemes, see Commission Decision C(2009)7085 of 17.9.2009, State aid N 437/2009 - Aid scheme for the promotion of cogeneration in Romania, OJ C 31, 9.2.2010, p. 8, recitals 63 to 65.

([33]) Judgment of 22 December 2008, Régie Networks v Rhone Alpes Bourgogne, C-333/07, EU:C:2008:764, paragraph 99 and case law cited

([34]) Judgment of 22 December 2008, Régie Networks v Rhone Alpes Bourgogne, C-333/07, EU:C:2008:764, paragraphs 100 and 104.

(108) According to the case law ([35]), a charge that is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenue from such a charge is used to support activities that specifically benefit the taxed domestic products. Such a charge would include a levy if the advantages which those products enjoy were to wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge having equivalent effect to custom duties, contrary to Article 30 TFEU. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of Article 110 TFEU and will be contrary to this provision as regards the proportion used to offset the burden borne by the domestic products.

(109) As set out in recitals (59) to (61), Hungary commits to open a share of the scheme to foreign projects, which will be able to participate to the tenders under the same conditions as the domestic projects. Hungary applies an approach similar to the one included in the Hungarian RES scheme ([36]). This is appropriate, as the purpose of both schemes is similar in supporting Hungary's targets for achieving a high RES penetration in the electricity system.

(110) Specifically, the volume of the storage capacity open for storage facilities operating in foreign projects located outside Hungary will be calculated in the following way. First, the transmission capacity set aside for balancing capacity exchange will determine the theoretical maximum of the participating projects, as it is the maximum of the balancing service that can be imported. The maximum value will be de-rated according to the share of renewables in total imports from the country concerned. The limitation to transmission capacity available for balancing purposes can be justified by the large role that balancing services are expected to play in the financing of the storage facilities. The annual income expected from balancing services is more than twice as high as the annual income expected from energy arbitrage in other timeframes, see recital (62) and Table (1). Furthermore, an important role of storage facilities is to contribute to system stability in the balancing timeframe. Against this background, the Commission concludes that financing of the measure via the storage levy is compatible with Articles 30 and 110 TFEU.

(111) The Hungarian authorities confirm that the provisions under EU law on ownership, development, management and operation of storage facilities, notably Articles 36 and 54 Directive 2019/944, will be complied with.

(112) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.

(113) The Hungarian authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on

([35]) 4 Judgments of 11 March 1992, Compagnie Commerciale de l'Ouest and Others, C-78/90 to C-83/90, EU:C:1992:118, paragraph 27, and of 27 October 1993, Scharbatke, C-72/92, EU:C:1993:858, paragraph 10; see also, to that effect, judgment of 17 July 2008, Essent Netwerk Noord and Others, C-206/06, EU:C:2008:413, paragraphs 40 to 57.

([36]) See Commission decision of 11 July 2017 in State Aid SA.44076 – Hungary Aid for electricity production from renewable energy sources (METÁR).

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)).

(114) The Hungarian authorities confirm that, as required by point 52 of the Temporary Crisis and Transition 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 (recital (31)).

(115) The Hungarian authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (79)).

(116) The Hungarian authorities further confirm that the aid under the measure, including both the investment grant and the annual support, will not be cumulated with other aid under the Temporary Crisis and Transition Framework, the COVID-19 Temporary Framework or other Regulations (recitals (75)-(78)). The Commission notes that Hungary has not introduced a scheme under section 2.5 of the previous Temporary Crisis Framework for the same eligible costs, and thus the scheme complies with point 95 of the Temporary Crisis and Transition Framework.

(117) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure, which contributes to speeding up the rollout of renewable energy, storage and renewable heat in line with the REPowerEU Plan. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to Article 107(3)(c), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition 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)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President