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**Subject: State Aid SA.106689 (2023/N) – United Kingdom (Northern Ireland)
TCTF: Energy and Trade Intensive Industry subsidy**

Dear Foreign Secretary,

1. PROCEDURE

- (1) By electronic notification of 13 March 2023, the United Kingdom (“UK”) notified aid in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”) ⁽¹⁾ to compensate for the severe increase in natural gas and electricity prices for undertakings located in Northern Ireland (“NI”) (the Energy and Trade Intensive Industry (ETII) subsidy; the “measure”) under 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⁾.

⁽¹⁾ As applicable under Articles 10(1) and 12(4) of the Windsor Framework (pursuant to [Joint Declaration No 1/2023](#), “the Windsor Framework”) which forms an integral part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“the Withdrawal Agreement”) OJ L 29, 31.1.2020, p. 7.

⁽²⁾ Communication from the Commission on the 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

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- (2) On 26 April, 25 May, 4 July, 20 July, 29 August and 14 November 2023, the UK provided further information by email, in reply to queries from the Commission of 14 April, 12 May, 21 June, 11 July, 25 August and 9 October 2023. On this basis, the UK updated the initial notification on 15 September 2023 and provided further clarifications concerning the notification on 22 November 2023.

2. DESCRIPTION OF THE MEASURE

- (3) The UK 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 Union internal market and the UK internal market ('the current crisis'). High energy prices⁽³⁾ have triggered a surge in consumer price inflation to a forty-year high. According to the UK Office for Budget Responsibility forecast⁽⁴⁾, which covers the UK as a whole, a lack of compensating wage growth means that real household disposable incomes will fall by around 7.1% during 2022-2023. As a result of Russia's invasion of Ukraine, the impact of high energy prices on NI's GDP has been unambiguously negative. The UK argues that, as a net energy importer, NI has suffered a 'terms of trade shock', which reduces GDP because it is now more expensive for NI to meet its demand by imports. Weaker overall demand can also have more persistent negative effects because it in turn reduces firms' incentives to hire and invest. This price shock has had a particularly negative impact on applicants operating in ETII sectors and located in NI. This is due to ETII sectors being particularly exposed by their large proportion of costs spent on energy use.
- (4) This measure is part of a set of discounts designed to provide support for certain energy users in Great Britain and NI. That set of discounts incorporates the following components:
- (a) A baseline discount will provide support with energy bills for all eligible non-domestic customers in Great Britain and NI.
 - (b) An ETII discount (the 'measure') will provide a higher level of support linked to consumption of electricity and natural gas by businesses and organisations in ETII sectors.
 - (c) A heat network discount will provide a higher level of support to heat networks with domestic end consumers.
- (5) Only the second discount has been notified and the present decision is limited to examining that measure alone for the territory of NI.

Framework'), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 1311, 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) For reference, the UK authorities note that day-ahead electricity prices have increased by 162% from an average of GBP 67/MWh (EUR 79/MWh) in 2019-2021 to an average of GBP 177/MWh (EUR 207/MWh) in 2022-23. Meanwhile, day-ahead gas prices increased by 343% from an average of GBP 14/MWh (EUR 16/MWh) in 2019-2021 to an average of GBP 60/MWh (EUR 71/MWh) in 2022-23

(4) <https://obr.uk/download/economic-and-fiscal-outlook-november-2022/?tmstv=1689171109>

- (6) The measure will be granted to applicants that operate in sectors that are most vulnerable to high energy prices due to high energy intensity and who are less able to pass these costs onto customers due to their trade exposure (See Section 2.6).
- (7) In addition, aid will be granted under the measure only if natural gas and electricity prices incurred by the beneficiary are significantly above pre-crisis levels (see recital (29)).
- (8) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (9) The UK 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 a country within the European Economic Area ('EEA') to the UK. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (10) The compatibility assessment of the measure is based on Article 107(3), point (b), TFEU, in light of sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (11) The measure provides aid on the basis of a scheme in the form of direct grants which are financed by public funds. The support provides a per-unit discount on wholesale gas and electricity prices for businesses. Suppliers apply this discount on business customers energy bills and apply to the government to recover the costs..

2.2. Legal basis

- (12) The legal basis for the measure is the Energy Prices Act 2022 (EPA), which covers the UK including NI and gives the UK government powers to reduce the exposure of those who consume energy (particularly, electricity and natural gas) in the UK to the effects of the high prices that have recently prevailed in wholesale markets (especially since 2022). The measure only covers undertakings receiving support under this legal basis which are active in NI.
- (13) The Energy Bills Discount Scheme (EBDS), the set of measures which includes the measure that will be provided in NI, is implemented by regulations made under sections 11, 13 and 26(2) of, and Schedule 2 to, the EPA, with accompanying detailed rules. Section 11 enables provision to be made to reduce the amount that would be charged for non-domestic electricity and natural gas supply by licensed suppliers. Section 13 enables the provision of support in cases of licence-exempt energy provision. The regulations underpinning the set of measures provide that the measure cannot take effect until the notification of the Commission approval decision, in accordance with EU State aid requirements that continue to apply in NI under the terms of the Windsor Framework.

2.3. Administration of the measure

- (14) The UK Department for Energy Security and Net Zero is responsible for administering the measure.

2.4. Budget and duration of the measure

- (15) The estimated budget of the measure is up to GBP 20 million (EUR 23 million) in total. This is based on the high policy cost scenario for the ETII subsidy element of the UK-wide set of measures, adjusted to reflect consumption in NI for the period of the measure (April 2023 to March 2024). As per section 11(1)(b) and (2)(b) of the EPA, the State may reimburse suppliers for discounts they pass on to end consumers.
- (16) To estimate the maximum support individual applicants could receive under the measure, the UK authorities have combined different publicly available data from the Office for National Statistics (ONS) to estimate the per-firm consumption of electricity and natural gas for typical businesses in different sectors and size bands. The UK applied the maximum available discounts (see recital (28)) to 70% of these typical firms' energy consumption to derive the final maximum support level.
- (17) According to the UK, for all undertakings the amount that they will receive under this measure will not exceed EUR 2.25 million per undertaking at any given point in time (all figures used must be gross, that is, before any deduction of tax or other charges) and fall under Section 2.1 of the Temporary Crisis and Transition Framework.
- (18) The aid may be granted under the measure until no later than 31 March 2024.

2.5. Beneficiaries

- (19) The final beneficiaries of the measure are companies with facilities located in NI that are affected by the crisis in the form of increased energy prices. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.
- (20) These companies are required to fulfil eligibility and verification criteria when making an application for the aid under the measure.
 - (a) To qualify as an eligible beneficiary, the applicant in question must operate in an eligible sector (see recital (23)).
 - (b) In order to be eligible, a beneficiary has to prove that a minimum of 50% of its total revenue for the financial year 2021/2022 is generated from activities in one or more of the eligible sectors. This activity must be based in the UK. If the latest set of financial statements are unavailable, the UK authorities will accept a minimum of the most recent two quarters' financial accounts for newly formed, or newly eligible organisations ending on or before the application date, for which the applicant has carried out qualifying ETII activities.

- (c) Furthermore, the UK authorities state that they will implement a compliance and enforcement regime as part of the measure to ensure only those who are eligible receive support.
- (21) The UK confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, 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 Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (22) The UK confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁵. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (23) The measure applies to the whole territory of NI, applying to undertakings with facilities located in that territory. It is open to undertakings active in the sectors listed in the table below (which does not include the financial sector). Eligible sectors are (i) those included in Annex 1 to the Commission State aid guidelines for climate, environmental protection and energy⁽⁶⁾, based on their electro intensity and trade intensity, as well as (ii) those that are above the 80th percentile of energy intensity and the 60th percentile for trade intensity⁽⁷⁾. These sectors have disproportionately high energy costs and are less able to pass through increasing costs downstream due to international competition.

Extraction of crude petroleum (B6.1)
Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate (B8.1.1)
Operation of gravel and sand pits; mining of clays and kaolin (B8.1.2)
Other mining and quarrying n.e.c. (B8.9)

⁽⁵⁾ 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).

⁽⁶⁾ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p.1.

⁽⁷⁾ energy intensity was calculated as total gas and electricity consumption divided by GVA using 2021 energy consumption data and 2017-2019 GVA data from the Office for National Statistics (ONS). Trade intensity using ONS trade in goods data (2017-2019) was calculated as (imports + exports)/(turnover + imports.). More information is provided here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128033/230104_ETII_List_for_gov.uk.pdf

Processing and preserving of meat (C10.1.1.)
Processing and preserving of poultry meat (C10.1.2)
Processing and preserving of fish, crustaceans and molluscs (C10.2)
Manufacture of oils and fats(C10.4.1)
Operation of dairies and cheese making(C10.5.1)
Manufacture of grain mill products(C10.6.1)
Manufacture of bread; manufacture of fresh pastry goods and cakes (C10.7.1)
Manufacture of cocoa, chocolate and sugar confectionery (C10.8.2)
Manufacture of prepared meals and dishes (C10.8.5)
Manufacture of homogenised food preparations and dietetic food (C10.8.6)
Manufacture of other food products n.e.c. (C10.8.9)
Manufacture of prepared feeds for farm animals (C10.9.1)
Manufacture of cider and other fruit wines (C11.0.3)
Manufacture of beer (C11.0.5)
Manufacture of malt (C11.0.6)
Weaving of textiles (C13.2.0)
Finishing of textiles (C13.3)
Manufacture of knitted and crocheted fabrics (C13.9.1)
Manufacture of made-up textile articles, except apparel (C13.9.2)
Manufacture of carpets and rugs (C13.9.3)
Manufacture of cordage, rope, twine and netting (C13.9.4)
Manufacture of non-wovens and articles made from non-wovens, except apparel (C13.9.5)
Manufacture of other technical and industrial textiles (C13.9.6)
Manufacture of other textiles n.e.c. (C13.9.9)
Manufacture of workwear (C14.1.2)
Manufacture of other wearing apparel and accessories (C14.1.9)

Manufacture of knitted and crocheted hosiery (C14.3.1)
Manufacture of luggage, handbags and the like, saddlery and harness (C15.1.2)
Sawmilling and planing of wood (C16.1)
Manufacture of veneer sheets and wood-based panels (C16.2.1)
Manufacture of other products of wood; manufacture of articles of cork, straw and plaiting materials (C16.2)
Manufacture of paper and paperboard (C17.1.2)
Manufacture of corrugated paper and paperboard and of containers of paper and paperboard (C17.2.1)
Manufacture of household and sanitary goods and of toilet requisites (C17.2.2)
Manufacture of paper stationery (C17.2.3)
Manufacture of wallpaper (C17.2.4)
Manufacture of other articles of paper and paperboard (C17.2)
Manufacture of refined petroleum products (C19.2)
Manufacture of dyes and pigments (C20.1.2)
Manufacture of other inorganic basic chemicals (C20.1.3)
Manufacture of other organic basic chemicals (C20.1.4)
Manufacture of fertilisers and nitrogen compounds (C20.1.5)
Manufacture of plastics in primary forms (C20.1.6)
Manufacture of pesticides and other agrochemical products (C20.2)
Manufacture of soap and detergents, cleaning and polishing preparations (C20.4)
Manufacture of man-made fibres (C20.6)
Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres (C22.1.1)
Manufacture of other rubber products (C22.1.9)
Manufacture of plastic plates, sheets, tubes and profiles (C22.2.1)
Manufacture of plastic packing goods (C22.2.2)

Manufacture of builders' ware of plastic (C22.2.3)
Manufacture of other plastic products (C22.2.9)
Shaping and processing of flat glass (C23.1.2)
Manufacture of hollow glass (C23.1.3)
Manufacture of glass fibres (C23.1.4)
Manufacture and processing of other glass, including technical glassware (C23.1.9)
Manufacture of refractory products (C23.2.0)
Manufacture of ceramic tiles and flags (C23.3.1)
Manufacture of bricks, tiles and construction products, in baked clay (C23.3.2)
Manufacture of ceramic household and ornamental articles (C23.4.1)
Manufacture of ceramic sanitary fixtures (C23.4.2)
Manufacture of other ceramic products (C23.4.9)
Manufacture of cement (C23.5.1)
Manufacture of lime and plaster (C23.5.2)
Manufacture of concrete products for construction purposes (C23.6.1)
Manufacture of plaster products for construction purposes (C23.6.2)
Manufacture of ready-mixed concrete (C23.6.3)
Manufacture of mortars (C23.6.4)
Manufacture of fibre cement (C23.6.5)
Manufacture of other articles of concrete, plaster and cement (C23.6.9)
Cutting, shaping and finishing of stone (C23.7.0)
Production of abrasive products (C23.9.1)
Manufacture of other non-metallic mineral products n.e.c. (C23.9.9)
Manufacture of basic iron and steel and of ferro-alloys (C24.1)
Manufacture of tubes, pipes, hollow profiles and related fittings, of steel (C24.2)
Cold drawing of wire (C24.3.4)

Aluminium production (C24.4.2)
Lead, zinc and tin production (C24.4.3)
Other non-ferrous metal production (C24.4.5)
Casting of iron (C24.5.1)
Casting of steel (C24.5.2)
Casting of light metals (C24.5.3)
Manufacture of light metal packaging (C25.9.2)
Manufacture of electronic components (C26.1.1)
Manufacture of watches and clocks (C26.5.2)
Manufacture of batteries and accumulators (C27.2)
Manufacture of other electronic and electric wires and cables (C27.3.2)
Manufacture of electric domestic appliances (C27.5.1)

2.7. Basic elements of the measure

- (24) Aid under the measure will be in the form of direct grants which are financed by public funds. All figures used are gross, there are no further deduction of taxes or charges.
- (25) In particular, the measure requires under certain conditions (see recital (28)) that licensed suppliers discount the price per unit of energy component of the energy bill of their customers that are eligible for aid under the measure, for which suppliers are reimbursed from State resources. For a small element of the market where energy is supplied through license-exempt providers, an application for support by a provider on behalf of a beneficiary or by beneficiaries is made to the Secretary of State for Energy Security and Net Zero (the ‘Secretary of State’), who, by 31 March 2024, assesses it and, if deemed eligible, grants aid with a payment that is made, on the basis of the relevant energy bills of the eligible period.
- (26) The measure is available to beneficiaries with retail contracts with a fixed price that was set on or after 1 December 2021, beneficiaries signing new, amended or extended fixed price contracts, beneficiaries that are on default or variable contracts and those that are on flexible purchase contracts. Retail contracts with a fixed price that was set before 1 December 2021 are not eligible under the measure, as the UK government considers any fixed term contracts agreed before this date would not have been subject to the surge in energy costs. There are also exclusions for natural gas or electricity used to generate electricity to be sold to the grid, including where this has been stored first (under battery or pumped storage) and/or natural gas or electricity to be used to provide heating, cooling,

hot water or electricity for end users in Ireland (in the cases of beneficiaries in NI).⁽⁸⁾

- (27) The measure provides a per-unit discount on natural gas and electricity prices incurred by the beneficiary (“retail price”), provided that such prices are linked to a wholesale price that is sufficiently high (“reference wholesale price”). In particular:
- a) In case of retail contracts with a fixed price, the reference wholesale price is the “one year ahead” forward energy price on the day in which the retail contract was concluded.
 - b) In case of retail contracts with a variable price, the reference wholesale price is updated every three months, on the basis of the ICIS NBP Price Assessment for natural gas and the UK OTC Power Price Assessment for electricity⁽⁹⁾. The UK argues that this approach reflects the most common practice in variable retail contracts, whose methodology tend to update retail prices on a quarterly basis.
 - c) For retail contracts with prices indexed to the day-ahead wholesale prices, the reference wholesale price is the day-ahead price and is thus updated on a monthly basis.
- (28) Aid is granted only when the reference wholesale prices exceed certain price thresholds:
- a) In case of natural gas, no aid is granted if the reference wholesale price does not exceed GBP 99/MWh (EUR 116/MWh). Whenever the reference wholesale price exceeds the threshold price, the aid covers the difference up to a maximum per-unit aid of GBP 40/MWh (EUR 47/MWh);
 - b) In case of electricity, no aid is granted if the reference wholesale price does not exceed GBP 185/MWh (EUR 216/MWh). Whenever the reference wholesale price exceeds the threshold price, the aid covers the difference up to a maximum per-unit aid of GBP 89/MWh (EUR 104/MWh).
- (29) The UK has shown that the price thresholds enacting aid granting have been set at levels significantly higher than pre-crisis prices⁽¹⁰⁾. The average day-ahead

⁽⁸⁾ The purpose of the EBDS is to provide support to beneficiaries in respect of the energy that they consume or that their end users consume. These exclusions exist, as any beneficiary would receive payment for the electricity sold to the grid, and so receive payment for the natural gas or electricity that was used to produce this. The exclusions ensure that the beneficiary does not benefit twice from the energy which they use. The EBDS scheme also applies to GB and NI only, so the benefit should not reach Ireland.

⁽⁹⁾ ICIS NBP Price Assessment Bid/Offer range daily outright (Mid) Quarter+1 for natural gas and UK OTC Power Price Assessment – Baseload Quarter+1 for electricity averaged across a full month. They will be published the month before the start of each quarter and based on the previous month’s prices. For example, the wholesale reference price for Q2 2023 will be published in March 2023, with the wholesale reference price based on an average of Quarter+1 prices across the whole of February.

⁽¹⁰⁾ Data source: <https://www.ofgem.gov.uk/energy-data-and-research/data-portal/wholesale-market-indicators>

electricity prices in 2019-2021 was equal to GBP 67/MWh (EUR 79/MWh), while the average day-ahead gas prices in 2019-2021 was equal to GBP 14/MWh (EUR 16/MWh). Moreover, as illustrated in figures 1-3 below, the electricity threshold price of GBP 185/MWh (EUR 216/MWh) is more than double the January 2021 average wholesale price for day-ahead contracts (GBP 90.94/MWh, or EUR 106.4/MWh). The natural gas threshold price of GBP 99/MWh (EUR 116/MWh) is more than triple the January 2021 average wholesale price for day-ahead contracts (GBP 20.13/MWh, or EUR 23.6/MWh). It is therefore very unlikely that a business would have entered a contract pre-crisis with a wholesale price element so high that this would be above threshold levels.

Figure 1: ETII wholesale contracted prices against thresholds (fixed contracts)



Figure 2: ETII reference wholesale prices against thresholds (default and variable contracts)

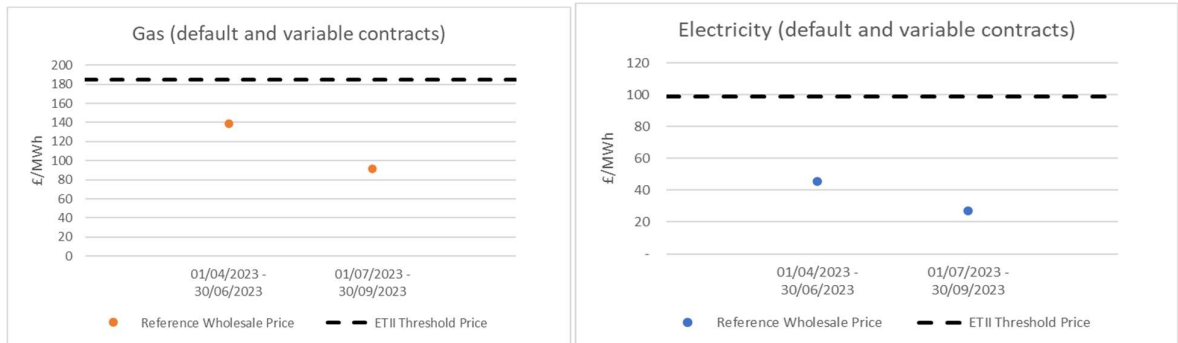
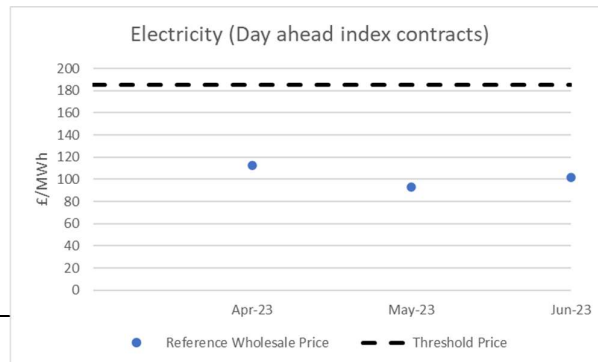


Figure 3: ETII reference wholesale prices against thresholds (day ahead index contracts)



- (30) Aid may be granted under the measure for energy costs incurred from 1 April 2023 to 31 March 2024 (“eligible period”).
- (31) The UK authorities explained that aid under the measure will be provided by energy suppliers applying discounts to the unit price of each kWh of energy supplied to beneficiaries, as part of their regular billing processes, for which they will be reimbursed on the basis of discount recovery claims submitted to a timetable set under the legislation. According to the UK authorities, the measure preserves competition between suppliers and it ensures that aid to suppliers is passed on to the final beneficiaries in full, as suppliers can claim reimbursement only insofar and to the extent of the discount they have previously granted to the final beneficiaries. Furthermore, the UK authorities note that Part 2 of the Energy Bills Discount Scheme (Northern Ireland) Regulations (regulations 8-31) requires all licensed suppliers to apply the discount to relevant energy bills in a uniform way. The UK authorities thus note that the beneficiaries have a right to a reduction in their energy bills and may still choose any supplier that offer the most advantageous price thereby preserving competition between suppliers. For a small element of the market where energy is supplied through license-exempt providers, an application for support by beneficiaries is made to the Secretary of State, who, by 31 March 2024, assesses it and, if deemed eligible, grants aid with a payment that is made on the basis of the relevant energy bills of the eligible period.
- (32) The UK authorities commits that the overall maximum aid amounts(s) per undertaking will not exceed EUR 2.25 million at any given point in time.
- (33) The UK authorities explained that the national data system in place allows them to identify on an ongoing basis the consumption levels of beneficiaries and control the overall aid that is being granted to each undertaking. In particular, the UK authorities will gather data on amounts of aid on an ongoing provided under this measure at the level of individual meter. The UK authorities will aggregate such data at beneficiary and undertaking level. On this basis, the UK authorities will monitor the cumulative amount of aid provided to undertakings under the measure on an ongoing basis. The granting authority will have the power to instruct energy suppliers to discontinue the application of ETII discount, so that the cumulative discount applied to the undertaking does not exceed EUR 2 million at any point in time.
- (34) The measure will apply energy price rebates in line with recital (28) to 70% of the consumption of electricity and/or natural gas (as the case may be).
- (35) The UK authorities confirm that the 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.

- (36) The measure is not available to primary producers of agricultural and fishing products. Indeed, undertakings in the agricultural, forestry and fishing sectors are not eligible for the aid.

2.8. Compliance with relevant provisions of Union law

- (37) The UK authorities confirm that the proposed 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. The UK commits to take all necessary measures to ensure that the measure remains in line with relevant provisions of Union law applicable under the Windsor Framework.

2.9. Cumulation

- (38) The UK authorities confirm that aid granted under the measure may not be cumulated with aid under *de minimis* Regulation⁽¹¹⁾ or the General Block Exemption Regulation⁽¹²⁾.
- (39) The UK authorities confirm that aid under the measure may not be cumulated with aid under measures approved by the Commission under the COVID-19 Temporary Framework⁽¹³⁾.
- (40) The UK authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework provided the provisions in those specific sections are respected.
- (41) The UK authorities note that no aid was granted under the previous Temporary Crisis Framework and confirm that for aid granted under sections 2.1 of the Temporary Crisis and Transition Framework, the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework are respected at all points in time.
- (42) The UK authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures

⁽¹¹⁾ 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).

⁽¹²⁾ 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), 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).

⁽¹³⁾ 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).

approved by the Commission under section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in point 61(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under section 2.1 of the Temporary Crisis and Transition Framework which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.10. Monitoring and reporting

- (43) The UK authorities confirm 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⁽¹⁴⁾).

3. ASSESSMENT

3.1. Existence of State aid

- (44) 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⁽¹⁵⁾.
- (45) The measure is imputable to the State, since it is administered by the UK Department for Energy Security and Net Zero (recital (14)) and it is based on the Energy Prices Act 2022 and the regulations made under sections 11, 13 and 26(2) of, and Schedule 2 to, the Energy Prices Act 2022 (recitals (12) and (13)). It is financed through State resources, since it is financed by public funds (recital (11)).
- (46) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (11)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (47) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular the undertakings active in the sectors listed in recital (23), which does not include the financial sector.
- (48) 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.

⁽¹⁴⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.

⁽¹⁵⁾ For the purpose of the present decision, in accordance with the first subparagraph of Article 13(1) of the Windsor Framework read in conjunction with the introductory phrase of Article 7(1) Withdrawal Agreement references to Member States includes the United Kingdom in respect of Northern Ireland.

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

3.2. Compatibility

- (50) 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.
- (51) Pursuant to Article 107(3), point (b), TFEU, the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (52) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the current crisis has 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.
- (53) Those effects taken together have caused a serious disturbance of the economy in all Member States. It has also affected the economy of Northern Ireland. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (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 current crisis.
- (54) The measure aims at facilitating the access of undertakings to limited amounts of aid in the form of payment advantages at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Northern Ireland.
- (55) The measure is one of a series of actions taken by the UK to remedy a serious disturbance in its economy, including in Northern Ireland. The importance of the measure 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 Northern Ireland. Furthermore, the measure has been designed to meet the requirements of specific categories of aid, namely aid in the form of limited amounts of aid, described in section 2.1 of the Temporary Crisis and Transition Framework.
- (56) 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 meets all the relevant conditions of the Temporary Crisis and Transition Framework. In particular:
- The aid takes the form of direct grants. Aid channelled through an energy supplier, as described in recital (31), complies with point 34 of the Temporary Crisis and Transition Framework, since the UK authorities confirm that competition between suppliers is preserved and that aid is passed on to the final beneficiaries. In particular, as described in recital (31), the legal basis requires all licensed suppliers to apply the discount to

relevant energy bills in a uniform way, thereby preserving competition between suppliers, and provides that aid to suppliers is granted subject to and in line with the discount they have previously granted to their eligible customers. The Commission considers that the competition intensity between suppliers will not be affected and the aid will be passed on to the final beneficiaries.

- The overall nominal value of aid will not exceed EUR 2 250 000 per undertaking at any given point in time (recital (32)); all figures used must be gross, that is, before any deduction of tax or other charges (recital (24)). The measure therefore complies with point 61(a) of the Temporary Crisis and Transition Framework.
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (15). The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework.
- Aid will be granted under the measure no later than 31 March 2024 (see recital (18)). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework.
- Aid will be granted only to undertakings affected by the crisis (recitals (20), (26) and (28)-(29)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework.
- Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers (recitals (28) and (35)). The measure therefore complies with point 61(e) of the Temporary Crisis and Transition Framework.

- (57) 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 market¹⁶.
- (58) The UK has confirmed that the proposed 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 (recital (37)). In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.
- (59) In particular, the Commission notes that, according to Article 9 of the Windsor Framework, the provisions of EU law governing the wholesale electricity markets listed in Annex 4 shall apply to and in the UK in respect of Northern Ireland. Annex 4 specifies further that the acts listed shall apply insofar as they apply to

⁽¹⁶⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paras, 96 *et seq.*

generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity. Annex 4 further provides that provisions relating to retail markets and consumer protection shall not apply.

- (60) In light of the provisions of the Windsor Framework, the provisions relating to retail markets included in Directive (EU) 2019/944⁽¹⁷⁾ will not apply to and in the UK in respect of Northern Ireland. The Commission also notes that Council Regulation (EU) 2022/1854 does not apply to and in the UK in respect of Northern Ireland.
- (61) The Commission takes note that the UK authorities committed to monitor the measure, to report on its implementation (recital (43)), and to take all necessary measures to ensure that the measure remains in line with relevant provisions of Union law, applicable under the Windsor Framework (recital (37)).
- (62) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (63) The UK confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under section 2.1 of the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework at any point in time (see recital (41)).
- (64) The UK authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from a country within the EEA to the United Kingdom. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (9)).
- (65) The UK 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 Union, 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 Union; or
 - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (21)).
- (66) The UK authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be

⁽¹⁷⁾ Directive (EU) 2019/944 is a recast of Directive 2009/72/EC that is listed in Annex 4 to the Windsor Framework and therefore applies by virtue of Article 13(3) of the Windsor Framework.

respected (recital (43)). The UK authorities further confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework are respected (recital (41)).

- (67) The UK authorities confirmed that that aid under the measure may not be cumulated with aid under a measure approved by the Commission under the COVID-19 Temporary Framework (recital (39)), under *de minimis* Regulations or under the General Block Exemption Regulation (recital (38)).
- (68) The Commission therefore concludes that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and is compatible with the internal market pursuant to Article 107(3), point (b) TFEU, since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President