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COMMUNICATION FROM THE COMMISSION

Temporary Crisis Framework for State Aid measures to support the economy following Russia's military aggression against Ukraine

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COMMUNICATION FROM THE COMMISSION

Temporary Crisis Framework for State Aid measures to support the economy following the invasion of Ukraine by Russia

1. Invasion of Ukraine by Russia, its effect on the EU economy and the need for temporary State Aid support measures

1. On 22 February 2022, Russia decided to illegally recognise the non-government controlled areas of Donetsk and Luhansk regions in Ukraine as independent entities. On 24 February 2022, Russia launched an unprovoked and unjustified military aggression against Ukraine. The European Union (EU) and international partners immediately reacted to this serious violation of the territorial integrity, sovereignty and independence of Ukraine by taking restrictive measures. Restrictive measures were also taken against Belarus, due to its role in facilitating Russia's military aggression. Further measures might be adopted as the situation evolves. Russia decided to take certain economic counter measures of its own.

2. The Russian military aggression against Ukraine and the restrictive economic measures (sanctions) taken will have economic repercussions on the entire Internal Market. Undertakings in the EU may be affected in multiple ways, both directly and indirectly. This may take the form of shrinking demand, disruptions in the supply chain, in particular of raw materials and pre-products, or other inputs no longer being available or not being economically affordable. The Russian military aggression against Ukraine resulted also in a disruption of supply chains for EU imports from Ukraine for certain products, especially cereals and vegetable oils[1], as well as for EU exports to Ukraine. That situation also affects the energy market, in particular electricity, gas and oil prices in the European Union, a major input for several economic activities, including those particularly hit by the COVID outbreak like travel and tourism. The impact has also been felt on financial markets, in particular with concerns for liquidity.

3. It is against that background that the Commission has decided to adopt this Communication to specify the criteria for the assessment of the compatibility with the Internal Market of State aid measures that Member States may take to remedy the economic effects following the invasion of Ukraine by Russia and the following economic sanctions adopted in this context. A coordinated economic response of Member States and EU institutions is crucial to mitigate the negative repercussions on the EU economy.

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[1] Ukraine is the EU's fourth largest external food supplier, providing 52% of the EU maize import, 19% of soft wheat and 23% of vegetable oils.

1.1. RESTRICTIVE MEASURES TAKEN BY THE EUROPEAN UNION AND INTERNATIONAL PARTNERS

4. Following the invasion of Ukraine by Russia, the Council of the European Union has agreed on a set of restrictive measures.

5. On 23 February 2022, the Council agreed on a package including (i) targeted sanctions against the 351 members of the Russian State Duma and an additional 27 individuals, (ii) restrictions on economic relations with the non-government controlled areas of Donetsk and Luhansk oblasts, and (iii) restrictions on Russia's access to the EU's capital and financial markets and services.[2]

6. On 25 February 2022, the Council agreed on further sanctions against Russia that target: (i) the financial sector, (ii) the energy and transport sectors, (iii) dual-use goods, (iv) export control and export financing, (v) visa policy, and (vi) additional sanctions against Russian individuals.[3]

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[2] Council Regulation (EU) 2022/259 of 23 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42I, 23.2.2022, p. 1–2); Council Implementing Regulation (EU) 2022/260 and 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42I, 23.2.2022, p. 3–14; OJ L 42I, 23.2.2022, p. 15–73); Council Regulation (EU) 2022/262 of 23 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42I, 23.2.2022, p. 74–76); Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42I, 23.2.2022, p. 77–94); Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 42I, 23.2.2022, p. 95–97); Council Decision (CFSP) 2022/265 and 2022/267 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 42I, 23.2.2022, p. 98–108; OJ L 42I, 23.2.2022, p. 114–172); and Council Decision (CFSP) 2022/266 of 23 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas (OJ L 42I, 23.2.2022, p. 109–113).

[3] Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 48, 25.2.2022, p. 1–16); Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 49, 25.2.2022, p. 1–140); Council Decision (CFSP) 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 50, 25.2.2022, p. 1–3);Council Regulation (EU) 2022/330 of 25 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 51, 25.2.2022, p. 1–2); Council Decision (CFSP) 2022/331 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 52, 25.2.2022, p. 1–44); Council Implementing Regulation (EU) 2022/332 of 25 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 53, 25.2.2022, p. 1–44); Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the

7. On 28 February 2022, the Council decided to close the European airspace for Russian aircrafts and adopted preventive measures to ensure that the Russian Central Bank cannot deploy its international reserves in ways that undermine the impact of the measures taken[4].

8. On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system[5], (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik[6], and on 2 March 2022 (iii) further restrictive measures against Belarus, the other aggressor in this war[7].

9. On 2 March 2022, due to its role in facilitating the military aggression, the Council decided to introduce further sanctions against Belarus related to the trade of goods used for the production or manufacturing of tobacco products, mineral products, potassium chloride (‘potash‘) products, wood products, cement products, iron and steel products, and rubber products. It also prohibited the export to Belarus or for use in Belarus of dual-use goods and technology, exports of goods and technology which might contribute to Belarus’s military, technological, defence and security development, and exports of machinery, together with restrictions on the provision of related services.[8]

10. In close cooperation with the EU, restrictive measures were also taken by international partners, notably the United States, the United Kingdom, Canada, Norway, Japan, South Korea and Australia.

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issuance of visas to the citizens of the European Union and the Russian Federation (OJ L 54, 25.2.2022, p. 1–3).

[4] Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 1–3), and Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 4–6).

[5] Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 1–4), and Council Decision (CFSP) 2022/346 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 63, 2.3.2022, p. 5–7).

[6] Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 1–4), and Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine (OJ L 65, 2.3.2022, p. 5–7).

[7] Council Implementing Regulation (EU) 2022/353 of 2 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 66, 2.3.2022, p. 1–13), and Council Decision (CFSP) 2022/354 of 2 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 66, 2.3.2022, p. 14–26).

[8] Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 1–102), and Council Decision (CFSP) 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 103–111).

1.2. UNDERTAKINGS AFFECTED BY HIGH GAS AND ELECTRICITY PRICES OR BY DISRUPTIONS OF ENERGY SUPPLY

11. The current crisis has already driven up the prices for gas and electricity significantly above the already high levels observed in the period before the invasion. In this context, the Commission recalls the toolbox which it presented already in October 2021[9] (the 'October Communication') and the Communication REPowerEU[10].

12. Very high energy prices are hurting the economy. The European Central Bank estimated before the invasion that the energy price shocks will reduce GDP growth by around 0.5 percentage points in 2022. Continued high energy prices are likely to increase poverty and affect business competitiveness. Energy-intensive industries in particular have faced higher manufacturing costs.[11]

13. The toolbox[12] presented by the Commission in October 2021 has proven useful, and has been extensively applied. Most Member States have adopted measures in line with the toolbox. Those measures have eased energy bills for around 71 million households and several million small and medium-sized enterprises ('SMEs') and micro enterprises. Overall, costs of those measures amount to more than EUR 23 billion.

14. The Commission Communication REPowerEU of 8 March[13] provides further guidance and new actions to ramp up the production of green energy, diversify supplies and reduce demand, including preparatory measures for next winter.

1.3. THE NEED FOR CLOSE EUROPEAN COORDINATION OF NATIONAL AID MEASURES

15. Targeted and proportionate application of EU State aid control serves to ensure that national support measures are effective in helping undertakings affected by the current crisis. EU State aid control also ensures that the EU Internal Market is not fragmented and that the level playing field stays intact. The integrity of the Internal Market is important to withstand external pressure and to avoid subsidy races, where Member States with deeper pockets can outspend neighbours to the detriment of cohesion within the Union.

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9 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 660 final of 13 October 2021- Tackling rising energy prices: a toolbox for action and support.

10 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2022) 108 final of 8 March 2022 – REPowerEU: Joint European Action for more affordable, secure and sustainable energy.

11 Over half of the EU's aluminium and zinc smelters are today operating at reduced capacity or have temporarily closed. The EU has temporarily lost 650 000 tonnes of primary aluminium capacity, about 30% of its total.

12 Communication from the Commission, COM(2021) 660 final of 13 October 2021 – Tackling rising energy prices: a toolbox for action and support.

13 Communication from the Commission, COM(2022) 108 final of 8 March 2022 – REPower EU: Joint European Action for more affordable, secure and sustainable energy.

1.4. APPROPRIATE STATE AID MEASURES

16. In the overall effort of Member States to address the challenges resulting from the geopolitical situation, this Communication sets out the possibilities Member States have under EU State aid rules to ensure liquidity and access to finance for undertakings, especially SMEs that face economic challenges under the current crisis.

17. As set out in the October Communication[14], measures benefiting non-commercial energy consumers do not constitute State aid, provided they do not indirectly benefit a specific sector or undertaking. Member States can, for example, make specific social payments to those most at risk which could help them afford their energy bills in the short term, or provide support for energy efficiency improvements, while ensuring effective market functioning.

18. Measures targeting commercial energy consumers do not constitute State aid, provided such measures are of a general nature, benefitting all such energy consumers equally. Such non-selective measures can, for example, take the form of general reductions in taxes or levies, a reduced rate to the supply of natural gas, electricity or district heating or reduced network costs. To the extent national interventions qualify as aid, they may be considered compatible with State aid rules if they meet certain requirements. For example, aid in the form of reductions in harmonised environmental taxes that respect the minimum levels of taxation and the rules set in the Energy Taxation Directive[15] and are in line with the provisions of a Block Exemption Regulation may be implemented by Member States without prior notification to the Commission.

19. Member States may also grant aid to make good the damage caused by exceptional occurrences under Article 107(2)(b) TFEU. Such State aid aimed at mitigating damage directly caused by the current and exceptional occurrences of the Russian military aggression against Ukraine may also cover certain direct effects of the economic sanctions taken in response or other restrictive measures negatively affecting the beneficiary from operating its economic activity or a specific and severable part of its economic activity.

20. Member States must notify such aid measures and the Commission will assess them directly under Article 107(2)(b) TFEU. Such aid may be granted to undertakings in difficulty.

21. Aid granted by Member States under this Communication to undertakings, which is channelled through banks as financial intermediaries, shall benefit those undertakings directly. However, it may confer an indirect advantage on the financial intermediaries. Nevertheless, under the safeguards of sections 2.1 and 2.2, such indirect advantages do not have the objective to preserve or restore the viability, liquidity or solvency of the credit institutions. As a result, such aid would not be qualified as extraordinary public financial support under Directive 2014/59/EU of

[14] Communication from the Commission, COM(2021) 660 final of 13 October 2021 – Tackling rising energy prices: a toolbox for action and support.

[15] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51.

the European Parliament and of the Council (the Bank Recovery and Resolution Directive - BRRD)[16] or under Regulation 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)[17], and would not be assessed under the State aid rules applicable to the banking sector.[18]

22. Aid granted by Member States to banks under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis, which does not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity would not be qualified as extraordinary public financial support under the BRRD nor under the SRM Regulation, and would also not be assessed under the State aid rules applicable to the banking sector.[19]

23. If due to the current crisis and the restrictive measures taken in connection with that aggression, banks would need extraordinary public financial support (see Article 2(1)(28) BRRD and Article 3(1)(29) SRM Regulation) in the form of liquidity, recapitalisation or an impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD and Article 18(4)(d)(i), (ii) or (iii) of the SRM Regulation. Where the latter conditions are fulfilled, the bank receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail.

24. To the extent such measures address problems linked to the invasion of Ukraine by Russia and the restrictive measures taken in connection with that aggression, they would be deemed to fall under point 45 of the 2013 Banking Communication[20], which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.

25. Aid granted under this Communication shall not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition would appear to be harmful to the internal market. This is irrespective of the number

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[16] OJ L 173, 12.6.2014, p. 190, see Article 2 (1) (28) of the BRRD.

[17] OJ L 225, 30.7.2014, p. 1, see Article 3 (1) (29) of the SRM Regulation.

[18] Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2); Communication from the Commission on the treatment of impaired assets in the Community financial sector (OJ C 72, 26.3.2009, p. 1); Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 329, 7.12.2010, p. 7); Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7); and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Communication') (OJ C 216, 30.7.2013, p. 1).

[19] Any measures to support credit institutions or other financial institutions that constitute State aid in the meaning of Article 107(1) TFEU, which fall outside the present Communication must be notified to the Commission and shall be assessed under the State aid rules applicable to the banking sector.

[20] As defined in footnote 18.

of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

1.5. APPLICABILITY OF ARTICLE 107(3)(B) OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

26. Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. In this context, the Union courts have ruled that the disturbance must affect the whole or an important part of the economy of the Member State concerned, and not merely that of one of its regions or parts of its territory. This, moreover, is in line with the need to make a strict interpretation of any exceptional provision such as Article 107(3)(b) TFEU[21]. This interpretation has been consistently applied by the Commission in its decision-making.[22]

27. The Commission considers that the invasion of Ukraine by Russia and the economic sanctions taken in response by the EU or its international partners have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States. Supply chain disruptions and increased uncertainty have direct or indirect effects that impact a wide area of sectors. In addition, rising energy prices affect virtually any economic activity in all Member States. The Commission considers accordingly, that all economic sectors in all Member States are affected by serious economic disturbances. On that basis, the Commission considers that it is appropriate to lay down the criteria for the assessment of State aid that Member States may take to remedy this serious disturbance.

28. State aid is in particular justified and can be declared compatible with the Internal Market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the economic sanctions adopted by the EU or by its international partners targeted at certain economic actors or the Russian and Belarusian economies more widely, as well as the economic counter measures taken by Russia.

29. The Commission sets out in this Communication the criteria for the compatibility assessment it will apply in principle to the aid granted by Member States in this

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[21] Joined Cases T-132/96 and T-143/96 Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission, EU:T:1999:326, paragraph 167.

[22] Commission Decision 98/490/EC in Case C 47/96 Crédit Lyonnais (OJ L 221, 8.8.1998, p. 28), point 10.1; Commission Decision 2005/345/EC in Case C 28/02 Bankgesellschaft Berlin (OJ L 116, 4.5.2005, p. 1), points 153 et seq.; and Commission Decision 2008/263/EC in Case C 50/06 BAWAG (OJ L 83, 26.3.2008, p. 7), point 166. See Commission Decision in Case NN 70/07 Northern Rock (OJ C 43, 16.2.2008, p. 1); Commission Decision in Case NN 25/08 Rescue aid to Risikoabschirmung WestLB (OJ C 189, 26.7.2008, p. 3); Commission Decision of 4 June 2008 in State aid C 9/08 SachsenLB (OJ L 104, 24.4.2009, p. 34); and Commission Decision of 6 June 2017 in case SA.32544 (2011/C) Restructuring of TRAINOSE S.A (OJ L 186, 24.7.2018, p. 25).

context under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission and falling within the scope of this Communication are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions of this Communication are fully respected.

30. State aid measures notified and assessed under this Communication are intended to support undertakings active in the EU that are affected by the Russian military aggression and consequences of the economic sanctions taken. The aid measures may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners. In particular, it must be avoided that natural persons or entities targeted in the sanctions benefit directly or indirectly from any such measures.

31. State aid measures falling within the scope of this Communication may be cumulated with one another in line with the requirements in the specific sections of this Communication. State aid measures covered by this Communication may be cumulated with aid under de minimis Regulations[23] or with aid under Block Exemption Regulations[24] provided the provisions and cumulation rules of those Regulations are respected. State aid measures covered by this Communication may be cumulated with aid under the COVID-Temporary Framework[25], provided overcompensation is avoided and the cumulation rules therein are respected. When Member States grant to the same beneficiary loans or guarantees under the COVID Temporary Framework and under this Communication and when the overall amount of the loan principal is calculated on the basis of self-declared liquidity needs of the beneficiary, the Member States must ensure that those liquidity needs are covered only once with aid. Likewise, aid under this Communication may be cumulated with aid under Article 107(2)(b) TFEU only where it does not lead to overcompensation.

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[23] 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 of 26.4.2012, p. 8).

[24] 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 (General Block Exemption Regulation); Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1; and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

[25] 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).

2. TEMPORARY STATE AID MEASURES

2.1. LIQUIDITY SUPPORT IN THE FORM OF GUARANTEES

32. In order to ensure access to liquidity to undertakings affected by the current crisis, public guarantees on loans for a limited period and loan amount can be an appropriate, necessary and targeted solution during the current circumstances.

33. For the same underlying loan principal, guarantees granted under this section shall not be cumulated with aid granted under section 2.2 of this Communication and vice versa or with aid granted under sections 3.2 or 3.3 of the COVID-19 Temporary Framework. Guarantees granted under this section may be cumulated for different loans provided the overall loan amount per beneficiary does not exceed the ceilings set out in point 34(d) of this Communication. A beneficiary may benefit in parallel from multiple measures under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 34(d).

34. The Commission will consider such State aid in the form of public guarantees on new individual loans made to undertakings affected by the current crisis as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:

a) Guarantee premiums are set per individual loans at a minimum level, which shall increase progressively as the duration of the guaranteed loan increases, as set out in the following table:

Type of recipient	*For 1st year*	*For 2nd –3rd year*	*For 4th -6th years*
SMEs	*25bps*	*50bps*	*100bps*
Large enterprises	*50bps*	*100bps*	*200bps*

b) As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby guarantee duration, guarantee premiums and guarantee coverage may be modulated for each underlying individual loan principal (for instance, lower guarantee coverage could offset a longer duration or could allow lower guarantee premiums); a flat premium may be used for the entire duration of the guarantee, if it is higher than the minimum premiums for the 1st year set out in the table above for each type of beneficiary, as adjusted according to guarantee duration and guarantee coverage under this paragraph;

c) The guarantee is granted by 31 December 2022 at the latest;

d) The overall amount of loans per beneficiary, for which a guarantee is granted under this section, shall not exceed:
   - (i) [10%] of the beneficiary's average total annual turnover over the last three closed accounting periods ; or
   - (ii) [30%] of energy costs over the 12 months preceding the month when the application for aid is submitted; or
   - (iii) Upon appropriate justification to be provided by the Member State to the Commission for its assessment (for example in connection with the

characteristics of certain type of undertakings)[26], the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming [12] months for SMEs[27] and for the coming [6] months for large enterprises. The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework cannot be covered by measures adopted under this Communication. The liquidity needs should be established through self-certification by the beneficiary[28];

e) The duration of the guarantee is limited to maximum six years, unless modulated according to point 34(b), and the guarantee may not exceed:
   (i) 90 % of the loan principal where losses are sustained proportionally and under same conditions by the credit institution and the State; or
   (ii) 35 % of the loan principal, where losses are first attributed to the State and only then to the credit institutions (*i.e.* a first-loss guarantee); and
   (iii) in both of the above cases, when the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally;

f) The guarantee shall relate to investment and/or working capital loans

g) Guarantees may not be granted to: i) undertakings targeted by economic sanctions adopted by the EU; or ii) undertakings owned or controlled by persons, entities or bodies targeted by restrictive measures adopted by the EU; or iii) undertakings controlled by Russian persons, entities or bodies;

h) Guarantees may be provided directly to final beneficiaries or to credit institutions and other financial institutions as financial intermediaries. The credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the public guarantees to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates than without such public guarantees.

2.2. Liquidity support in the form of subsidised loans

35. In order to ensure access to liquidity to undertakings affected by the current crisis, subsidised interest rates for a limited period and loan amount may be an appropriate, necessary and targeted solution during the current circumstances.

36. For the same underlying loan principal, loans granted under this section shall not be cumulated with aid granted under section 2.1 of this Communication and vice-versa. Loans and guarantees granted under this Communication may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed

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[26] Relevant justification could relate to undertakings active in sectors that are particularly affected by direct or indirect effects of the invasion, including restrictive economic measures taken by the EU, its international partners, as well as counter measures taken by Russia. These effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks or rising prices for specific inputs or raw-materials affected by the current crisis.

[27] As defined in Annex I to the General Block Exemption Regulation.

[28] The liquidity plan may include both working capital and investment costs.

the thresholds set out in point 34(d) or in point 37(e). A beneficiary may benefit in parallel from multiple subsidised loans under this section provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 37(e).

37. The Commission will consider State aid in the form of subsidised loans in response to the current crisis as compatible with the Internal Market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:

a) The loans are granted to undertakings that have been affected by the current crisis, excluding credit institutions or other financial institutions;
b) The loans may be granted at reduced interest rates, which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission[29]) available either on 1 March 2022 or at the moment of notification, plus the credit risk margins as set-out in the table below:

Type of recipient	*Credit risk margin for 1st year*	*Credit risk margin for a 2nd -3rd year*	*Credit risk margin for 4th-6th year*
SMEs	*25bps*[30]	*50bps*[31]	*100bps*
Large enterprises	*50bps*	*100bps*	*200bps*

c) As an alternative, Member States may notify schemes, considering the above table as a basis, but whereby the loan maturity and the level of credit risk margins may be modulated, for instance, a flat credit risk margin may be used for the entire duration of the loan, if it is higher than the minimum credit risk margin for the 1st year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph[32];
d) The loan contracts are signed by 31 December 2022 at the latest and are limited to maximum six years, unless modulated according to point 37(c);
e) The overall amount of the loans per beneficiary shall not exceed:
   (i) [10%] of the beneficiary's average total annual turnover over the last three closed accounting periods; or
   (ii) [30%] of energy costs over the 12 months preceding the month when the application for aid is submitted;
   (iii)With appropriate justification provided by the Member State to the Commission (for example in connection with the characteristics of certain type of undertakings)[33], the amount of the loan may be

[29] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p. 6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

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

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

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

[33] Relevant justification could relate to undertakings active in sectors that are particularly affected by direct or indirect effects of the invasion, including restrictive economic measures taken by the EU, its international partners, as well as counter measures taken by Russia. These effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased risks of cyber-attacks, or rising prices for specific inputs or raw-materials affected by the current crisis.

increased to cover the liquidity needs from the moment of granting for the coming [12] months for SMEs[34] and for the coming [6] months for large enterprises. The liquidity needs already covered by aid measures under the COVID-19 Temporary Framework shall not be covered by the current Communication. The liquidity needs should be established through self-certification by the beneficiary[35];

f) Loans shall relate to investment and/or working capital needs,

g) Loans may not be granted to: i) undertakings targeted by economic sanctions adopted by the EU; or ii) to undertakings owned or controlled by persons, entities or bodies targeted by restrictive measures adopted by the EU; or iii) undertakings controlled by Russian persons, entities or bodies;

h) Loans may be provided directly to final beneficiaries or through credit institutions and other financial institutions as financial intermediaries. In such a case, the credit institutions or other financial institutions should, to the largest extent possible, pass on the advantages of the subsidised interest rates on loans to the final beneficiaries. The financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries without conditioning the granting of subsidised loans under this section to refinancing existing loans.

2.3. AID FOR ADDITIONAL COSTS DUE TO EXCEPTIONALLY SEVERE INCREASE IN GAS AND ELECTRICITY PRICES

38. Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary support could alleviate exceptionally severe increases in the price of gas and electricity, which undertakings may not be able to pass on or adapt to in the short-term. This could mitigate the consequences for otherwise healthy undertakings to cope with the steep cost increases as a consequence of the geopolitical crisis 2022 and also reduce the inflationary pressure from energy price increases.

39. The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided the following conditions are met:

a) The aid is granted no later than [31 December 2022];

b) The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees, loans and equity provided the total nominal value of such measures remains below the applicable aid intensity and aid ceilings. All figures used must be gross, that is, before any deduction of tax or other charge;

c) Aid granted in the form of repayable advances, guarantees, loans or other repayable instruments may be converted into other forms of aid such as grants, provided the conversion takes place by [31 March 2023] at the latest and the conditions in this section are complied with;

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36 As demonstrated by the undertaking e.g. based on the respective bill.

36 As demonstrated by the undertaking e.g. based on the respective bill.

d) The aid is granted on the basis of a scheme with an estimated budget. Member States may limit the aid to investments that support specific economic areas of particular importance to the economy. However, such limits need to be designed broadly and not lead to an artificial limitation of eligible investments or potential beneficiaries that would result in targeting only a small number of undertakings;

e) Aid may not be granted to: i) undertakings targeted by economic sanctions adopted by the EU; or ii) to undertakings owned or controlled by persons, entities or bodies targeted by restrictive measures adopted by the EU; or iii) undertakings controlled by Russian persons, entities or bodies;

f) Eligible costs under this measure are the increase in monthly gas and electricity costs after the invasion of Ukraine by Russia in comparison with a reference period between 1 November 2021 and 31 January 2022. Therefore, and for the purposes of this point, aid can be granted in relation to the gas and electricity consumption of the undertaking from 1 March 2022 until 31 December 2022, at the latest ('eligible period'). The eligible cost includes the monthly unit cost[36] of the undertaking e.g. in EUR/MWh of gas and electricity in the eligible period to the extent it exceeds [140%] of the average unit cost of gas and electricity for the undertaking in the reference period.[37]

g) The overall aid per undertaking does not exceed [30%] of the eligible costs up to a maximum of [EUR 2 million] at any given point in time; and

h) The granting authority may make an advance payment to the aid beneficiary, when the aid is granted before the eligible costs have been incurred. In doing so, the granting authority may rely on estimations of the amounts under the ceilings in point 39 (f) to (g) in order to determine the amount of the advance. The granting authority is required to verify that ceiling ex-post and claw-back any aid payment that exceeds the threshold calculated on the basis of the methodology described in point 39(f) no later than [three months] after the eligible period has ended. In any event, the advance cannot exceed the aid ceiling set out in point 39(g).

40. In certain situations further aid may be necessary to ensure the continuation of economic activity. To that end, Member States may grant aid exceeding the values calculated pursuant to point 39 (f) and 39 (g), where, in addition to meeting the conditions in point 39(a) to (d) and (h), the following conditions are met:

a) The beneficiary of the aid is an 'energy-intensive business' within the meaning of the first limb of Article 17(1)(a) of the Energy Taxation

[36] As demonstrated by the undertaking e.g. based on the respective bill.

[37] $((p(t) - p(ref) * 1,4) * q(t)$, where p denotes the unit price, q the quantity consumed, ref the reference period and t the period from 1 March to 31 December 2022.

Directive[38], that is to say, where the purchases of energy products and electricity amount to at least 3.0 % of the production value[39];

b) The beneficiary incurs operating losses[40] resulting from the increase in gas and electricity costs occurring after the Russian military aggression in Ukraine. For the purposes of this point, the eligible costs as defined in point 39(e) must be at least as high as the operating loss in the eligible period.

c) The overall aid does not exceed [50%] of the eligible costs and amounts to a maximum of [80%] of the operating losses of the undertaking; and

d) The overall aid does not exceed [EUR 25 million] per undertaking at any given point in time.

[POSSIBLE AID TO FARMERS, GOING BEYOND THE LIQUIDITY MEASURES UNDER SECTIONS 2.1, 2.2, LINKED TO THE SIGNIFICANT INCREASES IN INPUT COSTS, IN PARTICULAR FEED AND FERTILISERS, FOLLOWING THE RUSSIAN INVASION OF UKRAINE

FOR THIS SECTION PLEASE PROVIDE YOUR INPUT BY ANSWERING THE QUESTIONS IN THE EUSURVEY]

3. MONITORING AND REPORTING

41. Member States must publish relevant information on each individual aid above EUR 100 000[41] granted under this Communication, and above EUR 10 000[42] in the primary agriculture and in the fisheries sectors, on the comprehensive State aid website or Commission's IT tool[43] within 12 months from the moment of granting.

42. Member States must submit annual reports to the Commission[44].

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[38] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51.

[39] Based on financial accounting reports for the calendar year 2021 or the latest available accounts.

[40] The undertaking is considered to have operating losses when EBITDA (earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments) for the eligible period is negative.

[41] Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 of 17 June 2014 and of Annex III to Commission Regulation (EU) No 702/2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

[42] Referring to information required in Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, subordinated loans and other forms the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

[43] The State aid transparency public search gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid and can be found at https://webgate.ec.europa.eu/competition/transparency/public?lang=en.

[44] OJ L 140, 30.4.2004, p. 1.

43. Member States must ensure that detailed records regarding the granting of aid provided for by this Communication are maintained. Such records, which must contain all information necessary to establish that the necessary conditions have been observed, must be maintained for 10 years upon granting of the aid and be provided to the Commission upon request.

44. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.

45. In order to monitor the implementation of this Communication, the Commission may request Member States to provide aggregate information on the use of State aid measures to remedy the serious disturbance of the economy due to the current crisis and the related restrictive measures.

4. FINAL PROVISIONS

46. The Commission applies this Communication from [XX March 2022], having regard to the economic impact of the Russian aggression against Ukraine and following sanctions, which required immediate action. This Communication is justified by the current exceptional circumstances and will not be applied after the dates specified herein.

47. The Commission will review all sections under this Communication before [31 December 2022] on the basis of important competition or economic considerations, as well as the international developments. Where helpful, the Commission may also provide further clarifications on its approach to particular issues.

48. The Commission, in close cooperation with the Member States concerned, ensures swift assessment of measures upon clear and complete notification of measures covered by this Communication. Member States should inform the Commission of their intentions and notify plans to introduce such measures as early and comprehensively as possible. The Commission will provide guidance and assistance to Member States in this process.