



Brussels, 20.7.2022
C(2022) 5342 final

COMMUNICATION FROM THE COMMISSION

Amendment to the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia

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1. INTRODUCTION

1. On 23 March 2022, the Commission adopted the Temporary Crisis Framework.
2. The Temporary Crisis Framework seeks to allow Member States to remedy the liquidity shortage faced by those undertakings affected directly or indirectly by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the restrictive measures (sanctions) imposed by the Union or by its international partners and the economic counter measures taken, for example, by Russia.
3. The Commission considers that it is necessary to adjust the measures set out in the Temporary Crisis Framework in view of the prolonged military aggression by Russia and the aggravating direct and indirect effects on the Union economy overall and the economies of all Member States.
4. The Commission has consulted Member States on their views regarding specific needs to be addressed in view of the sixth package of sanctions¹, the efforts to reduce dependency on Russian oil and of the objectives of the REPowerEU Plan².
5. First, the Commission considers that maximum aid amounts under section 2.1 of the Temporary Crisis Framework should be increased to cater for the continued economic disturbance and the aggravating macroeconomic effects of further and

¹ Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 1; Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 11; Council Implementing Regulation (EU) 2022/878 of 3 June 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 153, 3.6.2022, p. 15; Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 153, 3.6.2022, p. 53; Council Regulation (EU) 2022/880 of 3 June 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 153, 3.6.2022, p. 75; Council Implementing Decision (CFSP) 2022/881 of 3 June 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 77; Council Decision (CFSP) 2022/882 of 3 June 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 88; Council Decision (CFSP) 2022/883 of 3 June 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 153, 3.6.2022, p. 92; Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 153, 3.6.2022, p. 128; Council Decision (CFSP) 2022/885 of 3 June 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 153, 3.6.2022, p. 139.

² COM/2022/230 final, 18.5.2022.

prolonged increases of energy costs, worsening scarcity of gas supply and insecurity about its future availability, as well as direct and indirect effects of the additional sanctions adopted by the Union or by its international partners.

6. Second, the Commission considers that certain adjustments are required in section 2.4 of the Temporary Crisis Framework in order to improve its effective implementation. Moreover, the Commission considers that support granted under that section should be limited to avoid incentives to increase energy and gas usage, which would aggravate the current gas scarcity.
7. Third, the Commission considers that Member States may need to take additional measures in line with the REPowerEU Plan to speed up or facilitate the investments in renewables (solar, wind power and geothermal), biogas and biomethane from organic waste and residues, renewable hydrogen, storage and renewable heat.
8. Fourth, the Commission considers that Member States may need to take additional measures to accelerate diversification of energy supplies and to reduce dependency on imported fossil fuel by supporting decarbonisation measures.
9. In view of the above, the Commission considers that beyond aid measures allowed under Article 107(3)(b) TFEU and existing possibilities under Article 107(3)(c) TFEU, it is also essential to accelerate rollout of renewable energy, storage and renewable heat to implement the REPowerEU Plan and to decarbonise industrial production processes through electrification and/or the use of renewable and certain types of electricity-based hydrogen and energy efficiency measures. Therefore, this Communication lays down the conditions under which it will consider such measures compatible with the internal market under Article 107(3)(c) TFEU. To that end, two new sections (Sections 2.5 and 2.6) will be introduced in the Temporary Crisis Framework.
10. Besides the proposed amendments, the Commission recalls that Member States may grant aid to cover liquidity needs of undertakings affected by the current crisis under the existing sections 2.1, 2.2 and 2.3 of the Temporary Crisis Framework. Investment costs, such as manufacturing equipment or materials necessary to implement REPowerEU objectives may be supported with subsidised loans or guarantees under sections 2.2 and 2.3 of the Temporary Crisis Framework.

2. AMENDMENTS TO THE TEMPORARY CRISIS FRAMEWORK

11. The Commission will apply the following amendments to the Temporary Crisis Framework as of 20 July 2022.
12. Point 14bis is introduced:

‘14bis. On 3 June 2022, the Council adopted a sixth package of sanctions*, in light of Russia’s continuing war of aggression against Ukraine, Belarus’ support for it, and the reported atrocities committed by the Russian armed forces. The package includes: 1) a ban on imports from Russia of crude oil and refined petroleum products, with limited exceptions; 2) a SWIFT ban for an additional three Russian bank and one Belarusian bank; and 3) a suspension of broadcasting in the Union for three more Russian State-owned outlets. The Union also adopted sanctions against an additional 65 individuals and 18 entities. They include individuals responsible for the atrocities committed in Bucha and Mariupol.

*Council Implementing Regulation (EU) 2022/876 of 3 June 2022 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 1; Council Regulation (EU) 2022/877 of 3 June 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 11; Council Implementing Regulation (EU) 2022/878 of 3 June 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 153, 3.6.2022, p. 15; Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 153, 3.6.2022, p. 53; Council Regulation (EU) 2022/880 of 3 June 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 153, 3.6.2022, p. 75; Council Implementing Decision (CFSP) 2022/881 of 3 June 2022 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 77; Council Decision (CFSP) 2022/882 of 3 June 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, OJ L 153, 3.6.2022, p. 88; Council Decision (CFSP) 2022/883 of 3 June 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 153, 3.6.2022, p. 92; Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 153, 3.6.2022, p. 128; Council Decision (CFSP) 2022/885 of 3 June 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 153, 3.6.2022, p. 139.'

13. Point 19 is replaced by the following:

'19. The REPowerEU Communication provides further guidance and describes new actions to increase the production of green energy, diversify supplies and reduce demand, including preparatory measures for winter 2022-2023. The REPowerEU plan* includes measures on reducing the Union's dependency on Russian fossil fuels by accelerating the green transition, investing in energy efficiency and diversifying energy supplies. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. High energy prices also reflect the scarcity of supplies in the short term, which is feeding through into the general price level. In the short term, temporary support might therefore be needed to help undertakings for which the current crisis situation would have particularly severe short-term consequences.

*COM/2022/230 final, 18.5.2022.'

14. The following point 25bis is introduced:

'25bis. Damage directly caused by mandatory reductions in natural gas consumption which may have to be imposed by Member States can be assessed under Article 107(2)(b) TFEU, provided there is no overcompensation.

15. The following points 26bis, 26ter, 26quater and 26quinquies are inserted:

26bis. Reductions in gas supplies into the Union may also make it necessary to incentivise voluntary reductions in natural gas demand. Where Member States envisage introducing incentives for voluntary reductions in natural gas demand in the context of the current crisis, the Commission will assess such measures directly

under Article 107(3)(b) TFEU. While this will require a case-by-case assessment, the Commission considers the following elements to be particularly relevant:

- a. the use of a competitive process based on transparent criteria to contract volumes for voluntary demand reduction;
- b. the absence of any formal restrictions to cross-border trade or flows;
- c. the limitation of the incentives concerned to demand reductions in the future that go beyond those that the beneficiary would have undertaken regardless of the measure;
- d. an immediate reduction in aggregate final gas demand in the Member State concerned while avoiding a mere shift in demand for natural gas.

26ter. Member States may also consider measures to incentivise the filling of gas storage facilities to the extent that the market does not provide incentives to do so for the coming winter. Where Member States envisage granting incentives for the filling of gas storage facilities in the context of the current crisis, the Commission will assess them directly under Article 107(3)(b) TFEU*. While this will require a case-by-case assessment, the Commission considers the following elements as particularly relevant:

- a. the use of a competitive process based on transparent criteria to minimise the aid;
- b. the absence of any restrictions to cross-border trade or flows;
- c. the presence of safeguards to avoid overcompensation;
- d. the compliance with the obligations and conditions for filling and incentivizing gas storage set out in Article 6a to Article 6d of Regulation (EU) 2017/1938**, in particular the conditions for support measures set out in Article 6b, paragraphs (2) and (3).

*See Commission decision SA.103012 (2022/NN) - Incentive measure to store natural gas in the Bergermeer storage facility for the next heating period.

**As amended by Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022, OJ L 173, 30.6.2022, p. 17.

26quater. The Commission will consider on a case-by-case basis possible necessary, proportionate and appropriate aid, in line with the Commission Communication “Save gas for a safe winter”* and the national gas security of supply emergency plans, in order to refurbish facilities that will contribute to replace gas, before the next winter and for a limited period of time, with another more polluting carbon fuel. Any such alternative carbon fuel must have the lowest possible emissions content, while the aid must be subject to energy efficiency efforts and avoid lock-in effects beyond the crisis, in line with EU climate objectives. Such measures can be aimed at both preemptively reducing the consumption of gas or to respond to mandatory reductions in natural gas demand, unless otherwise compensated.

*COM(2022) 360/2, 20.7.2022.

26quinquies. In view of the challenges to transport goods to and from Ukraine, the Commission will consider on a case-by-case basis possible aid for insurance or reinsurance regarding transport of goods to and from Ukraine. Among other things, Member States will need to show that the insurance or reinsurance is not available at all or at rates which are substantially higher than before Russia's invasion of Ukraine.'

16. Point 41(a) is replaced by the following:

'a. The overall aid does not exceed EUR 500 000 per undertaking at any given point in time.* 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 does not exceed the overall cap of EUR 500 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges.

*Aid granted on the basis of schemes approved under this section 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.

** When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

*** When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.'

17. Point 42(a) is replaced by the following:

'a. the overall aid does not at any point in time exceed EUR 62 000 per undertaking active in the primary production of agricultural products and EUR 75 000 per undertaking active in the fishery and aquaculture sectors; * 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 does not exceed the overall relevant cap of EUR 62 000 or EUR 75 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

*Aid granted on the basis of schemes approved under this section that has been reimbursed before granting of new aid under this section must not be taken into account in determining whether the relevant ceiling is exceeded.

** When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

*** When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.'

18. Point 43 is replaced by the following:

'Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 41(a) and 42(a), the Member State concerned must ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 500 000 is not exceeded per undertaking. Where an undertaking is active exclusively in the sectors covered by point 42(a) the overall maximum amount of EUR 75 000 should not be exceeded per undertaking.'

19. The following footnote is inserted in point 45:

‘*For the purpose of this section, the term ‘public guarantees on loans’ covers also guarantees on certain factoring products, namely guarantees on recourse and reverse factoring where the factor has the right of recourse to the factoree. Eligible reverse factoring products must be limited to products that are used only after the seller has already executed its part of the transaction, *i.e.* the product or service has been delivered. Financial leasing is also covered by the term ‘public guarantees on loans’.’

20. The following footnote is inserted in point 47(e) letter (i):

‘*When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 47(e)(i) will be calculated based on the undertaking’s duration of existence at the moment of the aid application by the undertaking.’

21. The following footnote is inserted in point 47(e) letter (ii):

‘*When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 47(e)(ii) will be calculated based on the undertaking’s duration of existence at the moment of the aid application by the undertaking.’

22. In point 49 the reference to point 47(d) is replaced with ‘point 47(e)’.

23. The following footnote is inserted in point 50(b):

‘*If a grace period is applied for interest payments, the minimum interest rates set out in point 50(b) must be complied with and interests must accrue from the first day of the grace period and must be capitalised at least annually. The duration of the loan contracts will remain limited to maximum of six years from the moment of granting the loan unless modulated in line with point 50(c) and the overall amount of the loans per beneficiary referred to in point 50 (e) will not be exceeded.’

24. The link in footnote 48 is replaced with the following:

https://ec.europa.eu/competition-policy/state-aid/legislation/reference-discount-rates-and-recovery-interest-rates_en

25. The following footnote is inserted in point 50(c):

‘*See the summary of case practice on modulation under point 50(c) published on the website of DG Competition at https://ec.europa.eu/competition-policy/state-aid/ukraine_en.’

26. The following footnote is inserted in point 50(e) letter (i):

‘*When the beneficiaries of the measure are newly established enterprises that do not hold three closed annual accounts, the applicable cap provided by point 50(e)(i) will be calculated based on the undertaking’s duration of existence at the moment of the aid application by the undertaking.’

27. The following footnote is inserted in point 50(e) letter (ii):

‘*When the beneficiaries of the measure are newly established enterprises that do not have records for the entirety of the preceding twelve months, the applicable cap provided by point 50(e)(ii) will be calculated based on the undertaking’s duration of existence at the moment of the aid application by the undertaking.’

28. Point 50(e) letter (iii) is replaced by the following:

‘(iii) with appropriate justification provided by the Member State to the Commission (for example in connection with the challenges faced by the beneficiary during the current crisis) *, 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** and for the coming 6 months for large enterprises. Where large enterprises need to provide financial collaterals for trading activities on energy markets, the amount of the loan may be increased to cover the liquidity needs derived from these activities for the coming 12 months. 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***;

*Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the Russian aggression, including restrictive economic measures taken by the Union and its international partners, as well as counter measures taken by Russia. Those effects may include disruptions of supply chains or outstanding payments from Russia or Ukraine, increased price volatility on energy markets and related collateral needs, increased risks of cyber-attacks, or rising prices for specific inputs or raw-materials affected by the current crisis.

**As defined in Annex I to the General Block Exemption Regulation.

***The liquidity plan may include both working capital and investment costs.’

29. Point 51 is replaced by the following:

’51. Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in this Communication, temporary support could alleviate exceptionally severe increases in the price of natural 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 undertakings and help them cope with the steep cost increases as a consequence of the current crisis. Against the background of further reductions in gas supplies, it is on the other hand also important to maintain incentives for demand reductions and gradually prepare undertakings to shift towards reducing gas consumption. Additional support may currently still be warranted to enable continued activity of energy-intensive undertakings.’

30. Point 52 is replaced by the following:

‘52. 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 does not exceed 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 30 June 2023 at the latest;
- d. The aid is granted on the basis of a scheme with an estimated budget. Member States may limit the aid to activities that support specific economic sectors of particular importance to the economy or to the security and resilience of the internal market. However, such limits need to be designed broadly and not lead to an artificial limitation of potential beneficiaries;
- e. For the purposes of this section, eligible costs are calculated based on the increase in natural gas and electricity costs linked to the Russian aggression against Ukraine. The maximum eligible cost is the product of the number of units of natural gas and electricity procured by the beneficiary***** from external suppliers as a final consumer***** between 1 February 2022 and 31 December 2022 at the latest ('eligible period') and increase in the price that the beneficiary pays per unit consumed (measured for example in EUR/MWh), which must be calculated as the difference between the unit price paid by the beneficiary in a given month in the eligible period and twice (200%) the unit price paid by the beneficiary on average in the reference period from 1 January 2021 until 31 December 2021*****. As from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs must not exceed 70% of the beneficiary's consumption for the same period in 2021;
- f. The overall aid per beneficiary does not exceed 30% of the eligible costs;
- g. The overall aid per undertaking does not exceed EUR 2 million at any given point in time;
- h. The granting authority may make an advance payment to the beneficiary when the aid is granted before the eligible costs have been incurred. When doing so, the granting authority may rely on estimations of the eligible cost provided that the aid ceilings in point 52(f) and (g) are respected. The granting authority is required to verify the relevant ceilings ex-post on the basis of actual cost incurred and to claw back any aid payment that exceed those ceilings no later than six months after the eligible period has ended;
- i. Aid granted under this point 52 may be cumulated with aid granted under section 2.1, provided that a total amount of EUR 2 million is not exceeded.

*By way of derogation, when the aid is granted only after an ex post verification of the supporting documentation of the beneficiary and the Member State decides not to include the possibility to grant advance payments in line with point 52(h), aid may be granted until 31 March 2023 provided the eligible period as defined in point 52(e) is respected.

**If the aid is granted in the form of a tax advantage, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2022.

*** When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

**** When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.

***** For the purposes of section 2.4 exclusively, 'beneficiary' means an undertaking or a legal entity that forms part of an undertaking.

***** As demonstrated by the beneficiary e.g. based on the respective bill. Only final consumption will be counted, sales and own production are excluded.

***** $(p(t) - p(\text{ref}) * 2) * q(t)$, where p denotes the unit price, q the quantity consumed, ref the reference period from 1 January 2021 to 31 December 2021 and t the given month in the period from 1 February to 31 December 2022.'

31. Point 53 is replaced by the following:

'53. In certain situations, further aid may be necessary to ensure the continuation of an economic activity. To that end, Member States may grant aid exceeding the values calculated pursuant to point 52(f) and (g) where, in addition to meeting the conditions in point 52(a) to (e) and (h), the following conditions are met:

- a. The beneficiary is eligible, if it is an 'energy-intensive business' within the meaning of the first limb of Article 17(1)(a) of Directive 2003/96/EC*, *i.e.* where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0 % of the production value**; upon appropriate justification to be provided by the Member State to the Commission for its assessment, the production value may be replaced by turnover;
- b. The beneficiary is eligible if it incurs operating losses***, whereby the increase in the eligible cost as defined in point 52(e) must amount to at least 50% of the operating loss in the same 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 beneficiary;
- d. The overall aid does not exceed EUR 25 million per undertaking at any given point in time;
- e. For an energy-intensive beneficiary active in one or more sectors or sub-sectors listed in Annex I****, the overall aid may be increased to a maximum of 70% of the eligible costs and may amount to a maximum of 80% of the operating losses incurred by the beneficiary. The overall aid may not exceed EUR 50 million per undertaking at any given point in time;
- f. Aid under point 53 may be cumulated with aid under section 2.1, provided that the ceilings specified under points 53(d) or 53(e), whichever applies, are not exceeded.

*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.

** Based on financial accounting reports for the calendar year 2021 or the latest available annual accounts.

*** 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. Such operating losses should be demonstrated by the beneficiary on a monthly or quarterly basis, unless otherwise duly justified.

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

32. The following section is inserted:

'2.5. Aid for accelerating the rollout of renewable energy, storage, and renewable heat relevant for REPowerEU

53bis. Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, it is essential in the context of Russian military aggression against Ukraine and of the REPowerEU Plan* to accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on Russian fossil fuels imports and accelerate the energy transition. State aid to accelerate the deployment of solar capacity, wind power capacity, geothermal energy capacity, electricity and thermal energy storage, renewable heat as well as the production of renewable hydrogen, biogas and biomethane from waste and residues, forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels in the current context. In the light of the urgent need to ensure the swift implementation of projects that accelerate the rollout of renewable energy, storage and renewable heat certain simplifications for the implementation of support measures are justified on a temporary basis.

* COM/2022/230 final, 18.5.2022.

53ter. The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU aid for the promotion of electricity from renewable sources, renewable hydrogen, biogas and biomethane from waste and residues, electricity and thermal energy storage and renewable heat provided the following conditions are met:

- a. the aid is granted for one of the following:
 - (i) photovoltaic or other solar electricity generation;
 - (ii) wind power electricity generation;
 - (iii) geothermal energy generation;
 - (iv) electricity or thermal energy storage;
 - (v) the production of renewable heat, including through heat pumps compliant with Annex VII to Directive (EU) 2018/2001 of the European Parliament and of the Council*;
 - (vi) the production of renewable hydrogen;

- (vii) the production of biogas and biomethane from waste and residues, compliant with the EU sustainability criteria pursuant to Article 29 to Directive (EU) 2018/2001 and with Regulation (EU) 2018/841**;
- b. support schemes may be limited to one or several technologies under point (a) but must not include any artificial limitation or discrimination, (including in the award of licences, permits or concessions when they are required) such as limitations by size of projects, location or regional aspects or very specific (sub)types of technologies within one of the technologies referred in point (a);
 - c. the aid is granted in the form of direct grants, repayable advances, loans, guarantees or tax advantages;
 - d. the aid is granted on the basis of a scheme with an estimated volume and budget;
 - e. the aid is granted by 30 June 2023 at the latest and the installations must be completed and be in operation within 24 months after the date of granting or 30 months after the date of granting for aid to offshore wind, renewable hydrogen installations. Where this deadline is not met, 5% of the amount of aid awarded must be reimbursed or reduced per month after the first 3 months of delay, increasing to 10% per month of delay after the sixth month, unless the delay is due to factors outside the control of the aid beneficiary, and could not reasonably have been foreseen***;
 - f. where the aid is granted in the form of contracts for ongoing aid payments, those contracts must not have a duration longer than 15 years after the aided installation starts operations;
 - g. the aid is granted in a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex ante and that minimise the risk of strategic bidding. At least 70% in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection**** or aid per unit of energy;
 - h. a competitive bidding process is not mandatory when aid is granted in the form of tax advantages, insofar as it is granted in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure. Furthermore, a competitive bidding process is not mandatory when the aid granted per undertaking per project does not exceed EUR 20 million and the aid beneficiaries are small projects defined as follows:
 - (i) for electricity generation, electricity or thermal storage – projects below or equal to 1 MW of installed capacity;
 - (ii) for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;
 - (iii) for the production of renewable hydrogen – projects below or equal to 3 MW of installed capacity or equivalent;
 - (iv) for the production biogas and biomethane from waste and residues – projects below or equal to 25,000 tonnes/year of installed capacity;

- (v) for 100% SME-owned or renewable energy community projects – projects equal to or below 6 MW installed capacity;
- (vi) for projects 100% owned by small and microenterprises or by renewable energy communities for wind generation only – projects equal or below 18 MW of installed capacity.

Where aid for small projects is not granted in a competitive bidding process, the aid intensity shall not exceed 45% of the total investment cost. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

- i. the volumes of capacity or production tendered must be set to ensure that the bidding process is effectively competitive. The Member State must prove the plausibility that the volume tendered will match the potential offer of projects. This may be done with reference to past auctions, to technology targets in the National Energy and Climate Plan*****, or by introducing a safeguard mechanism in case of risk of undersubscribed tenders. In case of repeated undersubscription of competitive bidding processes, the Member State must introduce remedies for any future schemes that it notifies to the Commission for the same technology;
- j. the aid must be designed to preserve efficient operating incentives and price signals. Furthermore, aid must be designed in a way that allows to addressing windfall profits, including in times of extremely high electricity or gas prices, such as, by putting in place a claw-back mechanism defined ex-ante or by granting the aid in the form of two-way contracts for differences*****;
- k. where the aid is granted for the production of renewable hydrogen, the Member State must ensure that the hydrogen is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001;
- l. aid under this measure must not be combined with other aid for the same eligible costs;
- m. aid may be granted for investments for which works started as of 20 July 2022; for projects started before 20 July 2022, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
- n. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
- o. the Member State must ensure compliance with the “do not significant harm” principle.

* Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

** Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p.1).

*** These factors could for example include a mandatory confinement of population due to a pandemic, or worldwide disruptions in the supply chain of necessary equipment for the projects. However, it would not include delays in obtaining the required permits for the project.

**** Such as EUR per tonne of CO₂ reduction.

***** Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p.1).

***** A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.

33. The following section is inserted:

‘2.6 Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures

53quater Beyond the existing possibilities available in accordance with Article 107(3)(c) TFEU, State aid to facilitate investments in the decarbonisation of industrial activities, notably through electrification and technologies using renewable and electricity-based hydrogen fulfilling the conditions of point 53quinquies (h), and in energy efficiency measures in industry forms part of an appropriate, necessary and targeted solution to reduce the dependency on imported fossil fuels in the context of Russian military aggression against Ukraine. In the light of the urgent need to accelerate that process for swift implementation of such investments certain simplifications are justified.

53quinquies The Commission will consider compatible with the internal market on the basis of Article 107(3)(c) TFEU the aid for investments leading to (i) a substantial reduction of greenhouse gas emissions from industrial activities currently relying on fossil fuels as energy source or feedstock, or (ii) a substantial reduction of energy consumption in industrial activities and processes, provided that all the following conditions are met:

- a. the aid is granted on the basis of a scheme with an estimated budget;
- b. the maximum individual aid amount that may be granted per undertaking must, in principle, not to exceed 10% of the total budget available for such a scheme. With appropriate justification provided by the Member State to the Commission,

the Commission may accept schemes that provide for the granting of individual aid amounts exceeding 10% of the total budget available for the scheme;

- c. the aid is granted in the form of direct grants, repayable advances, loans, guarantees or tax advantages;
- d. the investment must enable the beneficiary to do one or both of the following:
 - (i) reduce by at least 40% compared to the situation before the aid, direct greenhouse gas emissions from its industrial installation currently relying on fossil fuels as energy source or feedstock, by means of the electrification of the production processes, or the use of renewable and electricity-based hydrogen fulfilling the conditions of point (h) below to substitute fossil fuels; for the purposes of verifying the reduction of greenhouse gas emissions, also actual emissions from the combustion of biomass is to be taken into account; *
 - (ii) reduce by at least 20% compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities;**
- e. regarding investments relating to activities covered by the Emission Trading System (ETS), the aid leads to a reduction in the beneficiary installation's greenhouse gas emissions going below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447***;
- f. the aid must not be used to finance an increase of the overall production capacity of the beneficiary;
- g. where the aid is granted for an industrial decarbonisation investment involving the use of renewable hydrogen, the Member State must ensure that the hydrogen used is produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001;
- h. aid can also be granted for an industrial decarbonisation investment involving the use of hydrogen produced from electricity in one of the following instances:
 - (i) the hydrogen is produced only in hours in which the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electricity is consumed is a fossil-free electricity generation plant. Hydrogen produced in hours in which the marginal generation unit in the bidding zone where the electrolyser is located in the imbalance settlement periods when the electricity is consumed is a renewable electricity generation plant cannot be counted a second time under this section.
 - (ii) alternatively, hydrogen is produced from electricity taken from the grid and the electrolyser is producing hydrogen for a number of full load hours equal or lower than the number of hours in which the marginal price of electricity in the bidding zone was set by installations producing fossil-free electricity other than renewable;

- (iii) alternatively, the Member State must ensure that the used electricity-based hydrogen achieves life-cycle greenhouse gas emissions savings of at least 70 % relative to a fossil fuel comparator of 94g CO₂eq/MJ (2.256 tCO₂eq/tH₂) and that it originates from fossil-free sources. The method to compute the greenhouse gas emissions allocated to the electricity should not lead to an increased consumption of fossil fuel in line with REPowerEU objectives. Only the share of the produced hydrogen corresponding to the average share of electricity from fossil-free electricity generation plants other than renewable electricity generation plants, in the country of production, as measured two years before the year in question, can be used for the purpose of this section.
- i. the aid is granted by 30 June 2023 and is subject to the condition that the installation or equipment to be financed by the investment must be completed and be in full operation within 24 months after the date of granting or within 30 months after the date of granting for investments involving the use of renewable and hydrogen fulfilling the conditions of point (h). Where the deadline for completion and entry into operation is not met, 5% of the amount of aid awarded must be reimbursed or reduced per month after the first three months of delay, increasing to 10% per month of delay after the sixth month, unless the delay is due to factors outside the control of the aid beneficiary, and could not reasonably have been foreseen****. Where the deadline for completion and entry into operation is respected, aid in the form of repayable advances may be transformed into grants; if not, the repayable advance is to be reimbursed in equal annual instalments within five years after the date of granting the aid;
- j. aid may be granted for investments for which works started as of 20 July 2022; for projects started before 20 July 2022, aid may be granted if it is necessary to significantly accelerate or widen the scope of the investment. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid;
- k. the aid must not be granted for merely complying with applicable Union standards*****;
- l. the aid must induce the beneficiary to undertake an investment, which it would not undertake, or would carry out in a restricted or different manner, without the aid. The Commission considers that, given the exceptional economic challenges that undertakings face due to the current crisis, it is generally the case that in the absence of the aid, beneficiaries would continue their activities without changes, provided that continuing their activities without changes does not entail a breach of Union law;
- m. the eligible costs are the difference between the costs of the aided project and the cost savings or additional revenues, compared to the situation in the absence of the aid, over the lifetime of the investment;
- n. the aid intensity must not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings. The aid intensity may also be increased by 15 percentage points for investments delivering a reduction of direct greenhouse gas emissions of at least 55% or of

energy consumption of at least 25% compared to the situation prior to the investment*****;

- o. as an alternative to the requirements set out in points (m) and (n), the investment aid may be granted in a competitive bidding process that is open, clear, transparent and non-discriminatory, based on objective criteria that are defined ex-ante and minimising the risk of strategic bidding. At least 70% in the total selection criteria used for ranking bids must be defined in terms of aid per unit of environmental protection (such as EUR per tonne of CO₂ reduced, or EUR per unit of energy saved). The budget related to the bidding process must be a binding constraint in that it can be expected that not all bidders will receive aid;
- p. the scheme must be designed in a way that allows to address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in place a claw-back mechanism defined ex ante;
- q. aid under this section must not be combined with other aid for the same eligible costs.’

*The reduction in direct greenhouse gas emissions must be measured by reference to average direct greenhouse gas emissions occurred over the five years preceding the aid application (average emission on an annual basis).

**The reduction of energy consumption must be measured by reference to energy consumption occurred over the five years preceding the aid application (average consumption on an annual basis).

***Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 87, 15.3.2021, p. 29).

**** These factors could for example include a mandatory confinement of population due to a pandemic, or worldwide disruptions in the supply chain of necessary equipment for the projects. However, it would not include delays in obtaining the required permits for the project.

***** As defined in point 19(89) of the Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

***** The reduction in direct greenhouse gas emissions or energy consumption must be measured by reference to average direct greenhouse gas emissions or energy consumption occurred over the five years preceding the aid application (average emission/consumption on an annual basis).’