



Brussels, 23.3.2022  
C(2022) 1890 final

**COMMUNICATION FROM THE COMMISSION**

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

## COMMUNICATION FROM THE COMMISSION

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

#### 1. AGGRESSION AGAINST UKRAINE BY RUSSIA, ITS EFFECT ON THE EU ECONOMY AND THE NEED FOR TEMPORARY STATE AID SUPPORT MEASURES

1. On 22 February 2022, Russia illegally recognised 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 the serious violation of the territorial integrity, sovereignty and independence of Ukraine by imposing restrictive measures (sanctions). Sanctions were also imposed against Belarus, due to its role in facilitating Russia's military aggression. Further measures have been adopted over the following weeks and others might be adopted as the situation evolves. Russia decided to take certain restrictive economic counter measures<sup>1</sup> of its own.
2. The Russian military aggression against Ukraine, the sanctions imposed and the counter measures taken, for example by Russia 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, interruption of existing contracts and projects, with the consequent loss of turn-over, disruptions in supply chains, in particular of raw materials and pre-products, or other inputs no longer being available or not being economically affordable.
3. The Russian military aggression against Ukraine has resulted in a disruption of supply chains for EU imports from Ukraine for certain products, especially cereals and vegetable oils, as well as for EU exports to Ukraine. The energy market has been significantly impacted with increases in electricity and gas prices in the EU. The likelihood of a military aggression by Russia against Ukraine had already had effects on the energy market in the weeks preceding the physical aggression. High energy prices impact several economic sectors, including some of those particularly hit by the COVID-19 pandemic, like transport and tourism. The impact has also been felt on financial markets, in particular with concerns for liquidity and market volatility in commodity trade. The military aggression against Ukraine by Russia has also led to a major displacement of Ukrainian citizens both internally and in neighbouring countries, with a unprecedented inflow into the EU of refugees, with major humanitarian and economic consequences.

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<sup>1</sup> For example, on 6 March 2022, the Government of the Russian Federation adopted Decree no 299 Amendment of paragraph 2 of the methodology for determining the amount of compensation to be paid to the patentee when deciding on the use of the invention, utility model, the decision on the use of the invention, without his consent, and the procedure for its payment. This amendment foresees "no compensation for the use of an invention, utility model or industrial design of the "patent holders" from foreign States which commit 'unfriendly acts'".

4. The geopolitical crisis provoked by Russia's aggression against Ukraine is also having a particularly severe impact on the agriculture, food processing, fisheries and aquaculture sectors. High energy prices feed into high fertilisers prices. Fertiliser supply is also impacted by this restrictions on fertiliser imports from Russia and Belarus. The crisis is likely to have serious consequences on the supply of grain (in particular maize and wheat) and oilseeds (sunflower, rapeseed) or starch-derivatives from Ukraine and Russia to the EU, leading to a strong increase in livestock feed prices. The combined impact of those cost increases in energy, fertiliser, grains and oils is hardest felt by livestock farming<sup>2</sup>. Ukraine is also an important producer and exporter of vegetable oils (sunflower in particular), therefore price increases for those products are affecting operators in the food-processing sector and forcing them to seek for alternatives.
5. A second concern is the impossibility for EU products to continue to flow to Ukraine and potentially also to Russia and Belarus due to the war situation or sanctions. This would affect mainly the sectors of wines and spirits, processed foods (including processed fruits and vegetables), chocolate, confectionery, infant formula, and pet food in the case of Russia, fruits and vegetables in the case of Belarus, and most agricultural products in the case of Ukraine.
6. The situation is aggravated by the sharp increase of production costs, in part through the increase of nitrogen fertiliser costs due to the extreme increase of the price of natural gas, but also by direct use of energy in agricultural production processes. As Russia and Belarus are important producers and exporters of all the three key fertilisers (nitrogen, phosphorus, potassium), sanctions will drive fertiliser prices even higher.
7. 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 aggression against Ukraine by Russia and the following sanctions imposed by the EU and international partners and the counter measures taken, for example by Russia<sup>3</sup>. A coordinated economic response of Member States and EU institutions is crucial to mitigate the immediate social and economic negative repercussions in the EU, to preserve economic activities and jobs, and to facilitate the structural adjustments needed in response to the new economic situation created by the Russian military aggression against Ukraine.

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<sup>2</sup> Ukraine is the EU's fourth biggest external food supplier and a key supplier of cereals (52% of EU maize imports, 19% soft wheat), vegetable oils (23%) and oilseeds (22%, especially rapeseed: 72%). Global food prices are already high and could still increase in view of the situation.

<sup>3</sup> For example, according to WIPO Global Brand Database, WIPO Global Designs Database, PatentSight database respectively, in March 2022, there were around 150,000 trademarks, 2,000 industrial designs and 44,000 patents held by the EU firms in force in Russia. EU firms trademarks protected in Russia concern mainly the following sectors: pharma, cosmetics, automotive, chemical and consumer goods, fashion and luxury goods. Given the vague terminology of the amendment of the compensation methodology to be paid to patentee by Decree no 299 of 6 March 2022 (see footnote 1) adopted by the Russian Government and the economic exposure of EU undertakings and their intangible assets hold in Russia, such a counter measure may have a potential wide and harmful impact on EU undertakings.

## 1.1. SANCTIONS IMPOSED BY THE EUROPEAN UNION AND INTERNATIONAL PARTNERS

8. Following the unprovoked and unjustified aggression against Ukraine by Russia, the Council of the European Union has agreed on several packages of restrictive measures.
9. 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 regions of Ukraine, and (iii) restrictions on Russia's access to the EU's capital and financial markets and services.<sup>4</sup>
10. On 25 February 2022, the Council agreed on further sanctions against Russia that target: (i) the financial sector, (ii) the energy, space and transport sectors (aviation), (iii) dual-use goods, (iv) export control and export financing, (v) visa policy, and (vi) additional sanctions against Russian and other (including Belarusian) individuals.<sup>5</sup>

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<sup>4</sup> 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); 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; OJ L 42I, 23.2.2022, p. 15); 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); 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); 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); 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; OJ L 42I, 23.2.2022, p. 114); and Council Decision (CFSP) 2022/266 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. 109).

<sup>5</sup> 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); 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); 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); 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); 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); 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); Council Decision (EU) 2022/333 of 25 February 2022 on the partial suspension of the application of the Agreement between

11. On 28 February 2022, the Council decided to close the European airspace for Russian aircraft 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<sup>6</sup>. The Council also adopted additional sanctions against Russian persons<sup>7</sup>.
12. On 1 March 2022, the Council adopted further measures: (i) the removal of selected Russian banks from the SWIFT messaging system<sup>8</sup>, (ii) measures against disinformation spread by Russian State-owned media Russia Today and Sputnik<sup>9</sup>.
13. 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.<sup>10</sup> The Council also adopted individual measures against 22 Belarusian individuals.<sup>11</sup>

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

- <sup>6</sup> 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), 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).
- <sup>7</sup> Council Implementing Regulation (EU) 2022/336 of 28 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 58, 28.2.2022, p. 1) and Council Decision (CFSP) 2022/337 of 28 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 59, 28.2.2022, p. 1).
- <sup>8</sup> 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), 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).
- <sup>9</sup> 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), 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).
- <sup>10</sup> 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), 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).
- <sup>11</sup> 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) 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 63, 2.3.2022, p. 5).

14. On 9 March 2022, the Council adopted additional measures targeting the Belarusian financial sector, including a SWIFT ban for three Belarusian banks, a prohibition on transactions with the Central Bank of Belarus, limits on the financial inflows from Belarus to the EU and a prohibition on the provision of euro-denominated banknotes to Belarus.<sup>12</sup> The Council also introduced further restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia. In addition, the Council imposed restrictive measures on an additional 160 individuals.<sup>13</sup> On 15 March 2022<sup>14</sup>, the Council agreed on further sectoral and individual measures against Russia. The Council decided in particular to: (i) prohibit all transactions with certain State-owned enterprises, (ii) prohibit the provision of any credit rating services, as well as access to any subscription services in relation to credit rating activities, to any Russian person or entity, (iii) expand the list of persons connected to Russia's defence and industrial base, on whom tighter export restrictions are imposed regarding dual-use goods and technology which might contribute to Russia's technological enhancement of its defence and security sector, (iv) prohibit new investments in the Russian energy sector, and introduce a comprehensive export restriction on equipment, technology and services for the energy industry, and (v) introduce further trade restrictions concerning iron and steel, as well as luxury goods.<sup>15</sup> Furthermore, the Council decided to sanction key Russian oligarchs, lobbyists and propagandists, as well as key companies in the aviation, military and dual use, shipbuilding and machine building sectors.<sup>16</sup>
15. In close cooperation with the EU, sanctions were also imposed by international partners, notably the United States, the United Kingdom, Canada, Norway, Japan, South Korea, Switzerland and Australia.

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<sup>12</sup> Council Regulation (EU) No 2022/398 of 9 March amending Council Regulation (EU) 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 82, 9.3.2022, p. 1.

<sup>13</sup> Council Regulation (EU) 2022/394 of 9 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 81, 9.3.2022, p. 1.

<sup>14</sup> Council Implementing Regulation (EU) 2022/427 of 15 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 87, 15.3.2022, p. 1; Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 87I, 15.3.2022, p. 13.

<sup>15</sup> Council Regulation (EU) 2022/428 of 15 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87I, 15.3.2022, p. 13), and Council Decision (CFSP) 2022/430 of 15 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 87I, 15.3.2022, p. 56).

<sup>16</sup> Council Implementing Regulation (EU) 2022/427 of 15 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 87I, 15.3.2022, p. 1-), and Council Decision (CFSP) 2022/429 of 15 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 87I, 15.3.2022, p. 44).

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

16. 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 aggression. In this context, the Commission refers to the toolbox which it presented already in October 2021<sup>17</sup> (the ‘October Communication’) and the REPowerEU Communication of 8 March 2022 (‘the REPowerEU Communication’) <sup>18, 19</sup>.
17. Very high energy prices are hurting the economy as well as the purchasing power of EU citizens, notably the most vulnerable. The European Central Bank estimated before the Russian aggression 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. These cost increases can in certain cases put into question the continued activity of undertakings which otherwise would be profitable, with a likely impact on employment.
18. The toolbox 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.
19. The REPowerEU Communication 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. Accelerating the green transition will reduce emissions, reduce dependency on imported fossil fuels, and protect against price hikes. It is therefore crucial to remedy the current crisis. However, in the short term, temporary support may be needed to help companies facing high energy prices.

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

20. Targeted and proportionate application of EU State aid control serves to ensure that national support measures are effective in helping undertakings and workers 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

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<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Through the Technical Support Instrument established by Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 (OJ L 57, 18.2.2021, p. 1), the Commission supports Member States on request in designing and implementing reforms aimed at ensuring more affordable, secure and sustainable energy.

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.

#### 1.4. APPROPRIATE STATE AID MEASURES

21. 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.
22. As set out in the October Communication, 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
23. Measures targeting commercial energy consumers do not constitute State aid, provided such measures are of a general nature. 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 out in the Energy Taxation Directive<sup>20</sup> and are in line with the provisions of a Block Exemption Regulation may be implemented by Member States without prior notification to the Commission.
24. Member States are invited to consider, in a non-discriminatory way, setting requirements related to environmental protection or security of supply for granting aid under section 2.4 of this Communication. This could, for example, take the following forms:<sup>21</sup>
  - a. Requiring the beneficiary to meet a certain share of energy consumption needs by renewable energies, e.g. via power purchasing agreements or direct investments in energy generation from renewable energies;
  - b. Requiring investments in energy efficiency, reducing the energy consumption relative to economic output e.g. by reduced consumption for production processes, heating or transportation;

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<sup>20</sup> 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.

<sup>21</sup> Member States are invited to make use of the possibilities for granting aid approved under the guidelines on State aid for climate-, environmental protection and energy 2022, notably as regards renewable energies, energy efficiency or other decarbonisation measures.



- c. Requiring investments to reduce or diversify natural gas consumption, e.g. by electrification measures using renewable energy sources or circular solutions such as the re-use of waste gases;
  - d. Requiring flexibilisation of investments, to facilitate better adaptations of business processes to price signals on electricity markets.
25. 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 aggression against Ukraine may also cover certain direct effects of the economic sanctions imposed or of the counter measures negatively affecting the beneficiary from operating its economic activity or a specific and severable part of its economic activity
  26. 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.
  27. The transport of refugees and humanitarian material does not fall in principle under EU State aid rules, as long as the State is acting in the exercise of public powers (as opposed to carrying out an economic activity) and as long as the transport services are not purchased at a level above the market price.
  28. Aid granted by Member States under this Communication to undertakings, which is channelled through credit institutions 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 2.2 and 2.3, 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 the European Parliament and of the Council (the Bank Recovery and Resolution Directive - BRRD)<sup>22</sup> or under Regulation 806/2014 of the European Parliament and of the Council (the Single Resolution Mechanism - SRM Regulation)<sup>23</sup>, and would not be assessed under the State aid rules applicable to the banking sector.<sup>24</sup>

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<sup>22</sup> OJ L 173, 12.6.2014, p. 190, see Article 2(1)(28) of the BRRD.

<sup>23</sup> OJ L 225, 30.7.2014, p. 1, see Article 3(1)(29) of the SRM Regulation.

<sup>24</sup> 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).

29. Aid granted by Member States to credit institutions 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.<sup>25</sup>
30. If due to the current crisis and the sanctions imposed in connection with that aggression, credit institutions 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 credit institution receiving such extraordinary public financial support would not be deemed to be failing-or-likely-to-fail.
31. To the extent such measures address problems linked to the aggression against Ukraine by Russia and the sanctions imposed in connection with that aggression, they would be deemed to fall under point 45 of the 2013 Banking Communication<sup>26</sup>, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.
32. 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 of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
33. Aid under this Communication shall not be granted to undertakings under sanctions adopted by the EU, including but not limited to:
  - a. persons, entities or bodies specifically named in the legal acts imposing those sanctions;
  - b. undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or
  - c. undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

### **1.5. APPLICABILITY OF ARTICLE 107(3)(B) OF THE TFEU**

34. 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

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<sup>25</sup> 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 will be assessed under the relevant State aid rules.

<sup>26</sup> As defined in footnote 24.

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<sup>27</sup>. That interpretation has been consistently applied by the Commission in its decision-making.<sup>28</sup>

35. The Commission considers that the aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia 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 input and 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 affect many sectors. In addition, rising energy prices affect virtually every economic activity in all Member States. The Commission considers accordingly, that a wide range of economic sectors in all Member States are affected by a serious economic disturbance. On that basis, the Commission considers that it is appropriate to lay down the criteria for the assessment of State aid measures that Member States may take to remedy that serious disturbance.
36. 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, if it serves 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 sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken, for example by Russia.
37. 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 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 requirements of this Communication are fulfilled.
38. 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/or the consequences of the economic sanctions imposed and of the retaliatory counter measures taken, for example by Russia. The aid measures may

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<sup>27</sup> Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and others v Commission*, EU:T:1999:326, paragraph 167.

<sup>28</sup> 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 *BA W A G* (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 TRAINOSES.A* (OJ L 186, 24.7.2018, p. 25).

not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and must be in full compliance with the anti-circumvention rules of the applicable regulations.<sup>29</sup> In particular, it must be avoided that natural persons or entities subject to the sanctions benefit directly or indirectly from any such measures.<sup>30</sup>

39. 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<sup>31</sup> or with aid under Block Exemption Regulations<sup>32</sup> provided the provisions and cumulation rules of those Regulations are respected. State aid measures covered by this Communication may be cumulated with aid granted under the COVID-19 Temporary Framework<sup>33</sup>, provided their respective cumulation rules are respected. When Member States grant to the same beneficiary loans or guarantees under the COVID-19 Temporary Framework as well as 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 but there may be no overcompensation of damage suffered by the beneficiary.

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<sup>29</sup> For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

<sup>30</sup> Considering the specific situation of two subsequent crises that have affected undertakings in multiple ways, Member States may choose to provide aid under this Communication also to undertakings in difficulty.

<sup>31</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1); Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9); Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45); and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>32</sup> 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 (EU) 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).

<sup>33</sup> 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. LIMITED AMOUNTS OF AID

40. Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings affected by the Russian aggression against Ukraine and/or by the sanctions imposed or by the retaliatory counter measures taken in response can be an appropriate, necessary and targeted solution during the current crisis.
41. The Commission will consider such State aid compatible with the internal market on the basis of Article 107(3)(b) TFEU, provided that all the following conditions are met (the specific provisions for the primary agriculture, the fishery and aquaculture sectors are set out in point 42):
- a. The overall aid does not exceed EUR 400 000 per undertaking at any given point in time.<sup>34</sup> The aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>35</sup>, loans<sup>36</sup> and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 400 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges;
  - b. the aid is granted on the basis of a scheme with an estimated budget;
  - c. the aid is granted no later than 31 December 2022<sup>37</sup>;
  - d. the aid is granted to undertakings affected by the crisis;
  - e. the aid granted to undertakings active in the processing and marketing of agricultural products<sup>38</sup> is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.
42. By way of derogation from point 41(a), the following specific conditions apply to aid granted to undertakings active in the primary production of agricultural

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<sup>34</sup> 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.

<sup>35</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

<sup>36</sup> When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.

<sup>37</sup> 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.

<sup>38</sup> As defined in Article 2(6) and Article 2(7) of 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.

products<sup>39</sup>, fishery and aquaculture sectors<sup>40</sup>, in addition to the conditions of point 41(b) to (d):

- a. the overall aid does not at any point in time exceed EUR 35 000 per undertaking;<sup>41</sup> the aid may be granted in the form of direct grants, tax and payment advantages or other forms such as repayable advances, guarantees<sup>42</sup>, loans<sup>43</sup> and equity provided the total nominal value of such measures does not exceed the overall cap of EUR 35 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;
  - b. aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;
  - c. aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Regulation (EU) No 717/2014<sup>44</sup>.
43. 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 400 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 42(a) the overall maximum amount of EUR 35 000 should not be exceeded per undertaking.
44. Measures granted under this Communication 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 and the conditions in this section are complied with.

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<sup>39</sup> As defined in Article 2(5) of 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.

<sup>40</sup> As defined in Article 2(1) of 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.

<sup>41</sup> Aid granted on the basis of schemes approved under this section that has been reimbursed before granting of new aid under this section shall not be taken into account in determining whether the relevant ceiling is exceeded.

<sup>42</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

<sup>43</sup> When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.

<sup>44</sup> 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 90, 28.6.2014, p. 45.

## 2.2. LIQUIDITY SUPPORT IN THE FORM OF GUARANTEES

45. 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.
46. For the same underlying loan principal, guarantees granted under this section may not be cumulated with aid granted under section 2.3 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 47(e) 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 47(e).
47. The Commission will consider such State aid in the form of public guarantees as compatible with the internal market on the basis of Article 107(3)(b) TFEU provided:
- a. Public guarantees are provided on new individual loans made to undertakings;
  - b. 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:

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

- c. 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 1<sup>st</sup> year set out in the table above for each type of beneficiary, as adjusted according to guarantee duration and guarantee coverage under this paragraph;
- d. The guarantee is granted by 31 December 2022 at the latest;
- e. The overall amount of loans per beneficiary, for which a guarantee is granted under this section, shall not exceed:
  - (i) 15% of the beneficiary's average total annual turnover over the last three closed accounting periods ; or
  - (ii) 50% of energy costs over the 12 months preceding the month when the application for aid is submitted;
  - (iii) upon appropriate justification to be provided by the Member State to the Commission for its assessment (for example in connection with

the challenges faced by the beneficiary during the current crisis)<sup>45</sup>, 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<sup>46</sup> 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<sup>47</sup>;

- f. The duration of the guarantee is limited to maximum six years, unless modulated according to point 47(c), 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;
- g. The guarantee shall relate to investment and/or working capital loans;
- 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.

### **2.3. LIQUIDITY SUPPORT IN THE FORM OF SUBSIDISED LOANS**

- 48. 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.
- 49. For the same underlying loan principal, loans granted under this section shall not be cumulated with aid granted under section 2.2 of this Communication and vice-versa. Loans and guarantees granted under this Communication may be cumulated

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<sup>45</sup> Relevant justification could relate to beneficiaries active in sectors that are particularly affected by direct or indirect effects of the aggression, including sanctions imposed by the EU, its international partners, as well as counter measures taken, for example by Russia. Those 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.

<sup>46</sup> As defined in Annex I to the General Block Exemption Regulation.

<sup>47</sup> The liquidity plan may include both working capital and investment costs.



for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 47(d) or in point 50(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 50(e).

50. 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 not granted to 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<sup>48</sup>) available either on 1 February 2022 or at the moment of notification, plus the credit risk margins as set-out in the table below:

<i>Type of recipient</i>	<i>Credit risk margin for 1<sup>st</sup> year</i>	<i>Credit risk margin for a 2<sup>nd</sup>-3<sup>rd</sup> year</i>	<i>Credit risk margin for 4<sup>th</sup>-6<sup>th</sup> year</i>
<i>SMEs</i>	<i>25bps<sup>49</sup></i>	<i>50bps<sup>50</sup></i>	<i>100bps</i>
<i>Large enterprises</i>	<i>50bps</i>	<i>100bps</i>	<i>200bps</i>

- 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 1<sup>st</sup> year for each type of beneficiary, as adjusted according to the loan maturity under this paragraph<sup>51</sup>;
- 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 50(c);
- e. The overall amount of the loans per beneficiary shall not exceed:
  - (i) 15% of the beneficiary's average total annual turnover over the last three closed accounting periods; or
  - (ii) 50% of energy costs over the 12 months preceding the month when the application for aid is submitted;

<sup>48</sup> 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, 19.1.2008, p. 6) and published on the website of DG Competition at [https://ec.europa.eu/competition/state\\_aid/legislation/reference\\_rates.html](https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

<sup>49</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

<sup>50</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

<sup>51</sup> The minimum all-in interest rate (base rate plus the credit risk margins) should be at least 10 bps per year.

(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)<sup>52</sup>, 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<sup>53</sup> 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<sup>54</sup>;

- f. Loans shall relate to investment and/or working capital needs;
- g. 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.

#### **2.4. AID FOR ADDITIONAL COSTS DUE TO EXCEPTIONALLY SEVERE INCREASES IN NATURAL GAS AND ELECTRICITY PRICES**

- 51. Beyond the existing possibilities based on Article 107(3)(c) TFEU and the possibilities set out above, 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, and also reduce the inflationary pressure from energy price increases. Additional support may be warranted to enable continued activity of energy-intensive undertakings.
- 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<sup>55</sup> and payment advantages or other forms such as repayable advances, guarantees<sup>56</sup>, loans<sup>57</sup>

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<sup>52</sup> 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 EU, 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 risks of cyber-attacks, or rising prices for specific inputs or raw-materials affected by the current crisis.

<sup>53</sup> As defined in Annex I to the General Block Exemption Regulation.

<sup>54</sup> The liquidity plan may include both working capital and investment costs.

<sup>55</sup> 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.

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 and the conditions in this section are complied with;
- 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. Eligible costs under this measure are calculated based on the the increase in natural gas and electricity costs linked to the Russian aggression against Ukraine. The eligible cost is the product of the number of units of natural gas and electricity procured by the undertaking from external suppliers as a final consumer<sup>58</sup> in a period between 1 February 2022 and 31 December 2022 at the latest ('eligible period') and a certain increase in the price that the undertaking pays per unit consumed (measured for example in EUR/MWh). That price increase shall be calculated as the difference between the unit price unit price paid by the undertaking in a given month in the eligible period and the double (200%) of the unit price paid by the undertaking on average for the reference period from 1 January 2021 until 31 December 2021<sup>59</sup>;
- f. 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;
- g. The granting authority may make an advance payment to the undertaking when the aid is granted before the eligible costs have been incurred. In doing so, the granting authority may rely on estimations of the eligible cost provided that the aid ceilings in point 52(f) 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;
- h. 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.

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<sup>56</sup> When aid is granted in form of guarantees under this section, the additional conditions in point 47(h) apply.

<sup>57</sup> When aid is granted in form of loans under this section, the additional conditions in point 50(g) apply.

<sup>58</sup> As demonstrated by the undertaking e.g. based on the respective bill. Only final consumption will be counted, sales and own production are excluded.

<sup>59</sup>  $(p(t) - p(\text{ref}) * 2) * q(t)$ , 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.

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(e) and (f), where, in addition to meeting the conditions in point 52(a) to (d) and (g), the following conditions are met:
- a. The undertaking is eligible if it is an ‘energy-intensive business’ within the meaning of the first limb of Article 17(1)(a) of the Energy Taxation Directive<sup>60</sup>, *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<sup>61</sup>;
  - b. The undertaking is eligible if it incurs operating losses<sup>62</sup>, 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 eligible period as defined in point 52(e);
  - 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;
  - d. The overall aid does not exceed EUR 25 million per undertaking at any given point in time;
  - e. For energy-intensive undertakings active in a sector or sub-sector listed in Annex I, the overall aid may be increased to a maximum of 70% of the eligible costs related to the production of the products in the sectors or sub-sectors listed in Annex I and may amount to a maximum of 80% of the operating losses of these activities. The overall aid may not exceed EUR 50 million per undertaking at any given point in time, whereby activities not listed in Annex I cannot receive more than EUR 25 million. Where an undertaking is active in several sectors to which different maximum amounts apply in accordance with this point 53, the Member State concerned shall 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 50 million is not exceeded per undertaking;
  - f. Aid under this 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.

### 3. MONITORING AND REPORTING

54. Member States must publish relevant information on each individual aid above EUR 100 000<sup>63</sup> granted under this Communication, and above EUR 10 000<sup>64</sup> in the

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<sup>60</sup> 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.

<sup>61</sup> Based on financial accounting reports for the calendar year 2021 or the latest available annual accounts.

<sup>62</sup> 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.

<sup>63</sup> 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,

primary agriculture and in the fisheries sectors, on the comprehensive State aid website or Commission's IT tool<sup>65</sup> within 12 months from the moment of granting.

55. Member States must submit annual reports to the Commission<sup>66</sup>.
56. 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.
57. The Commission may request additional information regarding the aid granted, in particular, to verify whether the conditions laid down in the Commission decision approving the aid measure have been met.
58. 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**

59. The Commission applies this Communication from 1 February 2022, having regard to the economic impact of the Russian aggression against Ukraine and the subsequent sanctions. This Communication is justified by the current exceptional circumstances and will not be applied after the dates specified herein.
60. 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.
61. 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.

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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.

<sup>64</sup> 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.

<sup>65</sup> 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>.

<sup>66</sup> OJ L 140, 30.4.2004, p. 1.

## ANNEX I

### Particularly affected sectors and sub-sectors

	<b>NACE code</b>	<b>Description</b>
1.	14.11	Manufacture of leather clothes
2.	24.42	Aluminium production
3.	20.13	Manufacture of other inorganic basic chemicals
4.	24.43	Lead, zinc and tin production
5.	17.11	Manufacture of pulp
6.	07.29	Mining of other non-ferrous metal ores
7.	17.12	Manufacture of paper and paperboard
8.	24.10	Manufacture of basic iron and steel and ferro-alloys
9.	20.17	Manufacture of synthetic rubber in primary forms
10.	24.51	Casting of iron
11.	20.60	Manufacture of man-made fibres
12.	19.20	Manufacture of refined petroleum products
13.	24.44	Copper production
14.	20.16	Manufacture of plastics in primary forms
15.	13.10	Preparation and spinning of textile fibres
16.	24.45	Other non-ferrous metal production
17.	23.31	Manufacture of ceramic tiles and flags
18.	13.95	Manufacture of non-wovens and articles made from non-wovens, except apparel
19.	23.14	Manufacture of glass fibres
20.	20.15	Manufacture of fertilisers and nitrogen compounds
21.	16.21	Manufacture of veneer sheets and wood-based panels
22.	23.11	Manufacture of flat glass
23.	23.13	Manufacture of hollow glasses
24.		The following subsectors within the industrial gases sector (20.11):
	20.11.11.50	Hydrogen
	20.11.12.90	Inorganic oxygen compounds of non-metals
25.		The following subsectors within the manufacture of other organic basic chemicals sector (20.14):
	20.14.12.13	Cyclohexane

	20.14.12.23	Benzene
	20.14.12.25	Toluene
	20.14.12.43	o-Xylene
	20.14.12.45	p-Xylene
	20.14.12.47	m-Xylene and mixed xylene isomers
	20.14.12.50	Styrene
	20.14.12.60	Ethylbenzene
	20.14.12.70	Cumene
	20.14.12.90	Other cyclic hydrocarbons
	20.14.23.10	Ethylene glycol (ethanediol)
	20.14.63.33	2,2-Oxydiethanol (diethylene glycol; digol)
	20.14.63.73	Oxirane (ethylene oxide)
	20.14.73.20	Benzol (benzene), toluol (toluene) and xylol (xylenes)
	20.14.73.40	Naphthalene and other aromatic hydrocarbon mixtures (excluding benzole, toluole, xylole)
26.		The following subsector within the manufacture of other non-metallic mineral products n.e.c. sector (23.99):
	23.99.19.10	Slag wool, rock wool and similar mineral wools and mixtures thereof, in bulk, sheets or rolls