



EUROPEAN COMMISSION

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C(2023) 2357 final

SENSITIVE (*): *COMP Operations*

Subject: State Aid SA.106390 (2023/N) – Belgium
TCTF: Aid to undertakings facing increased energy costs following Russian aggression against Ukraine (amendments to SA.104588)

Excellency,

1. PROCEDURE

- (1) By electronic notification of 10 February 2023, Belgium notified amendments (the ‘notified amendments’) to the existing aid scheme (the ‘existing aid scheme’) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the ‘Temporary Crisis and Transition Framework’) ⁽¹⁾. The Commission approved the existing aid scheme in case SA.104588 (2022/N) – Belgium TCF: Aid to undertakings facing increased energy costs following Russian aggression against Ukraine ⁽²⁾ (the ‘initial decision’).

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 The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.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

⁽²⁾ Commission Decision C(2022) 9123 final of 5 December 2022 in case SA.104588 (OJ C 480, 16.12.2022, p. 10).

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- (2) On 15 and 23 March 2023, the Commission sent additional questions to Belgium, to which the Belgian authorities replied on 17 and 24 March 2023 respectively.
- (3) Belgium exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ('TFEU'), in conjunction with Article 3 of Regulation 1/1958 ⁽³⁾ and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE EXISTING AID SCHEME AND THE NOTIFIED AMENDMENTS

- (4) The objective of the existing aid scheme is to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the aggression against Ukraine by Russia, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia (see recitals (4) to (10) of the initial decision).
- (5) The existing aid scheme covers aid in the form of grants for additional costs due to exceptionally severe increases in natural gas, electricity and heating produced from natural gas or electricity prices under section 2.4 of the Temporary Crisis Framework (see recital (13) of the initial decision). Aid may be granted under the existing measure until no later than 31 December 2023 (see recital (20) of the initial decision). The eligible period runs from 1 October 2022 until 31 December 2022 (see recital (31) of the initial decision). For each month of the eligible period for which aid is requested, the eligible costs are calculated as described in recitals (32) to (37) of the initial decision. The existing aid scheme is open to beneficiaries active in the Flemish region (see recital (21) of the initial decision), which may qualify under one of the following three categories:
 - (a) Category 1 covers beneficiaries that have incurred operating losses at the level of legal entity during the eligible period. Those beneficiaries are eligible for aid up to a maximum overall amount of EUR 500 000 per undertaking at any given point in time. For this category of beneficiaries, the aid intensity is set at 25% of the eligible costs and the aid amount must not exceed 80% of the operating losses of the beneficiary in the eligible period (see recitals (39) to (41) of the initial decision).
 - (b) Category 2 covers beneficiaries who, in addition to having incurred operating losses at the level of legal entity during the eligible period, also qualify as an energy-intensive business (as defined in footnote 19 of the initial decision) and whose eligible costs account for at least 50% of their operating losses in the eligible period. The beneficiaries of this Category are eligible for aid up to a maximum overall amount of EUR 4 000 000 per undertaking at any given point in time. For this category of beneficiaries, the aid intensity is set at 30% of the eligible costs and the aid amount must not exceed 80% of the operating losses of the beneficiary in the eligible period (see recitals (42) to (44) of the initial decision).

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

- (c) Category 3 covers beneficiaries that, in addition to meeting the conditions of Category 2, belong to sectors or sub-sectors listed in Annex I of the Temporary Crisis Framework. The beneficiaries of this Category are eligible for aid up to a maximum overall amount of EUR 7 500 000 per undertaking at any given point in time. For this category of beneficiaries, the aid intensity is set at 35% of the eligible costs and the aid amount must not exceed 80 % of the operating losses of the beneficiary in the eligible period (see recitals (46) to (48) of the initial decision).
- (d) Finally, beneficiaries under Categories 2 and 3 that have not incurred operating losses at the level of legal entity but can prove that they meet that condition at the level of one or several business units, are eligible for aid under the conditions described in recitals (45) and (49) of the initial decision.
- (6) With the notified amendments, Belgium wishes to amend the existing aid scheme as follows:
- (7) First, the eligible period will be extended until 31 March 2023. Following this extension, the amendments described below will apply to aid granted in relation to eligible costs incurred during the period which runs from 1 January 2023 to 31 March 2023.
- (8) Second, Belgium wishes to modify one of the eligibility conditions described in recital (22) (8th bullet point) of the initial decision. Following the notified amendments, enterprises will not be eligible under the measure if they have placed more than 35 % of the staff registered with the National Social Security Office on temporary unemployment status during the eligible period, except if the enterprise can demonstrate that the placement of staff for temporary unemployment is due to other reasons than rising energy prices or if the enterprise does not have more than 10 employees (instead of taking into account the registered staff on 30 September 2022). In addition, it is clarified that a staff member shall be regarded as being in temporary unemployment if they have been placed on temporary unemployment for 10 working days or more each month of the support period.
- (9) Third, Belgium wishes to modify the condition described in recital (23) of the initial decision, by requiring beneficiaries applying for aid under the amended scheme to not pay dividends during the period from 1 January 2023 to 31 December 2023.
- (10) Fourth, Belgium wishes to amend the formula for calculating the eligible costs (see recitals (32) to (37) of the initial decision). The eligible costs are calculated for each month of the eligible period and for each type of energy costs according to the following formula:

$$(p(t) - p(\text{ref}) * 1.5) * q(t) \text{ } ^{(4)}$$

⁽⁴⁾ In this formula, p (t) denotes the unit price of natural gas, electricity or heating in EUR/MWh borne by the beneficiary in the relevant month of the eligible period; p (ref) denotes the average unit price of natural gas, electricity and heating in EUR/MWh borne by the beneficiary during the reference period;

- (11) Belgium confirms that all figures used are gross, that is, before any deduction of tax or other charges.
- (12) Fifth, Belgium wishes to replace the conditions for granting aid to the different categories of beneficiaries (see recitals (39) to (49) of the initial decision) by the following conditions:

Category 1

- (13) In order to benefit from aid under this category, the applicants must be able to demonstrate that:
- (a) they had either a reduction in EBITDA ⁽⁵⁾ of at least 50% in the eligible period compared to their EBITDA in the reference period ⁽⁶⁾ or, a negative EBITDA in the eligible period and that EBITDA is lower than the EBITDA in the reference period.
- and
- (b) their total additional energy costs ⁽⁷⁾ amount to at least:
- (i) 50% of the EBITDA decrease (i.e. the difference between the EBITDA in the reference period and the EBITDA in eligible period)
- or
- (ii) 35% of the EBITDA in the reference period if the applicant has a positive EBITDA in the reference period and an EBITDA decrease higher than 70 %.
- (14) The aid intensity is set at 25% of the eligible costs.
- (15) The amount of aid must not exceed EUR 500 000 per undertaking for the aid period from 1 January until 31 March 2023 and EUR 4 million per undertaking at any given point in time. Belgium confirmed that all figures are gross, that is, before any deduction of tax or other charge.

q (t) denotes the amount of natural gas, electricity or heating, consumed by the beneficiary in the relevant month of the eligible period.

- ⁽⁵⁾ EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.
- ⁽⁶⁾ Given that the eligible period has a duration of three months, for comparison purposes, the EBITDA in the reference period will be calculated as 1/4 of the EBITDA for the calendar year of 2021. If the company was established between 1 January and 30 September 2021, the EBITDA in the reference period will be calculated on a pro-rata basis.
- ⁽⁷⁾ The total additional energy cost is defined as the product of the number of units of natural gas, electricity and heating procured by the beneficiary as a final consumer in the eligible period and a certain increase in the price that the beneficiary pays per unit consumed (measured in EUR/MWh). That price increase is calculated as the difference between the unit price paid by the beneficiary in the eligible period and the unit price paid by the beneficiary on average in the reference period, running from 1 January 2021 to 31 December 2021. The additional cost of heating is calculated on the basis of the cost of electricity and natural gas used to produce the heating.

- (16) The beneficiary's EBITDA in the eligible period, including the overall aid, may not exceed 70 % of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase in EBITDA in the eligible period above 0.

Category 2

- (17) The aid intensity and the total amount of aid may be increased for applicants which, in addition to meeting the conditions in recital (13) and (16), qualify as energy-intensive businesses ⁽⁸⁾.
- (18) For this category of beneficiaries, the aid intensity is set at 30% of the eligible costs.
- (19) The amount of aid must not exceed EUR 4 million per undertaking for the period from 1 January to 31 March 2023 and EUR 25 million per undertaking at any given point in time. Belgium confirmed that all figures are gross, that is, before any deduction of tax or other charge.
- (20) Beneficiaries under this category that do not meet the conditions in recital (13) at the level of the legal entity but are able to prove that they have business units which each have a negative EBITDA in the eligible period and have total eligible energy costs amounting to at least 50% of the negative EBITDA in the eligible period, can be eligible for aid if they fulfil the following conditions:
- (a) The applicant, at the level of the legal entity, has incurred a decrease of EBITDA in the eligible period of at least 40% compared to the reference period;
 - (b) The applicant, at the level of the legal entity, has an EBITDA in the reference period higher than 0;
 - (c) The applicant, at the level of the legal entity, had a turnover of at least EUR 40 million and the respective business units had a turnover of at least EUR 20 million in 2021;
 - (d) Only the energy costs that can be assigned to the respective business units are taken into account for the calculation of the eligible costs in accordance with the conditions set out in recitals (10) and (11);
 - (e) The respective business units had an active place of business in the Flemish region on 1 October 2021;
 - (f) The total amount of aid must not exceed EUR 3 million per undertaking for the period from 1 January to 31 March 2023 and EUR 25 million per undertaking at any given point in time. Belgium confirmed that all figures are gross, that is, before any deduction of tax or other charge.

⁽⁸⁾ According to the definition provided in footnote 19 of the initial decision.

Category 3

- (21) The aid intensity and the total amount of aid may be further increased for applicants which, in addition to meeting the conditions in recital (13) and (16), qualify as energy-intensive businesses and are active in one or more sectors or subsectors listed in Annex I of the Temporary Crisis and Transition Framework.
- (22) For this category of beneficiaries, the aid intensity is set at 35% of the eligible costs.
- (23) The amount of aid must not exceed EUR 7.5 million per undertaking for the period from 1 January to 31 March 2023 and EUR 50 million per undertaking at any given point in time. Belgium confirmed that all figures are gross, that is, before any deduction of tax or other charge.
- (24) Beneficiaries under this category that do not meet the conditions in recital (13) at the level of the legal entity but are able to prove that they have business units which each have a negative EBITDA in the eligible period and have total eligible energy costs amounting to at least 50% of the negative EBITDA in the eligible period, can be eligible for aid if they fulfil the following conditions:
 - (a) The applicant, at the level of the legal entity, has incurred a decrease of EBITDA in the eligible period of at least 40% compared to the reference period;
 - (b) The applicant, at the level of the legal entity, has an EBITDA in the reference period higher than 0;
 - (c) The applicant, at the level of the legal entity, had a turnover of at least EUR 40 million and the respective business units had a turnover of at least EUR 20 million in 2021;
 - (d) Only the energy costs that can be assigned to the respective business units are taken into account for the calculation of the eligible costs in accordance with the conditions set out in recitals (10) and (11);
 - (e) The respective business units had an active place of business in the Flemish region on 1 October 2021;
 - (f) The total amount of aid must not exceed EUR 5.25 million per undertaking for the period from 1 January to 31 March 2023 and EUR 50 million per undertaking at any given point in time. Belgium confirmed that all figures are gross, that is, before any deduction of tax or other charge.
- (25) Apart from the notified amendments, Belgium confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered. Belgium also confirms that aid granted under the Temporary Crisis Framework and the Temporary Crisis and Transition Framework cannot exceed the aid ceilings provided by the Temporary Crisis and Transition Framework for the same eligible period.
- (26) Belgium confirms that aid under the measure may be cumulated with aid under section 2.1 provided the maximum applicable ceilings per undertaking as

described in points 72(f) and 73(a) of the Temporary Crisis and Transition Framework are not exceeded.

- (27) The legal basis for the notified amendments, the draft of which has been submitted to the Commission, is the Decision of the Flemish Government granting aid to companies facing rising energy expenditure as a result of the Russian aggression against Ukraine, as regards the first quarter of 2023 (*Besluit van de Vlaamse Regering tot toekenning van steun aan ondernemingen die worden geconfronteerd met stijgende energie-uitgaven ten gevolge van de Russische agressie tegen Oekraïne, wat betreft het eerste kwartaal van 2023*; the ‘draft decision of the Flemish Government’). The draft decision of the Flemish Government is accompanied by the Note regarding the draft Decision of the Flemish Government granting aid to companies facing rising energy expenditure as a result of the Russian aggression against Ukraine, as regards the first quarter of 2023 (*Nota aan de Vlaamse Regering, Betreft: Ontwerp besluit van de Vlaamse Regering tot toekenning van steun aan ondernemingen die worden geconfronteerd met stijgende energie-uitgaven ten gevolge van de Russische agressie tegen Oekraïne, wat betreft het eerste kwartaal van 2023*; the ‘Note’), which provides clarifications on the measure and is published on the website of the Flemish Government. Belgium confirmed that the decision of the Flemish Government will be adopted after the notification of the Commission’s decision approving the measure to the Belgian authorities.
- (28) Aid may be granted under the scheme, for the period from 1 January to 31 March 2023, as from the notification of the Commission’s decision approving the notified amendments.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (29) By notifying the amendments before putting them into effect (see recital (27)), the Belgian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (30) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and be liable to affect trade between Member States.
- (31) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (59) to (61) of the initial decision. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (32) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of section 1 and section 2.4 of the Temporary Crisis Framework for the reasons set out in recitals (64) to (80) of the initial decision. The Commission therefore refers to the respective assessment of the initial decision. The Commission notes that that assessment remains valid although the Temporary Crisis Framework has in the meantime been replaced by the Temporary Crisis and Transition Framework referred to in recital (1) of this decision, inasmuch as the conditions of sections 1 and 2.4 of the Temporary Crisis Framework that are relevant for the initial decision have not been modified substantively in the Temporary Crisis and Transition Framework.
- (33) The notified amendments do not affect the conclusion that the existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU. In particular:
- Aid will be granted under the scheme until no later than 31 December 2023 (see recital (20) of the initial decision). The scheme therefore complies with point 72(a) of the Temporary Crisis and Transition Framework.
 - The aid takes the form of direct grants (see recitals (13) and (30) of the initial decision). The nominal value of the grant does not exceed the applicable aid intensity and aid ceilings laid down in point 72(f) and 73(a) of the Temporary Crisis and Transition Framework (see recitals (15), (19), (20)(f), (23) and (24)(f)). All figures used are gross that is, before any deduction of tax or other charge (see recitals (11), (15), (19), (20)(f),(23) and (24)(f)). The measure therefore complies with point 72 (b) of the Temporary Crisis and Transition Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (18) of the initial decision). As described in section 2.5 of the initial decision, the scope of the measure covers a large number of sectors except for credit and financial institutions, electricity and heat production. By limiting the granting of aid to beneficiaries who prove that they incurred a reduction in EBITDA of at least 50% in the eligible period compared to their reference EBITDA or that they had a negative EBITDA in the eligible period not larger than the reference EBITDA, that the EBITDA is lower than the EBITDA in the reference period and their total additional energy costs represent a significant percentage of the EBITDA decrease or the reference EBITDA (see recital (13)), Belgium aims to target entities and sectors of the economy most likely to be severely affected by the increase in energy costs and unable to pass on higher energy costs in the prices of their products due to exposure to international competition. The Commission considers that the measure is designed sufficiently broadly and does not lead to an artificial limitation of potential beneficiaries. The measure therefore complies with point 72(d) of the Temporary Crisis and Transition Framework.
 - The eligible costs are calculated based on the beneficiary's consumption of natural gas, electricity or heating produced from natural gas or

electricity during the period running from January to March 2023 (see recital (7)), in line with point 72(e) of the Temporary Crisis and Transition Framework (see recital (10)). The consumption that can be taken into account to determine the amount of eligible costs must not exceed 70 % of the beneficiary's consumption in the same period in 2021 (see recital (37) of the initial decision). The measure therefore complies with point 72(e) of the Temporary Crisis and Transition Framework.

- The aid per beneficiary falling under Category 1 will not exceed 25 % of the eligible costs and the overall aid per undertaking will not exceed EUR 500 000 for the period from 1 January to 31 March 2023 and 4 million at any given point in time (see recitals (14) and (15)); all figures used are gross, that is, before any deduction of tax or other charges (recital (15)). The measure therefore complies with points 72(b) and 72(f) of the Temporary Crisis and Transition Framework.
 - The aid per beneficiary falling under Category 2 will not exceed 30% of the eligible costs and the overall aid per undertaking will not exceed EUR 4 million for the period from 1 January to 31 March 2023 and EUR 25 million at any given point in time (see recitals (18) and (19)). The aid per beneficiary falling under Category 3 will not exceed 35 % of the eligible costs and the overall aid per undertaking will not exceed EUR 7.5 million for the period from 1 January to 31 March 2023 and EUR 50 million at any given point in time (see recitals (22) and (23)). The measure therefore complies with points 72(b) and 73(a) of the Temporary Crisis and Transition Framework.
 - For beneficiaries of all three categories, the beneficiary's EBITDA in the eligible period, including the overall aid, may not exceed 70 % of its EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase in EBITDA in the eligible period above 0 (see recitals (16), (17) and (21)). The measure therefore complies with point 73(d) of the Temporary Crisis and Transition Framework.
 - Aid granted under the measure may be cumulated with aid under section 2.1 of the Temporary Crisis and Transition Framework, provided that the applicable aid ceilings per undertaking are not exceeded (see recital (26)). The measure therefore complies with point 72(g) of the Temporary Crisis and Transition Framework. The second sentence of point 72(g) does not apply, because aid is not calculated under the measure on the basis of historical consumption.
- (34) Apart from the notified amendments, Belgium confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.
- (35) Belgium confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, aid granted under the Temporary Crisis Frameworks and the Temporary Crisis and Transition Framework cannot exceed the aid ceilings

provided by the Temporary Crisis and Transition Framework for the same eligible period (see recital (25)).

- (36) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Crisis and Transition Framework. The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision.

4. CONCLUSION

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

