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C(2022) 9123 final**SENSITIVE***: *COMP Operations*

Subject: State Aid SA.104588 (2022/N) – Belgium
TCF: Aid to undertakings facing increased energy costs following Russian aggression against Ukraine

Excellency,

1. PROCEDURE

- (1) By electronic notification of 17 October 2022, Belgium notified aid for additional costs due to exceptionally severe increases in natural gas and electricity prices (*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 vierde kwartaal van 2022*; the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”)¹.

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¹ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131 I, 24.3.2022, p. 1), as amended by Commission Communication C(2022)5342 (OJ C 280, 21.7.2022, p. 1) and by Commission Communication C(2022)7945 (OJ C 426, 9.11.2022, p. 1), which replaces the previous version and its amendments.

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- (2) On 28 October, 17 and 28 November 2022, the Commission sent additional questions to Belgium, to which the Flemish authorities replied on 7, 21 and 28 November 2022 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 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Belgium considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (‘the current crisis’) so far affect the real economy. The current crisis 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. Rising energy prices affect virtually every economic activity.
- (5) The current crisis affects the Belgian economy in several ways: (i) a sharp rise in the price of energy, which affects virtually every economic activity³, and raw materials; (ii) disruptions to value chains and the shock to world trade; and (iii) uncertainty leading to lost investment and financial stress⁴.
- (6) The Belgian economy is facing high inflation. According to the inflation forecasts produced by the Federal Planning Bureau, average consumer price inflation should be 9.5% in 2022 and 5.4% in 2023, compared to 2.44% in 2021 and 0.74% in 2020. The average growth rate of the so-called ‘health price index’, which is used for the price indexation of wages, social benefits and house-rent, should be 9.1% in 2022 and 5.6% in 2023, compared to 2.01% in 2021 and 0.99% in 2020⁵.
- (7) Part of the inflation is the consequence of electricity and natural gas price increase. In September 2022, the average wholesale electricity price in Belgium reached 346 EUR/MWh, almost three times the price reported in the same month of 2021⁶. According to data published by the Belgian Federal Commission for Electricity and Gas Regulation (CREG), the monthly average settlement price for

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ In May 2022 the National Bank of Belgium published a study on the impact of the energy prices on companies in Belgium (https://www.nbb.be/doc/ts/other/220513_bedrijven_stijging_energieprijzen.pdf). According to this study, the sharp rise in energy prices will affect all companies in all sectors of the economy.

⁴ The National Bank of Belgium, with the contribution of the Federal Planning Bureau and FPS Economy is closely monitoring the impact of the war in Ukraine on the Belgian economy and publishes a monthly dashboard on external developments (energy/commodity markets, trade and FDI exposure, global economic developments and forecasts, financial markets) as well as on developments within Belgium (energy markets in Belgium, households, labour markets and wages, financial sector, government): <https://www.nbb.be/nl/over-de-nationale-bank/missies-en-strategie/overige-opdrachten/advies-en-expertise/dashboard>. The most recent dashboard, dated 16 September 2022 can be found in the following link: https://www.nbb.be/doc/ts/other/dashboard/220916_dashboard.pdf.

⁵ <https://www.plan.be/databases/17-en-consumer-price-index-inflation-forecasts>.

⁶ <https://www.statista.com/statistics/1314413/belgium-monthly-wholesale-electricity-price/>.

the ‘Belgian Power Base Load Futures’, as published on www.theice.com for the month previous to the month of delivery, is 325 EUR/MWh for November 2022, compared to 211 EUR/MWh in November 2021⁷. As for natural gas, the monthly average settlement price for the ‘Dutch TTF Gas Base Load Futures’ as published on www.theice.com for the month previous to the month of delivery, is 136 EUR/MWh in November 2022, compared to 92 EUR/MWh in November 2021⁸.

- (8) Belgium explained that among the most affected are the energy-intensive undertakings, i.e. undertakings for which natural gas and electricity represent a significant part of their production costs and which have difficulty in passing the increased energy costs on to their customers in full due to their exposure to international competition. For some of those undertakings, the rise in natural gas and electricity prices may even jeopardise the continuation of their economic activity, while, under normal circumstances, such undertakings would be profitable⁹.
- (9) In light of the situation described in recitals (5) to (8), Belgium considers that a strong response to face the economic and social consequences of the current crisis with effective measures is required¹⁰.
- (10) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (11) Belgium confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (12) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.4 of the Temporary Crisis Framework.

2.1. The nature and form of aid

- (13) The measure provides aid in the form of direct grants for aid for additional costs due to exceptionally severe increases in natural gas and electricity prices under section 2.4 of the Temporary Crisis Framework.

2.2. Legal basis

- (14) The legal basis for the measure (the “national legal basis”), the draft of which has been submitted to the European Commission, is the Decision of the Flemish

⁷ <https://www.creg.be/sites/default/files/assets/Tarifs/ElectricityQuotations-NL.pdf>.

⁸ <https://www.creg.be/sites/default/files/assets/Tarifs/GasQuotations-NL.pdf>.

⁹ Average energy costs for small and medium sized companies, as observed by CREG, can be found in the following link: <https://www.creg.be/nl/professionals/marktwerking-en-monitoring/boordtabel>.

¹⁰ The Belgian authorities explained that, according to the rules of allocation of competencies between the Federal authorities of Belgium and the Regions, the Flemish Region, with its legislative and executive bodies, is competent for the adoption and implementation of measures relating to the economy within the territory of the Flemish Region.

Government granting aid to companies facing rising energy expenditure as a result of the Russian aggression against Ukraine, as regards the fourth quarter of 2022 (*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 vierde kwartaal van 2022*; the ‘draft decision of the Flemish Government’).

- (15) 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 (*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*; the ‘Note’), which provides clarifications on the measure and is published on the website of the Flemish Government.
- (16) 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.

2.3. Administration of the measure

- (17) The Agency for Innovation & Entrepreneurship - Agentschap Innoveren & Ondernemen (VLAIO)¹¹ is responsible for administering the measure.

2.4. Budget and duration of the measure

- (18) The maximum estimated budget of the measure is EUR 250 million. The measure will be financed from the national budget.
- (19) According to article 10 of the draft decision of the Flemish Government, the Belgian authorities will set the initial budget of the measure at EUR 125 million. In the event that the amount necessary to cover the requests for aid for all eligible undertakings exceeds EUR 125 million but remains below EUR 250 million, the aid amount for each eligible beneficiary will be reduced proportionately. However, if the amount needed to cover the requests for aid for all eligible undertakings reaches EUR 250 million, the Flemish authorities may decide to raise the budget up to EUR 250 million.
- (20) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure to the Flemish authorities until no later than 31 December 2023.

2.5. Beneficiaries

- (21) The final beneficiaries of the measure are SMEs¹² and large enterprises¹³ active in the Flemish region. However, credit institutions or other financial institutions are

¹¹ The Agency was established by the Flemish Government Decree of 7 October 2005 on the Agency for Innovation and Entrepreneurship.

¹² As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

excluded as eligible final beneficiaries, as well as entities principally engaged in electricity and heat production (NACE code 35.1 or 35.3).

(22) However, enterprises are not eligible under the measure if they:

- are under dissolution, discontinuation, bankruptcy or liquidation;
- have negative equity (value of assets lower than the value of liabilities) in both the financial year 2019 and the financial year 2021;
- did not have an active place of business in the Flemish region on 1 October 2021;
- are credit and financial institutions supervised by the National Bank of Belgium;
- are controlled by a national or foreign administrative authority in line with Article 14 of the laws on the Council of State of 12 January 1973;
- have entered into insolvency proceedings as described in article I.22(1) of the Code of Economic law at the time of the application for aid, or have been summoned by the National Social Security Office;
- have an undisputed outstanding debt with the Flanders Innovation and Entrepreneurship Fund or the Fund for Innovation and Entrepreneurship, referred to in Article 41 (1) of the Decree of 21 December 2001 containing provisions to accompany the 2002 budget;
- have placed more than 35 % of the staff registered with the National Social Security Office on 30 September 2022 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;
- have energy expenditure below EUR 7 500 in 2021;
- have received support from the Flemish Government to cover their increased energy costs via other measures.

(23) In order to be eligible for aid under the measure, applicants must commit to not pay dividends during the period from 1 October 2022 and 31 December 2023. Furthermore, the measure includes an obligation for the beneficiaries of aid to continue operations in the Flemish region for a period of five years following the deadline for application for aid. If this obligation is not met, the aid will be recovered in full.

¹³ As defined in Article 2 point 24 of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

- (24) Enterprises that fall under the scope of Energy Policy Agreements¹⁴ signed with the Flemish Government are eligible for aid under the measure if they are party to these agreements and have complied with the terms and conditions of the respective Agreements for all their establishments that fall under the scope of the said Agreements.
- (25) Belgium estimates that the measure will benefit around 10 000 undertakings.
- (26) Belgium confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (27) Belgium confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations¹⁵. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (28) The measure is open to all sectors except for those set out in recital (21). The measure applies to the Flemish region of Belgium.

2.7. Basic elements of the measure

- (29) The measure provides aid for additional costs due to exceptionally severe increases in natural gas and electricity prices. The aim of the measure is to mitigate the exceptionally large increases in the price of natural gas and electricity incurred by undertakings, which cannot be passed on to final consumers or with which they are unable to cope.
- (30) Aid will be in form of direct grants to alleviate the exceptionally severe increases in the price of natural gas and electricity.
- (31) The measure covers as eligible period the period from 1 October 2022 to 31 December 2022 (the ‘eligible period’).
- (32) The eligible costs are calculated by comparing the average unit price of natural gas, electricity and heating produced from natural gas or electricity of the beneficiary in the eligible period and the average unit price over the reference

¹⁴ The Flemish authorities explained that energy-intensive sites of industrial companies can sign voluntary Energy Policy Agreements with the Flemish Government which require companies to invest in energy efficiency projects based on their internal rate of return, in line with the recommendations of mandatory energy audits. Their aim is to ensure that industrial users of energy implement energy efficiency measures and thus contribute to the Flemish CO₂ reduction and energy efficiency targets.

¹⁵ 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).

period, which runs from 1 January 2021 to 31 December 2021 (the ‘reference period’)¹⁶.

- (33) The eligible cost is the product of the number of units of natural gas, electricity and/or heating produced from natural gas or electricity procured by the beneficiary as a final consumer in the eligible period and a certain increase in the price that the entity pays per unit consumed (measured in EUR/MWh).
- (34) That price increase is calculated as the difference between the unit price paid by the entity in a given month in the eligible period and twice (200 %) the unit price paid by the entity on average in the reference period.
- (35) The eligible costs are calculated, for each month of the eligible period for which aid is requested, according to the following formula:

$$(p(t) - p(\text{ref}) * 2) * q(t)^{17}$$

- (36) The eligible costs are based on the energy bills provided by the beneficiary. Belgium confirmed that eligible costs are to be calculated at the level of the legal entity, except for the specific cases described in recitals (45) and (49).
- (37) The quantity of natural gas, electricity and heating produced from natural gas or electricity used to calculate the eligible costs must not exceed 70 % of the entity’s consumption for the same period in 2021.
- (38) Belgium explained that the aid will be granted to the following categories of beneficiaries under different conditions and aid ceilings as follows:

Category 1

- (39) In order to benefit from aid under this category, applicants must be able to demonstrate that they have incurred operating losses¹⁸ during the eligible period. Belgium explained that this criterion will be checked at the level of the legal entity.
- (40) 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.
- (41) The total amount of aid must not exceed EUR 500 000 per undertaking at any given point in time. Belgium confirmed that all figures used are gross, that is, before any deduction of tax or other charge.

¹⁶ For legal entities created between 1 January 2021 and 30 September 2021, the reference period corresponds to the period between the date of creation of the entity and 31 December 2021.

¹⁷ More specifically, p (t) denotes the unit price of natural gas and electricity in EUR/MWh borne by the undertaking during the relevant month of the eligible period; p (ref) denotes the average unit price of natural gas and electricity in EUR/MWh borne by the undertaking during the reference period; q (t) denotes the amount of natural gas and electricity consumed by the beneficiary in the relevant month of the eligible period.

¹⁸ The beneficiary incurs operating losses if it has negative EBITDA (earnings before interest, taxes, depreciation and amortization, excluding one-time impairment losses) in the respective period.

Category 2

- (42) The aid intensity and the total amount of aid may be increased for applicants which, in addition to meeting the condition in recital (39), meet the following two conditions:
- (a) they qualify as an energy-intensive business¹⁹ and
 - (b) their eligible costs account for at least 50% of their operating losses in the eligible period.
- (43) 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.
- (44) The total amount of aid must not exceed EUR 4 000 000 per undertaking at any given point in time. Belgium confirmed that all figures used are gross, that is, before any deduction of tax or other charge.
- (45) For beneficiaries under this category that do not meet the condition in recital (39) at the level of the legal entity, but are able to prove that they meet that condition at the level of one or several business units²⁰, only the energy costs that can be assigned to the respective business units can be taken into account for the calculation of eligible cost in accordance with the conditions set out in recitals (29) to (38). For these beneficiaries, the aid intensity is set at 30% of the eligible costs and the aid amount must not exceed 80 % of the operating losses incurred by the respective business units in the eligible period. The total amount of aid must not exceed EUR 3 000 000 per undertaking at any given point in time. In addition, the beneficiary's EBITDA²¹ in the eligible period, including the overall aid, may not exceed 70 % of the average price of its EBITDA corresponding to a quarter of the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.

Category 3

- (46) The aid intensity and the total amount of aid may be further increased for applicants which, in addition to meeting the conditions in recitals (39), and (42), are active in one or more sectors or sub-sectors listed in Annex I²² of the Temporary Crisis Framework.

¹⁹ An energy-intensive business shall mean a legal entity, where the purchases of energy products amount to at least 3,0 % of the turnover or production value, based on data from financial accounting reports for the calendar year 2021.

²⁰ Belgium explained that a business unit ('bedrijfstak') under Belgian law is an entity that carries out autonomous activity on a technical and organisational level but has no legal personality.

²¹ Earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

²² A beneficiary will be considered as active in a sector or subsector listed in Annex I according to the beneficiary's classification in the sectoral national accounts or if one or several of the activities it carries out and which are included in Annex I generated more than 50 % of its turnover or production value in the reference period.

- (47) 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.
- (48) The total amount of aid must not exceed EUR 7 500 000 per undertaking at any given point in time. Belgium confirmed that all figures used are gross, that is, before any deduction of tax or other charge.
- (49) For beneficiaries under this category that do not meet the condition in recital (39) at the level of the legal entity, but are able to prove that they meet that condition at the level of one or several business units, only the energy costs that can be assigned to the respective business units can be taken into account for the calculation of eligible cost in accordance with the conditions set out in recitals (29) to (38). For these beneficiaries, the aid intensity is set at 35% of the eligible costs and the aid amount must not exceed 80 % of the operating losses incurred by the respective business units in the eligible period. The total amount of aid must not exceed EUR 5 250 000 per undertaking at any given point in time. In addition, the total amount of aid must not exceed EUR 3 000 000 per undertaking at any given point in time. In addition, the beneficiary's EBITDA in the eligible period, including the overall aid, may not exceed 70 % of the average price of its EBITDA corresponding to a quarter of the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0.
- (50) There are no advance payments and the aid is granted only after an ex-post verification of the supporting documentation of the beneficiary. More specifically, the beneficiary submits an application for aid via the website of VLAIO, no later than the date indicated on the website. The aid application is processed electronically. VLAIO examines the compliance with the conditions laid down in the national legal basis and decides whether to grant the aid, for which the applicant shall receive a written notification. Upon receipt of the invoices relating to the energy expenditure during the eligible period and, where mandatory, after the submission of the annual accounts relating to calendar year 2021, the beneficiary shall apply for payment of the aid via the website of VLAIO. The payment is made after verification of the supporting documents and the fulfilment of relevant conditions.

2.8. Cumulation

- (51) Belgium confirms that aid granted under the measure may be cumulated with aid under de minimis Regulations²³ and/or with aid under the General Block Exemption Regulation or with aid under the Agricultural Block Exemption

²³ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

Regulation or with aid under the Fisheries Block Exemption Regulation²⁴, provided the provisions and cumulation rules of those Regulations are respected.

- (52) Belgium confirms that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (53) Belgium confirms that aid under the measure may be cumulated with aid measures approved under COVID TF for which cumulation is allowed²⁵. Those measures were approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak²⁶ (COVID-19 Temporary Framework) and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.
- (54) Belgium confirms that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.
- (55) Aid under point 66 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the overall cap of EUR 4 million per undertaking is not exceeded. Aid under point 67 of the Temporary Crisis Framework may be cumulated with aid under section 2.1 provided the ceiling laid down in point 67(a), 67(b) or 67(c), whichever applies, is not exceeded.

2.9. Monitoring and reporting

- (56) The Belgian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid

²⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1), Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1) and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

²⁵ SA.60524, SA.62156, SA.62826, SA.64488, SA.101027, SA.101863, SA.61748, SA.102421, SA.63932.

²⁶ 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).

website or Commission's IT tool within 12 months from the moment of granting²⁷).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (57) By notifying the measure before putting it into effect, the Belgian authorities have respected their obligations under Article 108(3) TFEU (see recital (16)).

3.2. Existence of State aid

- (58) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (59) The measure is imputable to the State, since it is administered by the Agency for Innovation & Entrepreneurship - Agentschap Innoveren & Ondernemen (VLAIO) (see recital (17)) and it is based on 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 fourth quarter of 2022 (see recital (14)). It is financed through State resources, since it is financed by public funds (see recital (18)).
- (60) The measure confers an advantage on its beneficiaries in the form of direct grants (see recitals (13) and (30)). The measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (61) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular those incurring operating losses during the eligible period, which are applying for support (see section 2.7). Furthermore, the Commission notes that credit institutions or other financial institutions are excluded as eligible final beneficiaries, as well as entities principally engaged in electricity and heat production (see recital (21)).
- (62) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Belgian authorities do not contest that conclusion

3.3. Compatibility

- (63) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it is compatible with the internal market.

²⁷ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

- (64) 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*”.
- (65) By adopting the Temporary Crisis Framework the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed by 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.
- (66) Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Belgium. The Commission concluded that State aid is 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 so far, for example by Russia.
- (67) The measure aims to mitigate the consequences for undertakings of the exceptionally severe increases in the price of natural gas and electricity 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. It does so at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Belgium.
- (68) The measure is one of a series of measures conceived at national level by the Belgian authorities to remedy a serious disturbance in their economy. The importance of the measure to compensate for the severe increase in natural gas and electricity prices is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire economy of Belgium. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices”) described in section 2.4 of the Temporary Crisis Framework.
- (69) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework.
- (70) In particular, aid will be granted under the measure no later than 31 December 2023 (see recital (20)). The measure therefore complies with point 66(a) of the Temporary Crisis Framework.
- (71) The aid takes the form of direct grants (see recitals (13) and (30)). The nominal value of the grant does not exceed the applicable aid intensity and aid ceilings laid down in point 66(f) and 67(a) of the Temporary Crisis Framework (see recitals (40), (41), (43), (44), (45), (47), (48), and (49)). All figures used are gross that is, before any deduction of tax or other charge (see recitals (41), (44), and (48)). The

measure therefore complies with point 66 (b) of the Temporary Crisis Framework.

- (72) Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (18)). As described in section 2.5, the scope of 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 operating losses during the eligible period, 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. In addition, given that higher aid intensities and amounts, in accordance with section 2.4 of the Temporary Crisis Framework apply to energy-intensive businesses, 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 66(d) of the Temporary Crisis Framework.
- (73) 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 eligible period running from 1 October to 31 December 2022 (see recitals (32) to (35)), in line with a formula that is more restrictive than the one provided in point 66(e) of the Temporary Crisis Framework, because it uses a factor of 2 instead of 1,5 to determine the part of the cost increase in the eligible period compared to the reference period that is eligible for aid. 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)). The measure therefore complies with point 66(e) of the Temporary Crisis Framework.
- (74) The overall aid per beneficiaries falling under Category 1 will not exceed 25 % of the eligible costs and the overall aid per undertaking will not exceed EUR 500 000 (see recitals (39) to (41)). The overall aid per beneficiaries falling under Category 2 will not exceed 30% of the eligible costs and the overall aid per undertaking will not exceed EUR 4 000 000 at any given point in time (see recitals (42) to (45)); all figures used must be gross, that is, before any deduction of tax or other charges (recitals (41) and (44)). The measure therefore complies with point 66(f) of the Temporary Crisis Framework.
- (75) The overall aid per beneficiaries falling under Category 3 will not exceed 35 % of the eligible costs and the overall aid per undertaking will not exceed EUR 7 500 000 (see recitals (46) to (49)). The measure therefore complies with point 67(a) of the Temporary Crisis Framework.
- (76) Beneficiaries of aid under point 67(a) of the Temporary Crisis Framework (i.e. beneficiaries falling under Category 3), must in principle incur losses at the level of the legal entity in order to benefit from aid (see recitals (46) and (39)) and aid cannot exceed 80 % of the incurred operating losses (see recital (47)). This means that for such beneficiaries the aid may not lead to an increase of EBITDA above 0 in the eligible period. Furthermore, for beneficiaries that do not incur losses at the level of the legal entity (see recital (49)), the condition applies that the beneficiary's EBITDA in the eligible period, including the overall aid, may not exceed 70 % of the average price of its EBITDA corresponding to a quarter of the

reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0. The measure therefore complies with point 67(d) of the Temporary Crisis Framework.

- (77) Aid granted under the measure may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided that the applicable aid ceilings per undertaking are not exceeded (see recital (55)). The measure therefore complies with point 66(g) of the Temporary Crisis Framework.
- (78) The Belgian authorities confirm that, pursuant to point 46 of the Temporary Crisis Framework, the aid under the measure is not 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. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (see recital (11)).
- (79) The Belgian authorities confirm that, pursuant to point 47 of the Temporary Crisis Framework, the aid under the measure will 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 (see recital (26)).
- (80) The Belgian authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (see section 2.9). The Belgian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (see recitals (51) to (55)).
- (81) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Crisis Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid 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.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

