

Client Alert

EU Competition Authorities Respond to Ukraine Crisis: More Flexibility for State Aid and Cooperation Among Companies

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Two recent initiatives have been adopted by EU competition authorities in response to the current crisis in Ukraine. On March 23, 2022, the European Commission adopted a new Temporary Crisis Framework for State aid measures to support the EU economy following Russia's attack on Ukraine. The goal is to allow EU countries to support companies and sectors that are severely affected by the economic impact of the war or the sanctions imposed against Russia. The Framework will be in place until December 31, 2022. This initiative comes shortly after the European Competition Network issued a Joint Statement, allowing companies to cooperate to address severe disruptions caused by the Ukraine crisis.

Many businesses in the EU have been directly or indirectly affected by the war, the sanctions imposed and the countermeasures taken. The negative impact may result in loss of turn-over and/or sharp input cost increases, because of shrinking demand, interruption of existing contracts and projects, or disruptions to supply chains. In addition, high energy prices have impacted several economic sectors, including agriculture, food processing and all energy-intensive businesses.

European Commission – State Aid Temporary Crisis Framework

Against this background, the European Commission has adopted a Temporary Crisis Framework, which provides EU countries with additional tools to support severely affected companies and sectors while staying in line with EU State aid rules. The aim is to help remedy the serious disturbance in the economy of all EU countries while at the same time preserving a level playing field in the EU internal market.

Types of State aid

The Temporary Crisis Framework enables EU countries to grant three types of aid:

- **Limited amounts of aid** –EU countries can set up support schemes that provide limited amounts of aid to companies affected by the crisis. The maximum amount of aid is EUR 35,000 per company for companies active in the agriculture, fisheries and aquaculture sectors, and EUR 400,000 per company in all other sectors. This aid can be granted in any form (such as direct grants, tax and payment advantages, repayable advances, guarantees, loans and equity).
- **Liquidity support in the form of guarantees and subsidized loans** – EU countries can grant subsidized state guarantees or guarantee schemes supporting bank loans taken up by companies, to ensure banks keep lending to companies affected by the crisis. Such schemes will have below market rate premiums. Additionally, EU countries can enable public and private loans with subsidized interest rates, provided

that the reduced interest rates are at least equal to the risk-free base rate plus specified credit risk premiums.

Both working capital and investment loans can get support through guarantees or subsidized loans. The maximum amount of the loans is capped per beneficiary, based on the operating needs of the company according to its turnover, energy costs or specific liquidity needs.

- **Aid for additional costs due to high gas and electricity prices** – EU countries can partially compensate companies, in particular energy-intensive users, for additional costs due to exceptional gas and electricity price increases. The maximum aid per company cannot exceed 30% of the eligible costs, up to a maximum amount of EUR 2 million, at any given point in time. When an energy-intensive business incurs operating losses, further aid may be necessary to ensure its continued economic activity. In those circumstances, the aid can go up to 50% of the eligible costs and EUR 25 million for energy-intensive businesses, and even up to 70% of the eligible costs and EUR 50 million for companies active in specific (particularly affected) sectors. These sectors are listed in Annex I and include production of aluminum and other metals, glass fiber, pulp, fertilizer or hydrogen and other basic chemicals.

Safeguards and companies in difficulty

The Framework provides for a number of conditions with which the national authorities have to comply when granting the aid, including eligibility conditions and a proportional methodology. In addition, they are invited to consider setting up sustainability requirements when granting aid for additional costs caused by exceptionally high gas and electricity prices.

Under the Framework it will be possible to grant aid to companies that were already in difficulty before the crisis. This is a remarkable exception to one of the basic principles of EU State aid law, according to which aid to companies in difficulty can normally only be granted subject to very strict conditions under the Rescue and Restructuring Guidelines. For example, the Temporary Framework, which was adopted on March 19, 2020 in response to the coronavirus outbreak, and which has been amended six times since its adoption, does not allow aid to companies that were already in difficulty when the crisis started. The European Commission has accepted that the occurrence of two crises in quick succession has affected companies in multiple ways, and it has now recognized that temporary aid may be required to help certain companies in difficulty.

No aid to sanctioned Russian-controlled entities

In order to prevent the aid undermining the intended effects of the sanctions imposed against Russia, no aid can be provided to companies targeted by the sanctions adopted by the EU, including (but not limited to):

- Persons, entities or bodies specifically named in the legal acts imposing those sanctions;
- Companies owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or

-Undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.

The Temporary Framework is valid until December 31, 2022. The European Commission will assess before that date if it needs to be extended.

ECN Joint Statement – Application of competition law in the context of the Ukraine crisis

On March 21, 2022 the European Commission, the EU national competition authorities, and the EFTA Surveillance Authority (cooperating through the “European Competition Network” or “ECN”) published a Joint Statement on the application of competition law in the context of the Ukraine crisis.

In the Joint Statement, the ECN recognizes that the current crisis conditions may trigger the need for companies to jointly address severe disruptions caused by the impact of the war and/or of sanctions. Such action may include, for example, cooperation in order to (i) ensure the purchase, supply and fair distribution of scarce products and inputs; or (ii) mitigate severe economic consequences including those arising from compliance with sanctions imposed by the EU.

In this context, the ECN stated that it will not actively intervene against strictly necessary and temporary initiatives specifically targeted at avoiding the severe disruptions caused by the impact of the war and/or of sanctions. Companies can reach out to the members of the ECN at any time for informal guidance about the compatibility of their initiatives with EU/European Economic Area competition law.

At the same time, the ECN warned that it will not hesitate to take action against any company that tries to take advantage of the current situation by entering into a cartel or abusing its dominant position.

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