#### **SUMMARY**

- The meeting is with **Claire Waysand**, Secrétaire Générale d'ENGIE.
- 03/05/2022 11:15-12:15.
- Purpose of the meeting:

Evolution possible des systèmes énergétiques français et belges et impacts sur les sujets de concurrence

Prix de l'énergie : mesures immédiates et de plus long terme (market design) et impact sur la politique de concurrence

IPCEI – Traitement des dossiers à la DG COMP

EQUANS et mécanismes de soutien français au biométhane

Aides d'Etat/cadre temporaire dans le contexte de la crise russo-ukrainienne

 As always, we should not discuss details on ongoing cases without the presence of the MS concerned. We have informed them, but I would suggest stressing this at the beginning of the meeting.

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#### **EVOLUTION OF THE FRENCH ENERGY SYSTEM AND IMPACT ON COMPETITION**

#### **KEY MESSAGES**

- We observe that competition in the French electricity market is still limited and that EDF continues to hold dominant positions at both wholesale and retail levels.
- The ARENH scheme has partially responded to its initial objective to increase competition at the retail level, but it did not bring more competition at the wholesale level. This is due in particular to France's lasting refusal to open the hydropower sector to competition and the slow growth of electricity production from renewable energy sources in France.
- We expect that a reform of the ARENH scheme, together with a reform of the EDF group, will bring more competition in the French electricity market. However, a number of conditions are to be complied with. Firstly, a reformed ARENH scheme should not interfere with price formation in the wholesale market. Secondly, it should not provide any competitive advantage to EDF's other commercial activities. Third, it should not provide any unfair advantage to the French industrial consumers vis-à-vis their European competitors. The same conditions apply for any mechanism that would be established to support the construction of new nuclear power plants in France.
- Increasing competition in the French electricity market also requires that the
  French authorities remove the competitive advantage that EDF has been
  drawing over many years from the operation of the hydropower concessions,
  which is still subject to an antitrust (Art. 106 + 102 TFEU) proceedings.
- As regards the recent increase of the ARENH volume, we have taken note of the decision of the French authorities in the context of soaring energy prices in the EU.
- Finally, we have also noted Engie's interest in acquiring EDF's renewable business if it were up for sale. As this would be a major change in the French electricity market, we were wondering if you have more information on whether EDF divesting its renewable business is a credible prospect.

#### **NECESSARY FACTS AND FIGURES**

#### On EDF

 EDF is the State-owned incumbent, controlling approx. 85% of electricity generation capacity in France (mostly nuclear and hydro power plants) and having a 65% market share at retail supply level.

#### On ARENH and the envisaged ARENH's reform

 In 2012, the Commission approved under State aid rules a regulatory mechanism for nuclear generation called "Accès Régulé à l'Electricité Nucléaire Historique" (ARENH) to boos competition in the retail supply market. Under this

mechanism, EDF is obliged until end of 2025 to offer a maximum of 100 TWh/year of nuclear power at a regulated price (42 €/megawatt hours) to its competitors.

France engaged with the Commission services in 2019 in discussions on a reform
of its nuclear regulation. The planned reform foresaw guaranteed cost coverage
to EDF's nuclear production and the maintenance of EDF as an integrated group.
In July 2021, France has decided to put on hold the reform, as it appeared too
controversial in view of the presidential election.

#### On EDF's hydro concessions

• In 2015, the Commission sent a Letter of Formal Notice to France, based on Articles 106 and 102 TFEU, because it was concerned that the granting of 85% of France's hydropower concessions to EDF, without any competitive tenders and for very long duration, was distorting competition in the French electricity market. Discussions on hydropower concessions, which were linked to the reform of the nuclear regulation and the restructuring of the EDF group, have also been put on hold until the presidential election.

#### On the increase of the volume of ARENH electricity

- On 13 January 2022, France issued a press release announcing that it has decided to increase the ARENH volume from 100 TWh to 120 TWh for 2022 and to increase the price of these additional 20 TWh to 46.2 €/megawatt hours.
- On 25 February 2022, the French NCA adopted an opinion on the increase of the ARENH volume in which it criticizes the measure and recommends, for the future, the implementation of more targeted and effective measures to achieve the objective of protecting the customers most vulnerable to soaring energy prices.
- On 21 March 2022, 3 EDF's trade unions (CFE-CGC, FO and UNSA) lodged a complaint against France's decision to increase the ARENH volume alleging that it constitutes a State aid to EDF's competitors which has not been notified nor approved by the Commission. We rejected the complaint based on lack of legal standing on 8 April 2022.
- In parallel EDF's trade unions have brought the matter before the Conseil d'Etat. In this context, they asked the Commission to intervene in the proceedings as amicus curiae. We declined to do so on 20 April 2022..

#### On France's plan to build new nuclear power plants

On 10 February 2022, President Macron announced France's decision to build 6 new nuclear reactors (EPR technology), as well as the launch of studies for the construction of eight additional ones. Although no details have been given concerning the financing of the construction program (for a cost estimated by the French Court of Auditors at 46 billion euros for 6 reactors¹), state aid is likely in view of the net debt of EDF (43 billion euros at the end of 2021).

On EDF's recapitalisation

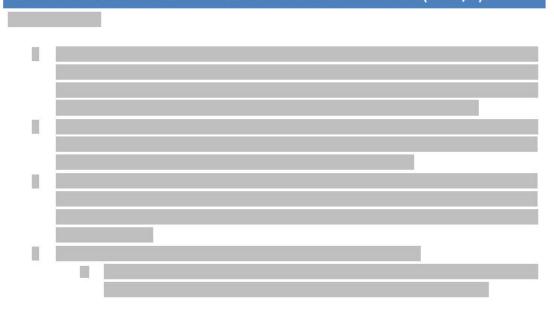
<sup>&</sup>lt;sup>1</sup> RPT La filière EPR (ccomptes.fr)

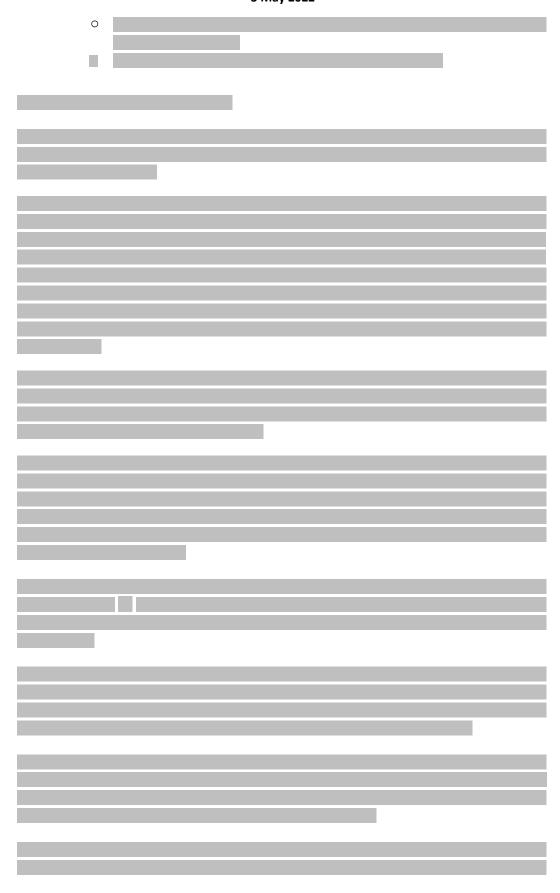
On 18 February 2022, Minister Le Maire announced that the French State will
contribute 2.1 billion euros to a 2.5 billion capital increase of EDF, in line with
the State's shareholding in EDF. Eventually EDF's capital has been increased by
3.1 billion euros, out of which 2.7 billion euros have been subscribed by the
French State.

Contact:	- Updated 26 April 2022
EQUANS ET ME	ÉCANISMES DE SOUTIEN FRANÇAIS AU BIOMÉTHANE



# BELGIAN CAPACITY REMUNERATION MECHANISM CASE - SA.574915 (2020/C)





Contact:	- Undated 26 April 2022

STATE AID - TEMPORARY CRISIS FRAMEWORK TO SUPPORT THE ECONOMY IN CONTEXT OF RUSSIA'S INVASION OF UKRAINE

#### **KEY MESSAGES**

- The Commission is ready to use the full flexibility of its State aid toolbox in order
  to enable Member States to support companies and sectors severely impacted
  by the Russian military aggression against Ukraine, including direct effects of the
  economic sanctions taken in response and high energy costs.
- On 23 March 2022, the Commission adopted a State aid Temporary Crisis Framework based on Article 107(3)(b) TFEU, which allows aid to be granted to remedy a serious disturbance across the EU economy.
- Some measures of the Temporary Crisis Framework are comparable to the COVID-19 Temporary Framework, enabling Member States to provide support to undertakings to continue operating and producing. In particular, limited amounts of aid can be granted in different forms, including direct grants up to €400,000 (€35,000 for agriculture and fisheries) and liquidity support in the form of loans and guarantees (in principle up to 15% of average annual turnover or 50% of past energy bills).
- In view of the specificity of the current crisis, the Temporary Crisis Framework also enables specific support for companies facing high costs of gas and electricity.
- The Temporary Crisis Framework excludes any undertakings, which are under sanctions adopted by the European Union or measures, which would amount to a circumvention of those sanctions. So also through individuals, which are nominated on the sanctions, or through other entities which somehow are linked to this persons which are under sanctions.
- Measures under the Temporary Crisis Framework can in principle be combined with support under the COVID-TF (undertakings may likely have been affected by bot crises). There is also no specific exclusion for support to undertakings in difficulty under the new Temporary Crisis Framework.
- The Temporary Crisis Framework is currently set to apply until the end of this year. With a view to ensuring legal certainty, the Commission will assess before that date if it needs to be extended. Moreover, we will keep the content and scope of the Framework under review in the light of developments.

- Furthermore, Article 107(2)(b) of the TFEU enables Member States to compensate companies for the damage directly caused by an exceptional occurrence.
- As regards State aid measures, to date, the Commission has approved three schemes (a French scheme enabling up to €155 billion in liquidity support for companies across all sectors in the context of Russia's invasion of Ukraine, a €836 million Polish scheme to support agricultural sector in context of Russia's invasion of Ukraine and a €20 billion German scheme to support companies in context of Russia's invasion of Ukraine). These schemes are the first approved under the State aid Temporary Crisis Framework.
- The Commission is in contact with a number of Member States and is committed to a swift assessment of the measures as soon as notified.

#### **BACKGROUND**

The State aid Temporary Crisis Framework to support the economy in the context of Russia's invasion of Ukraine, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognises that the EU economy is experiencing a serious disturbance. To remedy that, the Temporary Crisis Framework provides for three types of aid.

- Limited amounts of aid: Member States will be able to set up schemes to grant up to €35,000 for companies affected by the crisis active in the agriculture, fisheries and aquaculture sectors and up to €400,000 per company affected by the crisis active in all other sectors. This aid does not need to be linked to an increase in energy prices, as the crisis and the restrictive measures against Russia affect the economy in multiple ways, including physical supply chain disruptions. This support can be granted in any form, including direct grants.
- Liquidity support in form of State guarantees and subsidised loans: Member States will be able to provide (i) subsidised State guarantees to ensure banks keep providing loans to all companies affected by the current crisis; and (ii) public and private loans with subsidised interest rates.
  - Member States can grant State guarantees or set up guarantee schemes supporting bank loans taken out by companies applying subsidised premiums, with reductions on the estimated market rate for annual premiums for new loans for small and medium-sized enterprises ('SMEs') and non-SMEs.
  - Member States can enable public and private loans to companies with subsidised interest rates. These loans must be granted at an interest rate, which is at least equal to the risk-free base rate plus specified credit risk premiums applicable to SMEs and non-SMEs respectively.
  - For both kinds of support, there are limits regarding the maximum loan amount, which are based on the operating needs of a company, taking into account its turnover, energy costs or specific liquidity needs. The loans may relate to both investment and working capital needs.
- Aid to compensate for high energy prices: Member States will be able to
  partially compensate companies, in particular intensive energy users, for
  additional costs due to exceptional gas and electricity price increases. This
  support can be granted in any form, including direct grants. The overall aid per

beneficiary cannot exceed 30% of the eligible costs, up to a maximum of €2 million at any given point in time. When the company incurs operating losses, further aid may be necessary to ensure the continuation of an economic activity. To that end, Member States may grant aid exceeding these ceilings, up to €25 million for energy-intensive users, and up to €50 million for companies active in specific sectors, such as production of aluminium and other metals, glass fibers, pulp, fertilizer or hydrogen and many basic chemicals.

The Temporary Crisis Framework will help target support to the economy, while limiting negative consequences to the level playing field in the Single Market. The Temporary Crisis Framework therefore includes a number of safeguards:

- Proportionality: There should be a link between the amount of aid that can be granted to businesses and the scale of their economic activity and exposure to the economic effects of the crisis, by taking into account their turnover and energy costs;
- Eligibility conditions: The definition of energy intensive users is set by reference to Article 17(1)(a) of the <a href="Energy Taxation Directive">Energy Taxation Directive</a>, that is to say, businesses for which the purchase of energy products amount to at least 3% of their production value;
- Sustainability requirements: Member States are invited to consider, in a non-discriminatory way, setting up requirements related to environmental protection or security of supply when granting aid for additional costs due to exceptionally high gas and electricity prices. The aid should therefore help businesses to tackle the current crisis while at the same time laying the ground for a sustainable recovery.

The Temporary Crisis Framework will be in place until 31 December 2022. With a view to ensuring legal certainty, the Commission will assess before that date if it needs to be extended. Moreover, during its period of application, the Commission will keep the content and scope of the Framework under review in the light of developments regarding the energy markets, other input markets and the general economic situation.

The Temporary Crisis Framework adopted today complements the ample possibilities for Member States to design measures in line with existing EU State aid rules. For example, EU State aid rules enable Member States to help companies cope with liquidity shortages and needing urgent rescue aid. Furthermore, Article 107(2)(b) of the TFEU enables Member States to compensate companies for the damage directly caused by an exceptional occurrence, such as those caused by the current crisis.

The Commission had previously adopted a Temporary Framework in 2008, in response to the global financial crisis.

On 19 March 2020, the Commission adopted a Temporary Framework in the context of the coronavirus outbreak. The COVID Temporary Framework was amended on 3 April, 8 May, 29 June, 13 October 2020, 28 January and 18 November 2021.

#### **DEFENSIVES**

1) The 8 March Communication on energy prices mentions the possibility of a targeted amendment to the ETS State aid guidelines. Has there been any progress on that?

 Based on the feedback provided by Member States on the Temporary Crisis Framework, and in light of the changes proposed in the energy-specific section of the Temporary Crisis Framework, the Commission does not intend to proceed further with the targeted amendment of the ETS State aid guidelines.

#### **TEMPORARY CRISIS FRAMEWORK**

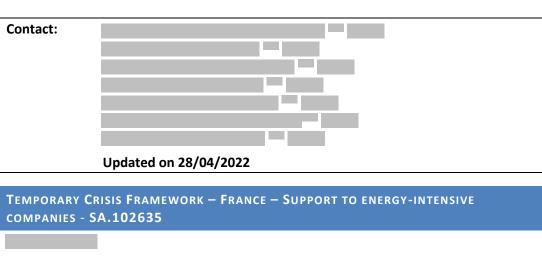
# 2) Why are the proposed measures limited to gas and electricity and do not cover oil price increases?

- Since the beginning of the Russian aggression against Ukraine, the increase in oil prices, although noticeable, has not been nearly as dramatic as in the case of gas and electricity prices. In addition, unlike gas and electricity, crude oil and refined products are globally traded commodities. While oil prices have increased, these price changes are a global phenomenon and do not put a unique additional burden on European companies compared to global competitors. This is different to the situation in the gas and electricity markets, where price hikes were significantly more severe than in many other regions of the world. Finally, oil prices are at levels which are not a new phenomenon and have repeatedly been seen in the past already.
- In addition, consumption of oil products is subject to heavy taxation in most Member States, compared to gas and electricity. More than half of the price of a litre of diesel at the pump is determined by taxes in most Member States. Member States have a possibility to ease the fallout of higher oil prices by adjusting the tax burden, either through economy-wide cuts, or through targeted cuts under, and in accordance with the <a href="Energy Taxation Directive">Energy Taxation Directive</a>. Such support could either not constitute aid or fall under the <a href="General Block">General Block</a> Exemption Regulation (GBER), and thus not require formal approval by the Commission.
- The Temporary Crisis Framework's section on aid for additional costs due to exceptionally high energy prices does not take into account increases in oil prices.
- Nevertheless, the Temporary Crisis Framework enables Member States to set up schemes to grant limited amounts of aid in any form, up to €35,000 for companies affected by the crisis active in the agriculture, fisheries and aquaculture sectors and up to €400,000 per company affected by the crisis active in all other sectors. This aid does not need to be linked to an increase in gas or electricity prices, and can therefore be granted to companies affected by increases in oil prices.

# 3) Why are some energy-intensive users eligible for higher aid amounts than others? Is it linked to the fact that they are more electro- or gas-intensive?

- The Temporary Crisis Framework allows for the compensation of increased energy costs both as regards electricity and gas consumption.
- The highest aid intensities are reserved for (i) particularly energy- and tradeintensive sectors that have been identified as subject to the risk of carbon
  leakage, independent of which type of energy they primarily consume, and (ii)
  sub-sectors with particular fuel switching potential, in line with the policy
  objective of industrial electrification.

- 4) Do we not need to include possibilities to support investments in infrastructure to reduce dependence from Russia?
- Such investment aid would currently have to be based on Article 107(3)(c) TFEU, which enables Member States to grant aid measures to facilitate the development of certain economic activities or of certain economic areas and is not covered by the scope of Temporary Crisis Framework. Existing State aid rules provide a number of possibilities to support such investments in infrastructure, including until the end of the year under the COVID-19 Temporary Framework.
- 5) For how long will the Crisis Framework be available?
- The Temporary Crisis Framework will be in place until 31 December 2022. With a view to
  ensuring legal certainty, the Commission will assess before that date if it needs to be
  extended. Moreover, during its period of application, the Commission will keep the
  content and scope of the Framework under review in the light of developments
  regarding the energy markets, other input markets and the general economic situation.





Contact:	
	Updated 27 April 2022

# SA.64648 AND OTHERS - IPCEI HYDROGEN 'INDUSTRY'

#### **KEY MESSAGES**

- La Commission examine en priorité la notification des aides d'État en faveur des projets relatifs à l'hydrogène. Dans le cadre du plan 'REPowerEU', elle s'engage à achever l'examen des premiers projets importants d'intérêt européen commun (PIIEC) dans le domaine de l'hydrogène dans un délai de 6 semaines à compter de la présentation d'une notification complète par les États membres participants. L'objectif partagé devrait être de permettre l'achèvement de l'examen d'ici l'été.
- Certains des projets pré-notifiés par les États membres dans le cadre des PIIEC hydrogène ne remplissent pas toutes les conditions des règles sur les PIIEC. Il s'agit par exemple de projets d'infrastructures dédiés à un seul consommateur d'hydrogène qui ne revêtent pas une importance majeure pour les stratégies de l'Union et notamment ne contribuent pas de manière significative à la mise e place d'une infrastructure européenne de l'hydrogène.
- Par conséquent, certains projets sont plutôt examinés par la Commission sur la base des Lignes directrices concernant les aides d'État au climat, à la protection de l'environnement et à l'énergie (CEEAG). Ces projets ne sont pas désavantagés ni en termes de timing ni en termes de maximum d'aide potentielle (les CEEAG permettant des aides au niveau du déficit de financement du projet).
- Les différents projets sont discutés par les équipes de la DG COMP avec les autorités des États membres.

# NECESSARY FACTS AND FIGURES



