Temporary State aid rules adopted to support green transition

European Commission – State aid – State aid schemes – Individual State aid – Tax credits – Temporary Crisis and Transition Framework

On March 9, 2023, following consultations with EU Member States, the European Commission (Commission or the EC) adopted a new new Temporary Crisis and Transition Framework (TCTF) as part of the broader Green Deal Industrial Plan for the Net-Zero Age.

Under the new framework, applicable until December 31, 2025, Member States are allowed to implement schemes to support new investments in production facilities in defined, strategic net-zero sectors, including through tax benefits. Individual aid would also be available for businesses in the green technology sectors that are at risk of relocating outside of the EU.

Background

On March 23, 2022, the European Commission adopted a Temporary Crisis Framework (Crisis Framework) allowing Member States to provide State aid to companies impacted by the conflict in Ukraine. The Crisis Framework set out temporary State aid measures that the EC considered compatible with the EU internal market and that can be approved rapidly upon notification by each Member State.

The Crisis Framework was based on Article 107(3)(b) of the Treaty of the Functioning of the European Union (TFEU), which allows measures to be taken to remedy a serious disturbance in the economy of a Member State. The framework provided for three types of aid: limited amounts of aid, liquidity support in form of State guarantees and subsidized loans, and aid to compensate for high energy prices.

The Crisis Framework complemented other possibilities available to Member States to mitigate the impact of the conflict, such as the possibility under Article 107(2)b TFEU to compensate specific companies or specific sectors for the damages directly caused by exceptional occurrences.

The framework was subsequently amended on July 20, 2022 and October 28, 2022. On February 1, 2023, the Commission sent to Member States for consultation a proposal for a new Temporary Crisis and Transition Framework. For more details, please refer to E-news Issue 170.

The Temporary Crisis and Transition Framework

Flexible State aid rules concerning the manufacturing of green technologies

A key measure introduced by the TCTF enables investment support to further accelerate investments in key sectors for the transition towards a net-zero economy.

Member States are allowed to implement schemes to support the manufacturing of green technologies – including the production of:

- strategic equipment, such as batteries, solar panels, wind turbines, heat-pumps, electrolysers and carbon capture usage and storage;
- related key components; and
- the production or recycling of related critical raw materials.

The support can be structured as direct grants or as tax advantages (e.g. tax credits), loans or guarantees. A cap applies, both in terms of nominal values (ranging from EUR 150 million to EUR 350 million per company per Member State) and percentage of support over total investment costs. The percentage ranges from 15 percent to 60 percent, based on the type of support, location of the investment and the size of the beneficiaries. Before granting the aid, national authorities would have to ensure that there are no risks of the productive investment not taking place within the European Economic Area (EEA), as well as there is no risk of triggering relocations within the single market.

In addition, in exceptional cases where there is a real risk of investments being diverted away from the EU, Member States are allowed to provide higher support to individual companies. In such cases, Member States would have the option to:

- provide a matching aid – match the amount of support the company could receive for an equivalent investment in that alternative location, or
- cover a funding gap - amount needed to incentivize the company to locate the investment in the EEA.

Member States are required to select the lowest amount of the two listed above. Strict safeguards are also introduced, related to the location of the projects and the technology to be used from an environmental emissions perspective. Similar to the general schemes, the individual aid may not be provided to facilitate relocation of production activities between Member States.

The measures are temporary and apply until December 31, 2025.

Other measures to support the transition to net-zero economy

The TCTF also prologues (until December 31, 2025) and expands the scope of the schemes for i) accelerating the accelerating the rollout of renewable energy and energy storage, and ii) decarbonisation of industrial production processes. Key changes include:

- simplification of the State aid calculation by enabling Member States to provide aid as a fixed percentage of total investment costs;
- higher State aid ceilings;
- expansion of the scope of framework to all renewable energy sources;
- simplified conditions for granting aid to small projects and less mature technologies (e.g. renewable hydrogen).

Other measures

The remaining provisions of the Crisis Framework (limited amounts of aid, liquidity support in form of State guarantees and subsidized loans, aid to compensate for high energy prices, measures aimed at supporting electricity demand reduction), remain applicable until December 31, 2023. These may be extended if deemed necessary by the Commission.

ETC Comment

The TCTF is a key element in the broader Green Deal Industrial Plan put forward by the Commission to enhance the competitiveness of the EU's net-zero industry and support the fast transition to climate neutrality. The new framework represents a significant relaxation of the otherwise strict EU State aid rules and was adopted amongst competitive concerns resulting from the US Inflation Reduction Act.

The new TCTF State aid rules should be considered in the context of wider EU competition concerns such as the increased scrutiny of foreign subsidies granted by third countries. As reported in EuroTaxFlash 495 the Council of the EU approved on November 28, 2022, a Regulation on foreign subsidies distorting the internal market. Under this Regulation, the Commission was granted powers to investigate financial contributions (including tax exemptions) received in non-EU countries by groups operating in the EU internal market. This Regulation will apply starting July 12, 2023, and the Commission can start ex officio investigations – that would cover subsidies granted in the five years prior to the date of application of the rules.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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