

EEA Coordination Unit
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Liechtenstein

Subject: Temporary Crisis Framework - LIE - Support scheme for energy intensive enterprises due to an exceptionally severe increase in electricity prices

1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Liechtenstein that, having assessed the support scheme for energy intensive enterprises due to an exceptionally severe increase in electricity prices (“the measure”), ESA considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections¹ to it, as it is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(b). ESA has based its decision on the following considerations.

2 Procedure

- (2) The Liechtenstein authorities notified the measure on 3 February 2023.²

3 Description of the measure

3.1 Background

- (3) The measure concerns the exceptionally severe increase in electricity prices that has resulted from the Russian aggression against Ukraine. Electricity prices in Liechtenstein are expected to remain on a high level throughout 2023. As will be elaborated on in Section 3.6.1 below, the measure aims to support energy intensive undertakings in Liechtenstein, which are no longer able to meet energy costs from their own resources.
- (4) The measure is designed to comply with the European Commission’s (“the Commission”) Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (“the TCF”).³

3.2 Objective

- (5) According to the Liechtenstein authorities, the objective of the measure is to preserve jobs in Liechtenstein, by supporting businesses which are in a situation

¹ Reference is made to Article 4(3) in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

² Document No 1350013.

³ 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 1311, 24.3.2022, p. 1, as amended. The version applicable as of 28 October 2022 was published in OJ C 426, 9.11.2022, p. 1–34.

that threatens their existence, due to the extraordinary increase in energy prices as a result of the Russian aggression against Ukraine.

3.3 Legal basis

- (6) The national legal basis for the measure is Act of 18 December 1997 on the Financing of Economic Support measures (“Economic Support Act”),⁴ and Government Guidelines on Subsidies of Electricity Costs of Energy-intensive Businesses for the Year 2023 of 13 December 2022, setting out the specific conditions applicable under the measure.⁵

3.4 Aid granting authority

- (7) The aid granting authority will be Office of Economic Affairs (*Amt für Volkswirtschaft*, “AVW”), in close cooperation with the Fiscal Authority (*Steuerverwaltung*).

3.5 Aid will not be made conditional on the relocation of an activity

- (8) The Liechtenstein authorities confirm that aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Liechtenstein. There is no provision in the legal basis of the measure, or otherwise in Liechtenstein law, that would entail such a condition.

3.6 Beneficiaries

3.6.1 Undertakings particularly affected by the severe increase in energy prices

- (9) The aid under the measure is reserved for undertakings present in Liechtenstein that are also subject to unlimited tax liability. In addition, the undertakings must have a Liechtenstein business licence, or a licence under special law, a recognition or concession.
- (10) The beneficiaries must also have a turnover in 2021 of at least CHF 100,000.⁶ Hence, undertakings with a lower turnover will be excluded from receiving aid under the measure.
- (11) The measure is reserved for energy-intensive undertakings, i.e. undertakings whose domestic energy costs (i.e. all energy costs such as electricity and gas costs, including grid costs and taxes that were incurred in Liechtenstein) in relation to turnover are particularly high. The energy intensity is determined by the ratio of energy costs to turnover in the 2021 financial year. If the ratio is at least 3 per cent, the undertaking is considered to be an energy-intensive undertaking for the purpose of this criterion. As the audited annual accounts for 2022 are not yet available, the 2021 audited annual accounts are used as a basis for assessing energy-intensity.
- (12) In order to be eligible for aid, the undertaking must also have had a profit margin of less than 5 percent in the 2021 business year. As for the energy-intensity

⁴ Gesetz vom 18. Dezember 1997 über die Finanzierung von Massnahmen zur Wirtschaftsförderung, LGBl. 1998 Nr. 33, <https://www.gesetze.li/konso/1998033000>.

⁵ Richtlinie zur Subvention von Stromkosten von energieintensiven Unternehmen für das Jahr 2023, 13. Dezember 2022, LNR 2022-1958, BNR 2022/2071, <https://www.llv.li/files/avw/richtlinie-energiekostenzuschuss-2023.pdf> (Government Guidelines).

⁶ For businesses that were founded as recently as 2021 and therefore do not have a total annual turnover since their foundation, the turnover achieved is to be extrapolated to 12 months.

criterion, the 2021 audited annual accounts are used as a basis, as the audited annual accounts for 2022 are not yet available. According to the Liechtenstein authorities, it is assumed that undertakings with such a low profit margin in 2021 are severely affected by the increased energy prices in 2022 and 2023.

- (13) The beneficiaries are obliged not to distribute any dividends or other profits in the financial year 2023, and not to grant any short- or long-term loans on assets and not to invest in other companies during this period.

3.6.2 Exclusions from the scope

3.6.2.1 Public entities etc.

- (14) The State and municipalities, public entities or entities that are significantly financed by the State, as well as real estate businesses are not eligible for aid under the measure. An undertaking is considered significantly financed by the State if it receives defined State contributions (*definierte Staatsbeiträge*) foreseen in the State budget, in order to be able to provide its services in the general interest.

3.6.2.2 Businesses that were established after 1 January 2022

- (15) Undertakings that were established after 1 January 2022 and therefore started operating after that date, are not eligible for aid under the measure.

3.6.2.3 Undertakings with outstanding liabilities

- (16) Undertakings are also excluded if taxes or social security debts have not been paid and are overdue at the time of application for aid.

3.6.2.4 Undertakings under bankruptcy proceedings or liquidation

- (17) Undertakings, which during the three years preceding the application for aid, were subject to either bankruptcy proceedings or a final rejection of a filing for bankruptcy, due to lack of assets, are ineligible for aid under the measure.

3.7 Compliance with sanctions

3.7.1 Aid will not be granted to undertakings under sanctions adopted by the European Union or Liechtenstein

- (18) The Liechtenstein authorities confirm that aid under the measure will not be granted to undertakings under sanctions adopted by Liechtenstein or the EU, including but not limited to: (a) persons, entities or bodies specifically named in the legal acts imposing the sanctions; (b) undertakings owned or controlled by persons, entities or bodies targeted by the sanctions; or (c) undertakings active in industries targeted by the sanctions insofar as the aid would undermine the objectives of the sanctions.

3.7.2 The measure may not in any way be used to undermine the intended effects of sanctions

- (19) The Liechtenstein authorities confirm that the measure may not in any way be used to undermine the intended effects of sanctions imposed by Liechtenstein, the EU or its international partners. To this end, it will be in full compliance with both the anticircumvention rules of the applicable regulations and the national Regulation on the sanctions against Russia and Belarus.

3.8 Aid instrument and aid amounts

- (20) The measure comprises grants in support of the electricity costs incurred by beneficiaries in 2023. The grants, which will be degressive over the duration of the scheme, and calculated on the basis of the beneficiaries' documented electricity consumption, are set as follows:

Q1 2023: 10 Rp/kWh (9,96 c/kWh)

Q2 2023: 7.5 Rp/kWh (7,48 c/kWh)

Q3 2023: 5 Rp/kWh (4,89 c/kWh)

Q4 2023: 2.5 Rp/kWh (2,49 c/kWh)

- (21) The rates have been set based on an electricity price prognosis for the year 2023.
- (22) The aid will be paid out after verification of the complete application and submission of the electricity bill with proof of the amount of electricity purchased. The maximum total aid amount per undertaking is EUR 2 million.
- (23) Any unjustified payment shall be reclaimed. If AVW discovers, during the examination of an application or at a later date, that the information provided is false, the entitlement to benefits shall lapse retroactively, and any amounts already paid out will be reclaimed.⁷

3.9 The application procedure

- (24) In order to apply for the measure, the official application form must be used and submitted electronically. The form will be made available on the website of the AVW.⁸
- (25) A decision on the eligibility of the applying undertaking is only made once - concretely after the first submission. In subsequent quarters, submission of the electricity bill, with proof of the amount of electricity purchased, will lead to payments. The latest consumption period eligible for support is the 4th quarter of 2023. The decision is made by means of an administrative order, which will be sent by email.⁹

3.10 Cumulation

- (26) The Liechtenstein authorities have confirmed that the relevant provisions on cumulation in the TCF and the COVID-19 Temporary Framework ("the COVID TF") will be respected.

3.11 Budget and duration

- (27) The overall State budget for the measure is CHF 4 million (EUR 3,987 million). Aid will be granted no later than 31 December 2023.

3.12 Monitoring and reporting

- (28) The Liechtenstein authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 3 of the TCF. To this end, the authorities

⁷ Government Guidelines, para. 4.

⁸ Government Guidelines, para. 3.1.

⁹ Government Guidelines, para. 3.2.

will publish relevant information on each individual aid above EUR 100,000 in the national State aid register within 12 months from the date of granting the aid. The Liechtenstein authorities will also keep detailed records regarding the granting of aid for 10 years, calculated from the same date, and provide them to ESA upon request. In line with the requirements of ESA [Decision No 195/94/COL](#), as amended, the Liechtenstein authorities will further submit annual reports to ESA.

4 Presence of State aid

- (29) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (30) The qualification of a measure as State aid therefore requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (31) The measure is imputable to the State as it is administered by the AVW and the Fiscal authority (see Section 3.4 above) and founded on a legal basis adopted by the State (see Section 3.3 above). It is also financed through State resources, since it is paid out of the State budget (see Section 3.11 above).
- (32) The measure comprises direct grants (see Section 3.8 above). It therefore confers an advantage on the beneficiaries by making available funds which would not be available under normal market conditions.
- (33) The eligibility criteria presented in Sections 3.6.1 and 3.8 above aim at targeting the aid to undertakings, which are particularly affected by the increase in energy prices brought about by the crisis. Hence, their effect is to exclude certain undertakings, which are also suffering from increased energy costs, although to a lesser extent. For example, while an undertaking which in 2021 incurred energy costs in Liechtenstein amounting to 3 per cent of its turnover can be eligible under the measure, an undertaking having incurred energy costs of 2.9 per cent of its turnover over the same period cannot. Furthermore, certain categories of undertakings are excluded from the measure, e.g. real estate businesses and undertakings established after 1 January 2022.
- (34) The information submitted does not establish that the undertakings, which are excluded, due to the criteria employed under the measure, are not in a comparable legal and factual situation as undertakings eligible for aid. On this basis, ESA finds that the measure reserves the advantages available under it for certain categories of undertakings. The measure is therefore selective.
- (35) The grants made under the measure will strengthen the competitive position of the beneficiaries. There is furthermore nothing to preclude undertakings active in trade between EEA States from receiving aid. It cannot be excluded that some of the beneficiaries do attract customers across the border or procure goods subject

to cross-border trade. The measure is therefore liable to distort competition and affect trade.

- (36) In view of the above, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Aid scheme

- (37) ESA notes that the legal basis of the measure is an act and a set of administrative guidelines, which do not require further implementing measures for the granting of the aid, and which identifies the beneficiaries in a general and abstract manner.¹⁰ The aid is therefore granted on the basis of an aid scheme.

6 Lawfulness of the aid

- (38) Pursuant to Article 1(3) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”): “The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. [...] The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision.”
- (39) The Liechtenstein authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) in Part I of Protocol 3.

7 Compatibility of the aid

7.1 Introduction

- (40) Under Article 61(3)(b) of the EEA Agreement, State aid “to remedy a serious disturbance in the economy of an EC Member State or an EFTA State” can be considered compatible with the functioning of the EEA Agreement.
- (41) The military aggression against Ukraine by Russia, the sanctions imposed by the EU and its international partners, and the counter-measures taken, for example by Russia (“the ongoing crisis”), 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. It is against this background that the Commission has adopted the TCF. In the TCF, the Commission has defined State aid measures that it will, on a temporary basis, declare compatible with the internal market under Article 107(3)(b) TFEU.
- (42) Article 107(3)(b) TFEU corresponds to Article 61(3)(b) of the EEA Agreement. In order to ensure uniform application of the State aid rules throughout the European Economic Area, in line with the objective of homogeneity established in Article 1 of the EEA Agreement, ESA will also apply the TCF. Therefore, in case where all relevant applicable conditions in the TCF are fulfilled, ESA will declare the measure in question compatible with the EEA Agreement on the basis of its Article 61(3)(b).

¹⁰ See Article 1(d) in Part II of Protocol 3.

7.2 Limited amounts of aid

- (43) On the basis of the information presented by the Liechtenstein authorities, as set out above, ESA concludes that the measure fulfils all of the relevant applicable conditions under Section 2.1 of the TCF, entitled “limited amounts of aid”. According to point 54 of the TCF, “... temporary limited amounts of aid to undertakings affected by the Russian aggression against Ukraine and/or by the sanctions imposed or by the retaliatory counter measures taken in response can be an appropriate, necessary and targeted solution during the current crisis”.
- (44) Further, ESA notes, first, that the measure fulfils all of the relevant conditions in point 55 of the TCF:
- a) As follows from the information presented above in Sections 3.8, 3.9 and 3.10, the aid ceiling of EUR 2 million per undertaking will be respected. This is compliant with point 55(a) of the TCF.
 - b) The measure is, as established above in Sections 3.11 and 5, an aid scheme with an estimated budget. This is compliant with point 55(b) of the TCF.
 - c) Aid under the measure will, as set out above in Section 3.11, be granted no later than 31 December 2023. This is compliant with point 55(c) of the TCF.
 - d) The criteria presented above in Sections 3.6.1 and 3.8 ensure that aid is only granted to undertakings affected by the crisis. In particular, the aid scheme is reserved for undertakings with an energy intensity of at least 3 per cent in 2021, and which are therefore likely to be severely hit by the steep rise in electricity prices resulting from the crisis. This is compliant with point 55(d) of the TCF.
- (45) Second, the information presented by the Liechtenstein authorities establishes that the aid granted under the measure will also fulfil the remaining, generally applicable, conditions of the TCF.
- (46) In that regard, ESA notes that, as set out above in paragraph (8), aid granted under the measure will not be made conditional upon the relocation of an activity of the beneficiary from another country within the EEA to the territory of Liechtenstein. Point 46 of the TCF is therefore complied with.
- (47) Further, as described above in Section 3.7, the Liechtenstein authorities have committed to respecting the provisions set out in points 47 and 52 of the TCF. Points 47 and 52 of the TCF safeguard the effectiveness of adopted sanctions. They concern respectively a prohibition on granting aid in breach of sanctions adopted by the EU and of using aid measures not in any way to undermine the effectiveness of sanctions adopted by the EU and its international partners.
- (48) Moreover, the Liechtenstein authorities have confirmed that the relevant rules on cumulation set out in the TCF and the COVID TF will be respected, thus ensuring compliance with point 53 of the TCF. ESA notes in this respect, that no aid has yet been granted by Liechtenstein authorities on the basis of said Guidelines.
- (49) Lastly, the Liechtenstein authorities have, as set out above in Section 3.12, confirmed that they will respect the monitoring and reporting obligations laid down in Section 3 of the TCF.

8 Conclusion

- (50) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that this aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(b), it has no objections to the implementation of the measure.
- (51) The Liechtenstein authorities have confirmed that the notification does not contain any confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.