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**Subject: State Aid SA.109170 (2023/N) – Austria
TCTF – Scheme for accelerated investments in sectors strategic for
the transition towards a net-zero economy**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 30 August 2023, Austria notified aid for accelerated investments in sectors strategic for the transition towards a net-zero economy (*‘Beihilfen für die Beschleunigung von Investitionen in Sektoren, die für den Übergang zu einer klimaneutralen Wirtschaft von strategischer Bedeutung sind’*, the “measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) ⁽¹⁾. Austria provided additional information on 25 September 2023, 2, 9, 12 and 27 October 2023.

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), (‘Temporary Crisis Framework’), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

Seiner Exzellenz Herrn Alexander Schallenberg
Bundesminister für europäische und internationale Angelegenheiten
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- (2) Austria 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

- (3) Austria considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia, have economic repercussions on the entire internal market (“the current crisis”). 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.
- (4) Austria explains that the current crisis, which caused serious disruptions in the supply of natural gas and electricity and significantly impacted electricity and gas prices, affected the Austrian economy and highlighted the EU’s and Austria’s dependence on fossil fuels. Austria adds that the Union does not have sufficient industrial production capacity to meet the rapidly growing demand for technologies necessary for the transition towards a net-zero economy. Austria thus considers that additional investments in strategic goods for the transition towards a net-zero economy are required, particularly in the current global context where such investments are at risk of being diverted away from the European Economic Area. Those investments will also accelerate the phasing out of fossil fuel use and reduce dependence towards third countries. For Austria, batteries, wind turbines, heat-pumps, solar panels, electrolysers and carbon capture and storage technologies are products that are key to meet the Union’s climate neutrality goals, as acknowledged by the Commission (³). Thus, with the measure Austria intends to create the necessary ecosystem for accelerated investments into the value chain for the production of such products.
- (5) Austria 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.
- (6) The compatibility assessment of the measure is based on Article 107(3), point (c), TFEU, in light of sections 1 and 2.8 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (7) The measure provides aid on the basis of a scheme in the form of direct grants.

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

⁽³⁾ Communication from the Commission of 1.2.2023, A green deal industrial plan for the net-zero age, COM(2023)62 final.

2.2. Legal basis

- (8) The legal basis for the measure is the draft of *Sonderrichtlinie für das Förderungsprogramm TWIN Transition der Transformationsoffensive* which will be adopted by the Austrian Federal Ministry of Labour and Economy (Bundesministerium für Arbeit und Wirtschaft, BMAW) (“the guidelines”).

2.3. Administration of the measure

- (9) *Austria Wirtschaftsservice GesmbH*, a development bank fully owned by the Austrian federal government to promote investments ⁽⁴⁾, is the granting authority and is also responsible for administering the measure.

2.4. Budget and duration of the measure

- (10) The estimated budget of the measure is EUR 60 million coming from the State.
- (11) Austria confirms that aid may be granted under the measure as from the adoption of the guidelines, which will only happen after the notification of the Commission’s decision approving the measure, until no later than 31 December 2025.

2.5. Beneficiaries

- (12) The beneficiaries of the measure are small and medium-sized enterprises (“SMEs”) ⁽⁵⁾ as well as large enterprises ⁽⁶⁾. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.
- (13) Undertakings are eligible if, amongst others, they meet all the following conditions:
- (a) Being headquartered or having a permanent establishment (for example a branch) in Austria;
 - (b) planning an investment of more than EUR 4 million;
 - (c) submitting a business plan ⁽⁷⁾;
 - (d) not being subject of insolvency proceedings or not meeting the requirements for the opening of insolvency proceedings at the request of their creditors;
 - (e) not being undertakings in difficulty ⁽⁸⁾.

⁽⁴⁾ https://www.bmk.gv.at/themen/innovation/foerderung_oesterreich/foerderungseinrichtungen/aws.html

⁽⁵⁾ 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 (“GBER”) (OJ L 187, 26.6.2014, p. 1).

⁽⁶⁾ As defined in Article 2, point 24, GBER.

⁽⁷⁾ The business plan must include in particular: a general information of the applicant company including an assessment of strengths and weaknesses in comparison to the competition, a description of the market, a detailed description of the project applied for (with particular attention to climate and environmental goals), information on the economic development of the company in recent years and a forecast for the next 3 years.

- (14) Beneficiaries must confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place and commit not to carry out such relocation up to a period of two years after completion of the investment.
- (15) The aid under the measure is not granted to undertakings under sanctions adopted by the Union, 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 Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (16) Austria confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁹. 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

- (17) The measure is open to all sectors with the exception of the financial sector. It applies to the whole territory of Austria.
- (18) Under the measure, the planned aid is aimed at incentivising investments for:
- (a) the production of batteries, solar panels, wind turbines, heat-pumps, electrolysers and equipment for carbon capture usage and storage;
 - (b) the production of key components⁽¹⁰⁾, provided that they are designed and primarily used as direct input for the production of the equipment defined under (a);

⁽⁸⁾ As defined under the Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

⁽⁹⁾ 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).

⁽¹⁰⁾ Key components for the production of batteries are anodes, cathodes (precursor cathode active material (pCAM)/cathode active material (CAM), separators, battery-grade (raw) materials, hydrofluoric acid, sulphuric acid, phosphoric acid, battery machinery and equipment, binders, coatings and additives. Key components for the production of solar panels are polysilicon, silicon crystals, wafers, crystal puller, dicing saws and diamond wires, (silver and aluminium) metallisation pastes for the manufacture of photovoltaic cells, solar cells, solar glass, laminar films, inverters. Key components for the production of wind turbines are monopiles (and other foundation structures), rotor hubs, rotor blades, rotor shafts, generators (including permanent magnets for wind power stations), transformers/converters. Key components for the production of heat pumps are heat exchangers (including fans), compressors, valve technology, refrigerants, inverters, electric motors (including permanent magnets). Key components for the production of electrolysers are anodes, cathodes, diaphragms, bipolar plates, heat exchangers, circulation pumps, hydrogen cooling, hydrogen purification. Key components for the production of equipment for carbon capture, usage and storage are air separation plants and compressors, liquefaction plants, sorption agents, membranes, porous materials for Pressure Swing Adsorption, fluidised bed reactors.

- (c) the production or recovery of related critical raw materials ⁽¹¹⁾, provided that they are necessary for the production of the equipment and key components defined in (a) and (b).

2.7. Basic elements of the measure

- (19) The purpose of the measure is to grant aid for investments for the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps and electrolysers (recital (18)(a)), of key components designed and primarily used as direct input for the production of that equipment (recital (18)(b)), and production or recovery of related critical raw materials necessary for the production of that equipment and those key components (recital (18)(c)).
- (20) The beneficiary must apply for aid before the start of works ⁽¹²⁾. The aid application will include the information required in Annex II to the Temporary Crisis and Transition Framework.
- (21) Eligible costs relate to all investment costs in tangible and intangible assets required for the production or recovery of the goods listed in recital (18). Intangible assets must: 1) remain associated with the area concerned and must not be transferred to other areas; 2) be used primarily in the relevant production facility receiving the aid; 3) they must be amortisable; 4) be purchased under market conditions from third parties unrelated to the buyer; 5) be included in the assets of the undertaking that receives the aid; and 6) must remain associated with the project for which the aid is awarded for at least five years (or three years for SMEs).
- (22) The intensity of the aid may not exceed 15 % of the eligible costs in the general case. For investments in assisted areas designated in the Austrian regional aid map ⁽¹³⁾, the aid may not exceed 20 % of the eligible costs. Considering that the estimated budget of the scheme is EUR 60 million, the overall aid amount may not exceed EUR 60 million per undertaking in Austria.
- (23) The beneficiary must commit to maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment. Such a commitment should not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the minimum period mentioned above (three or five years depending on the size of the undertaking). However, no further aid may be awarded to replace that plant or equipment.

⁽¹¹⁾ Austria refers to the EU list of critical raw materials laid down in Annex IV GBER.

⁽¹²⁾ ‘Start of works’ means either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is earlier. Buying land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

⁽¹³⁾ Commission decision C(2022) 289 final of 20.1.2022 in case SA.64462, Regional aid map for Austria (2022-2027), (OJ C 71, 11.2.2022, p. 1) and Commission decision C(2022) 8240 final of 21.11.2022 in case SA.104081, Regional aid map of Austria 2022 – 2027 (amendment); Population reserve and JTF areas (OJ C 461, 2.12.2022, p. 1).

- (24) Before granting the aid and on the basis of the information provided by the beneficiary in Annex II to the Temporary Crisis and Transition Framework (recital (19)) and the commitments set out in recital (14), the granting authority must verify the concrete risks of the productive investment not taking place within the EEA and that there is no risk of relocation within the EEA.

2.8. Compliance with relevant provisions of Union law

- (25) The Austrian authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

2.9. Cumulation

- (26) The Austrian authorities state that aid under the measure will not be cumulated with aid under the COVID-19 Temporary Framework) ⁽¹⁴⁾ or the previous Temporary Crisis Frameworks ⁽¹⁵⁾.
- (27) The Austrian authorities confirm 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 and Transition Framework provided the provisions in those specific sections are respected.
- (28) The Austrian authorities confirm that aid granted under the measure can be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules. Under no circumstances will the total aid amount exceed 100 % of the eligible costs.

2.10. Monitoring and reporting

- (29) The Austrian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and above EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool) within 6 months from the moment of granting ⁽¹⁶⁾.
- (30) The Austrian authorities confirm that they will inform the Commission within 60 days from the moment of granting the aid, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the

⁽¹⁴⁾ 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).

⁽¹⁵⁾ OJ C 426, 9.11.2022, p. 1, OJ C 131 I, 24.3.2022, p. 1 and OJ C 280, 21.7.2022, p. 1.

⁽¹⁶⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) 2022/2472 and Annex III to Commission Regulation (EU) 2022/2473.

investment supported on the basis of the information provided by the beneficiary in Annex II to the Temporary Crisis and Transition Framework.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (31) By notifying the measure before putting it into effect (recital (11)), the Austrian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (32) 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.
- (33) The measure is imputable to the State, since it is based on the legal basis adopted by the State as described in recital (8) and it is administered by an entity mandated by the State (recital (9)). It is financed through State resources, since it is financed by public funds (recital (10)).
- (34) The measure confers an advantage on its beneficiaries in the form of direct grants, (recital (7)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (35) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings that meet the requirements set out in recitals (12) to (15), excluding the financial sector (recital (17)). It is also selective since it only favours the production of certain goods (recital (18)).
- (36) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (37) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Austrian authorities do not contest that conclusion.

3.3. Compatibility

- (38) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (39) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the current crisis has 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.

- (40) Pursuant to Article 107(3), point (c), TFEU, the Commission may declare compatible with the internal market ‘aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’.
- (41) The current crisis has demonstrated the urgent need to reduce dependency on imports of fossil fuels and to accelerate the energy transition. In that context, the Commission considers that Member States may need to take additional measures to address the productive investment gap in sectors strategic for the transition towards a net-zero economy in order to achieve the Union’s climate targets. The adoption of the Temporary Crisis and Transition Framework demonstrates the Commission’s view that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for a limited period of time if it contributes to accelerating the economic transition and addressing the productive investment gap in sectors strategic for the transition towards a net-zero economy by providing incentives for their fast deployment, also considering global challenges posing a threat of new investments in these sectors being diverted in favour of third countries outside the EEA (recital (4)).
- (42) The Commission considers that the measure is necessary, appropriate and proportionate in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU. In particular:
- the measure is aimed at investment projects with strategic importance for the transition towards a net-zero economy. The measure will support investments for the production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat-pumps and electrolysers; the production of key components designed and primarily used as direct input for the production of that equipment; the production or recovery of related critical raw materials necessary for the production of that equipment and these key components (recitals (18) and (19)). The measure therefore complies with point 85(a) of the Temporary Crisis and Transition Framework;
 - the aid is granted under the measure on the basis of a scheme with an estimated budget (recital (10)). The measure therefore complies with point 85(b) of the Temporary Crisis and Transition Framework;
 - aid under the measure can be granted until 31 December 2025 at the latest (recital (11)). The measure therefore complies with point 85(c) of the Temporary Crisis and Transition Framework;
 - the measure provides that beneficiaries must apply for the aid before the start of works and must provide the information required in Annex II to the Temporary Crisis and Transition Framework (recital (20)). The measure therefore complies with point 85(d) of the Temporary Crisis and Transition Framework;
 - aid under the measure will be granted in the form of direct grants (recital (7)). The measure therefore complies with point 85(e) of the Temporary Crisis and Transition Framework;
 - the calculation of eligible costs as set out in recital (21) fulfils the requirements of point 85(f) of the Temporary Crisis and Transition Framework;

- the aid intensities and the overall aid amounts under the measure (recital (22)) correspond to the thresholds in point 85(g) of the Temporary Crisis and Transition Framework;
- the Austrian authorities commit that beneficiaries under the measure will maintain the investments in the area concerned for at least five years, or three years for SMEs, after the completion of the investment, and to respect the additional conditions set in line with point 85(i) of the Temporary Crisis and Transition Framework (recital (23)). The measure therefore complies with point 85(i) of the Temporary Crisis and Transition Framework;
- the Austrian authorities commit that before each individual grant of aid under the scheme, the granting authority will verify, on the basis of the information provided by the beneficiary, the concrete risks of the productive investment to be supported under the measure not taking place within the EEA and that there is no risk of relocation within the EEA (recital (24)). The measure therefore complies with point 85(j) of the Temporary Crisis and Transition Framework;
- the Austrian authorities commit that beneficiaries under the measure will have to (i) confirm that in the two years preceding the application for aid, they have not carried out a relocation to the establishment in which the aided investment is to take place; and (ii) commit not to carry out such relocation up to a period of two years after completion of the investment (recital (14)). The measure therefore complies with point 85(k) of the Temporary Crisis and Transition Framework;
- aid under the measure will not be granted to undertakings in difficulty (recital (13)(e)). The measure therefore complies with point 85(l) of the Temporary Crisis and Transition Framework;
- the Austrian authorities confirmed that aid under the measure may be cumulated with State aid in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable under any of the relevant rules (recital (28)). Under no circumstances may the total aid amount exceed 100 % of the eligible costs (recital (28)). The measure therefore complies with point 85(m) of the Temporary Crisis and Transition Framework.
- Austria committed to inform the Commission, within 60 days from the moment of granting individual aid under the measure, about the granting date, the aid amount, the eligible costs, the beneficiary's identity, the type and location of the investment supported on the basis of the information provided by the beneficiary (recital (30)). The measure therefore complies with point 85(o) of the Temporary Crisis and Transition Framework.

- (43) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ⁽¹⁷⁾.
- (44) Austria has confirmed that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market (recital (25)). Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (45) The Austrian authorities confirm that, as required by point 51 of the Temporary Crisis and Transition 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 (recital (5)).
- (46) The Austrian authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, 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 Union; or
 - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recitals (15) and (16)).
- (47) The Austrian authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (29) and (30)). The Austrian authorities further confirm that aid under the measure may not be cumulated with other aid granted under the previous Temporary Crisis Framework and the COVID-19 Temporary Framework. They confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework and the cumulation rules in the relevant Regulations and applicable Communications are respected (recitals (26) and (27)).
- (48) The Commission has taken due consideration of the fact that the measure facilitates the development of certain economic activities and of the positive effects of that measure, which contributes to the swift implementation of investments aimed at reducing the level of greenhouse gas emissions of industrial production processes or at increasing the energy efficiency of those processes and which accelerates the economic transition and overcomes the current crisis when

⁽¹⁷⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of the measure outweigh its potential negative effects on competition and trade and it is compatible with the internal market pursuant to Article 107(3), point (c), TFEU since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

The Commission has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (c), of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

Yours faithfully,

For the Commission

Didier REYNDERS
Member of the Commission