BUSINESSEUROPE

THE DIRECTOR GENERAL

Mrs Margrethe Vestager
Executive Vice-President of the European Commission
Rue de la Loi 200
BE - 1049 Brussels
BELGIUM

10 October 2022

Dear Executive Vice-President,

Temporary Crisis Framework

In this unprecedented crisis, European companies do their utmost to preserve Europe's economies and societies, but the current state of high gas and electricity prices bears the imminent risk of further production losses and shutdowns. Member States' governments are also trying to tackle the dire economic effects on businesses across the single market and the use of state aid plays an important role to ensure that as many companies as possible survive the present difficulties.

BusinessEurope greatly appreciates the major efforts the Commission has taken to approve the many aid schemes notified by the Member States. We have supported the introduction of the Temporary Crisis Framework (TCF). The TCF eases both the process and time perspective to the benefit of both Member States and businesses.

To prevent further production losses, the EU State aid framework must be further adjusted to temporarily enable Member States to grant much-needed aid to affected businesses whilst maintaining a level playing field. This involves a prolongation of the TCF until the end of next year and defining less restrictive eligibility criteria for energy cost compensation. Sunset provisions could be added to the initiatives to underline the *force majeure* nature of them.

Many energy-intensive sectors are not identified in the category of sectors eligible to the highest financial support because the Annex (see §53e of the TCF) features particularly restrictive criteria on electro-intensity and trade intensity. In our view, all energy-intensive sectors should be eligible for this kind of support and the Annex must be based also on gas-intensity to include all exposed sectors.

The aid limits per company as set out in chapter 2.1 and 2.4 TCF should also be increased to reflect current energy prices. The current caps for limited amounts of aid and aid to alleviate exceptionally severe increases in the price of natural gas and electricity, do not reflect the high-cost increases that companies are facing, nor do they acknowledge the "energy-intensive" nature of energy-intensive sectors. The cap for these sectors should follow a more proportional approach, aligned with the recently approved CEEAG and the ETS State Aid Guidelines. The maximum overall aid per undertaking should apply separately for each year of the TCF and the limit stipulated in §52f TCF should at least be doubled. The calculation of eligible costs should be possible not only on a monthly basis but also on the basis of an average of a specific period.

The requirement that undertakings must have negative earnings to be eligible and that the aid cannot exceed 80% of the operating losses (see §53b-c TCF) must be reconsidered as it makes it very difficult for companies to be eligible. The eligibility requirement for "operational losses" essentially asks companies to refrain from curtailing operations and continue producing, incurring massive losses, in the hope of off-setting – at some point in the future – a fragment of the damages. This may be too late to maintain many sustainable businesses. Also, a positive EBITDA can be caused by restrictive measures of a company, e.g., limiting production. Moreover, in practice, a company would need to wait for the publication of its annual financial statements, disclosing negative earnings, before even applying for aid.

The reference prices for eligible costs should also be lower than the current reference of double the 2021 average price of gas and electricity considering that energy prices were already very high in that period. Support should be extended to the whole energy bill and not only the part exceeding a price doubling, or alternatively, the eligible costs should be calculated based on the difference between the current energy prices and the prices that existed before the price surge began.

The establishment of environmental or security of supply requirements for the granting of the aid should not be mandatory (see section 1.4, §24 TCF). Many companies have already implemented the economically viable energy saving measures and may not have many options left. Other companies may be unable to finance further investments, also due to price increases and/or supply chain problems, while others may have predominantly technological consumption of energy without real opportunities to reduce consumption.

In addition, we believe that the current crisis situation should still be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU, allowing Member States to use this instrument to remedy the negative impact on businesses, whilst maintaining a level playing field and avoiding fragmentation of the single market.

Lastly, an extension of the list of eligible sectors for indirect costs compensation under the ETS state aid guidelines would be equally important to alleviate the impact of high energy prices on the European industry. The guidelines should be flexible enough to be expanded in the future if needed to address more sectors affected by relocation risks.

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Markus J. Beyrer