EUROPEAN COMMISSION

Brussels, 16.05.2023
C(2023) 3351 final

SENSITIVE[*]: *COMP Operations*

Subject: State Aid SA.106574 (2023/N) – Greece TCTF: Subsidy Scheme to non-household electricity consumers up to 35 kVA, operating as bakeries or on an agricultural tariff (amendments to SA.103978)

Excellency,

1. PROCEDURE

(1) By electronic notification of 28 February 2023, Greece notified two measures under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the "Temporary Crisis Framework") ([1]), consisting of:

(a) the implementation - with amendments (namely with an extension of the period for granting aid and an increase of maximum aid amounts) - of the subsidy scheme to non-household electricity consumers up to 35 kVA, operating as bakeries or on an agricultural tariff (the "aid scheme notified and assessed in case SA.103978"), which the Commission approved by

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([1]) 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 426, 28.10.2022, p. 1). This Temporary Crisis Framework ('Temporary Crisis Framework') replaces the 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) ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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Decision C(2022) 7146 final of 3 October 2022 in case SA.103978 (2022/N) ("the initial decision") ([2]) ("Measure 1"), and

(b) amendments to Measure 1, namely a prolongation of the eligibility period and an increase of the budget ("Measure 2").

(2) For the purposes of the present decision, the aid scheme notified and assessed in case SA.103978 as modified by Measure 1 and Measure 2 is referred to as "the amended scheme".

(3) Under the aid scheme notified and assessed in case SA.103978, the eligibility period ran from 1 February 2022 until 31 December 2022 and aid could be granted until 31 December 2022. However, Greece only adopted a national legal basis implementing that aid scheme on 3 January 2023 (the Joint Ministerial Decision ΥΠΕΝ/ΔΗΕ/152/4/02.01.2023 on the *"Granting of a subsidy from the - Energy Transition Fund for the invoiced consumption of electricity for non-household electricity consumption with a capacity of up to 35 kVA, electricity consumers who have a main activity with activity code number (SMR) 10.71, and electricity consumers with agricultural use"*; the "January Joint Ministerial Decision"). Thus, the January Joint Ministerial Decision in effect implements the aid scheme notified and assessed in case SA.103978, however by providing a new period for granting the aid and increasing the aid amounts (these amendments are described in detail in recital (10)). This constitutes Measure 1 under the present decision, whereas Measure 2, not put into effect yet, seeks to modify certain elements of Measure 1.

(4) On 28 March 2023, the Commission sent a request for information to Greece, to which the Greek authorities replied on 5 April 2023.

(5) Greece 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 1/1958 ([3]) and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

Background

(6) The objective of the aid scheme notified and assessed in case SA.103978 was to remedy the liquidity shortage faced by undertakings that were directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia. That remains the objective of Measure 1, also following the amendments envisaged under Measure 2.

(7) The aid scheme notified and assessed in case SA.103978 covered aid in the form of grants for limited amounts of aid under section 2.1 of the previous Temporary

([2]) OJ C 396, 14.10.2022, p. 6.

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

Crisis Framework. More specifically, the aid consisted in a fixed monthly rebate per unit of electricity consumed, which corresponds to a partial subsidy of the increase in the price of electricity, compared to a pre-crisis unit reference price, in favour of non-household electricity consumers on variable supply tariffs (i) with power supplies up to 35 kVA or (ii) who operate as bakeries or (iii) on the agricultural tariff (see recitals (12) and (24) to (28) of the initial decision). The eligible costs were, thus, the product of the units of electricity consumed by the beneficiary in each month of the eligible period, multiplied by the unit subsidy for the respective month. Aid could be granted until 31 December 2022 (see recital (19) of the initial decision) and was channelled through the electricity suppliers. The eligible period ran from 1 February 2022 until 31 December 2022 (see recital (27) of the initial decision).

(8) On 9 March 2023, the Temporary Crisis Framework was replaced by the Temporary Crisis and Transition Framework ([4]). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023. Pursuant to point 93 of the Temporary Crisis and Transition Framework, the Commission applies the provisions of the Temporary Crisis and Transition Framework to all measures notified as of 9 March 2023, as well as to measures notified prior to that date. Pursuant to point 97, non-notified measures, for their part, are to be assessed under the relevant version of the Framework in force at the time when the aid was granted.

(9) For the reasons set out in recitals (13) and (18) below, the compatibility of Measure 1 shall be assessed under sections 1 and 2.1 of the Temporary Crisis Framework (which was in force at the time when that measure was put into effect by the January Joint Ministerial Decision), whereas the compatibility of Measure 2 shall be assessed under sections 1 and 2.1 of the Temporary Crisis and Transition Framework (while being notified before 9 March 2023, the measure was not yet put into effect).

Measure 1

(10) By Measure 1, Greece sought to implement the aid scheme notified and assessed in case SA.103978. However, Greece also introduced the following amendments, which were not approved in the initial decision:

(a) It established the eligible period from 1 February 2022 until 30 November 2022.

(b) It established the period for granting aid until 31 December 2023.

(c) It increased the maximum aid amounts (indicated in recital (34) and (35) of the initial decision) up to the highest aid amounts allowed under Section 2.1 of the Temporary Crisis Framework in the version that was in force when the January Joint Ministerial Decision was adopted. Thus, the total amount of aid was increased to EUR 2 000 000 per undertaking at any given point in time or EUR 250 000 per undertaking active in the primary

([4]) 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 referred to in footnote 1.

production of agricultural products ([5]), or EUR 300 000 per undertaking active in the fishery and aquaculture sectors ([6]). All figures used must be gross, that is, before any deduction of tax or other charges.

(d) It included a commitment that where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 55(a) and 56(a) of the Temporary Crisis Framework, it will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million is not exceeded per undertaking per Member State. Where an undertaking is active exclusively in the sectors covered by point 56(a), the overall maximum amount of EUR 300 000 should not be exceeded per undertaking.

(11) Apart from these amendments, Greece confirms that no further amendments were brought to the aid scheme notified and assessed in case SA.103978 and that all other conditions of that scheme remained unaltered.

(12) The legal basis for Measure 1 was the January Joint Ministerial Decision (see recital (3)).

(13) Aid was granted under Measure 1 as from the publication of the January Joint Ministerial Decision (3 January 2023), in relation to eligible costs incurred from 1 February 2022 until 30 November 2022.

Measure 2

(14) By Measure 2, Greece wishes to amend Measure 1 by prolonging the eligible period under this measure until 31 December 2023.

(15) In addition, in order to account for the prolongation of the eligible period under Measure 2, Greece intends to increase the estimated budget of the measure from EUR 800 million (see recital (17) of the initial decision) to EUR 1.4 billion.

(16) The legal basis for the notified amendments, the draft of which has been submitted to the Commission, is the Joint Ministerial Decision on the "Granting of a subsidy from the Energy Transition Fund for the invoiced consumption of electricity for non-household electricity consumption with a capacity of up to 35 kVA, electricity consumers who have a main activity with activity code number (SMR) 10.71, and electricity consumers with agricultural use" ("the draft Joint Ministerial Decision"), which will repeat the provisions of the January Joint Ministerial Decision, but will determine the unit subsidy for the eligible period added under Measure 2. The Greek authorities have committed to adopt the draft Joint Ministerial Decision only after the notification of the Commission's decision approving the two measures.

([5]) As defined in Article 2(44) of Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1).

([6]) All figures used are gross, that is, before any deduction of tax or other charges.

(17) Apart from these amendments, Greece confirms that no further amendments are proposed to Measure 1 and that all other conditions of that scheme remained unaltered.

(18) According to Greece, aid may be granted under Measure 1, as amended by Measure 2, as from the notification of the Commission's decision approving the notified amendments.

Elements common to both measures

(19) Greece also confirms that aid granted under section 2.1 of the previous Temporary Crisis Frameworks and aid granted under the same respective sections of the Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework at any point in time.

(20) Greece confirms that the notified measures do not by themselves, or by the conditions attached to them or by their financing method constitute a non-severable violation of Union law.

Clarifications as regards the application of the amended scheme

(21) Greece explained that the methodology for determining the unit subsidy for each of the months in the eligible period from 1 December 2022 to 31 December 2023 remains the same as the methodology described in recital (32) of the initial decision, which referred to aid granted in relation to eligible costs incurred between August 2022 and December 2022.

(22) The Greek authorities also explained that the consumption limit described in recital (33) of the initial decision may also apply to the category of non-household electricity consumers with power supplies up to 35 kVA for the months from January 2023 to December 2023, following an assessment of the available revenues of Greece's Energy Transition Fund and of the targets for the reduction of gross electricity consumption according to Article 3 of Council Regulation (EU) 2022/1854 ([7]).

(23) In addition, Greece has explained that participation in the amended scheme is, as it was the case under the aid scheme notified and assessed in case SA.103978, open to all electricity suppliers with customers that are eligible for aid under the amended scheme. The Greek authorities further explained that electricity suppliers cannot benefit from aid under the amended scheme as they are required to pass on the aid in full to the final beneficiaries via a reduction of the monthly energy bill. In particular, energy suppliers must clearly indicate in the energy bill the applicable unit subsidy resulting in the reduction. The authority responsible for administering the measures ('DAPEEP S.A.', see recitals (15) and (16) of the initial decision) subsequently compensates the suppliers for the amounts corresponding to the reductions in the electricity bills issued by them.

([7]) Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261I, 7.10.2022, p. 1).

(24) In addition, for each eligible month and for a period of 12 months ([8]) following the expiry of the amended scheme, electricity suppliers that have issued account statements containing reductions according to the scheme, must send to the Ministry of the Environment and Energy, the Regulatory Authority for Energy ('RAE') and DAPEEP S.A., on the last working day of each month in which they have issued such account statements, detailed information on the calculation of the reductions and on the beneficiaries that are contracted with them. The competent electricity distribution system operator must also send to the abovementioned authorities, within 10 days after the sending of the information by the suppliers, detailed information on the beneficiaries' actual monthly electricity consumption and on the suppliers with which each beneficiary was contracted, along with the respective contract periods. Within the same deadline of 10 days, the DAPEEP S.A. is to credit the respective amounts to each supplier, but the granting authority is obliged to recalculate the amounts on the basis of the information received, on a regular basis and until no later than 13 months after the expiry of the amended scheme. The amended scheme also contains provisions ensuring that DAPEEP S.A. will claw back any excess payments from suppliers.

(25) The Greek authorities also submit that the amended scheme preserves competition between energy suppliers as it only provides for a fixed amount of aid per unit consumed, while suppliers remain free to determine the price at which they supply electricity to customers and they compete on price as well as on non-price aspects of their energy supply (for example on the renewable origin of the energy supplied, the quality of service, etc.). In addition, as described in recital (31) of the initial decision, pursuant to Article 138 of Law 4951/22, each supplier announces on the 20th day of the month the retail electricity price for the following month, including the fixed charges and the electricity supply charges, which cannot be linked to the fluctuation of wholesale market sizes applied to variable electricity supply tariffs. The Greek authorities further explained that the beneficiaries have the right to switch suppliers without any switching-related fees.

3. ASSESSMENT

3.1. Lawfulness

(26) As regards Measure 1, its effect is twofold: first, it implemented the aid scheme notified and assessed in case SA.103978 (see recital (1)(a)) and, second, it also introduced and put into force the amendments set out in recitals (10)(a) to (10)(d), including by establishing a new period of granting the aid until 31 December 2023.

(27) As Greece introduced and implemented Measure 1 before notifying it (recitals (3) and (10)), the Greek authorities did not fulfil their obligations under Article 108(3) TFEU. That measure thus constitutes unlawful State aid.

(28) By notifying Measure 2 before putting it into effect (recital (18)), the Greek authorities have respected their obligations under Article 108(3) TFEU.

([8]) This 12-month period will serve the verification of the actual electricity consumption of the beneficiaries, without prejudice to the granting of aid by 31 December 2023 at the latest.

3.2. Existence of State aid

(29) 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 be liable to affect trade between Member States.

(30) The aid scheme notified and assessed in case SA.103978 constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (44) to (49) of the initial decision. Measure 1 and Measure 2 do not affect that conclusion. The Commission therefore refers to the assessment of the initial decision and concludes that the notified measures constitute State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

(31) The aid scheme notified and assessed in case SA.103978 was compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it met the conditions of section 1 and section 2.1 of the Temporary Crisis Framework for the reasons set out in recitals (50) to (58) of the initial decision. The Commission therefore refers to the respective assessment of the initial decision. The Commission notes that that assessment remains valid although the Temporary Crisis Framework has in the meantime been replaced by the Temporary Crisis and Transition Framework, referred to in recital (8) of this Decision, inasmuch as the conditions of sections 1 and 2.1 of the Temporary Crisis Framework, referred to in recital (1) of the present decision, which are relevant for the initial decision have not been modified substantively in the Temporary Crisis and Transition Framework.

(32) For the reasons stated in recital (8), Measure 2 is assessed under the Temporary Crisis and Transition Framework. Since Measure 1 was put into effect on 3 January 2023 before being notified, it is assessed under the Temporary Crisis Framework applicable at that time.

(33) The notified measures do not affect the Commission's conclusion of the compatibility assessment made under the initial decision.

(34) First, as regards Measure 1, the Commission considers that the implementation of the aid scheme notified and assessed in case SA.103978 with the amendments presented in recital (10) is appropriate to ensure that national support measures effectively help affected undertakings during the current crisis. In particular:

- Aid will be granted under the measure no later than 31 December 2023 (recital (10)(b)). Measure 1 therefore complies with point 55(c) of the Temporary Crisis Framework.
- The overall nominal value of the aid amounts described in recital (10)(c) does not exceed EUR 2 000 000 per undertaking, EUR 250 000 per undertaking active in the primary production of agricultural products or EUR 300 000 per undertaking active in the fishery and aquaculture sectors. All figures used must be gross, that is, before any deduction of

tax or other charges. The measure therefore complies with points 55(a) and 56(a) of the Temporary Crisis Framework.

- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 55(a) and 56(a) of the Temporary Crisis Framework, Greece committed that it will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 000 000 is not exceeded per undertaking (recital (10)(d)). Where an undertaking is active in the sectors covered by point 56(a) of the Temporary Framework, the overall maximum amount of EUR 300 000 is not exceeded per undertaking (recital (10)(d)). The measure therefore complies with point 57 of the Temporary Crisis Framework.

- Aid channelled through an energy provider complies with point (29) of the Temporary Crisis Framework, since the Greek authorities demonstrated that they operate a mechanism which ensures that the aid is passed on to the final beneficiaries and that competition between suppliers is preserved. In particular, participation in the measure will be open to all energy suppliers authorised to supply energy users (see recital (23)). Furthermore, the granting authority will ensure that the aid is passed on in full to the final beneficiaries by verifying the information communicated by the suppliers on the applied reductions and ensuring that any excess payments are clawed back from suppliers (recital (24)). Thus, the measure will not discriminate against suppliers who are in a comparable legal and factual situation. Finally, the suppliers remain free to set their own prices (see recital (25)) and therefore can keep competing against each other for customers on the basis of both price and non-price elements of their energy supply. The Commission considers that the competition intensity between suppliers will not be affected and the aid will be passed on to the final beneficiaries.

(35) As regards Measure 2, the notified amendments do not affect the conclusion that Measure 1, as amended, is compatible with the internal market pursuant to Article 107(3)(b) TFEU. In particular:

- The extension of the eligible period is compatible with the provisions of section 2.1 of the Temporary Crisis and Transition Framework, since the aid is granted until no later than 31 December 2023 (recital (10)(a), which is also relevant for Measure 2), in compliance with point 61(c) of the Temporary Crisis and Transition Framework

- The increase in the overall budget of the scheme by EUR 600 million (see recital (15)) complies with point 61(b) of the Temporary Crisis and Transition Framework, since the aid is granted under the measure on the basis of a scheme with an estimated budget.

(36) Greece confirms that Measure 1 does not introduce further amendments to the aid scheme notified and assessed in case SA.103978, and that all other conditions of that scheme are unaltered. Furthermore, Greece confirms that Measure 2 does not

introduce further amendments to Measure 1, apart from the ones notified, and that all other conditions of that scheme are unaltered.

(37) Greece confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under Section 2.1 of the previous Temporary Crisis Frameworks and the Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in the respective section of the Temporary Crisis and Transition Framework at any point in time (see recital (19)).

(38) Greece confirms that the measures do not by themselves, or by the conditions attached to them or by their 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 measures from being declared compatible with the internal market (see recital (20)).

(39) Therefore, the Commission considers that the measures do not infringe any relevant provisions of Union law.

(40) The Commission therefore considers that measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since Measure 1 meets all the relevant conditions of the Temporary Crisis Framework and Measure 2 meets all the relevant conditions of the Temporary Crisis and Transition Framework.

4. CONCLUSION

The Commission regrets that Greece put Measure 1 into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

Nevertheless, the Commission has accordingly decided not to raise objections to Measure 1 and to Measure 1, as amended by Measure 2, on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
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EUROPEAN COMMISSION