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Subject: State Aid SA. 107476 (2023/N) – Italy – RFF - TCTF 2.6 – Aid scheme to support investments for the use of hydrogen in industrial processes in Italy

Excellency,

1. PROCEDURE

(1) By electronic notification of 11 May 2023, Italy notified aid for the decarbonisation of industrial production processes through the use of renewable hydrogen, and electrification, and/or for energy efficiency measures (‘*Regime di aiuti agli investimenti per la decarbonizzazione dei processi industriali in settori hard-to-abate*’, 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]).

([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

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(1a) On 22 June, 2 July, 24 October 2023 and 11 January 2024, the Commission requested additional information, which Italy submitted on 10 July, 6 November 2023 and 17 January 2024, respectively. Three meetings were held on 25 August, 6 September and 3 November 2023.

(2) Italy 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 ([2]) and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE AID MEASURE:

(3) Italy considers that the Russian aggression against Ukraine 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 crude oil, but also in numerous other input and raw materials and primary goods. Those effects taken together have had economic repercussions on the entire internal market ('the current crisis'). Italy also considers that the current crisis has a significant impact on its economy. The Italian authorities explain that Italy has experienced high inflation and uncertainty in necessary investments, which are being postponed indefinitely or even abandoned. The most burdensome effect comes from the increase in energy prices, particularly of crude oil and natural gas, which continue to inflate operating costs of the manufacturing sector ([3]). The current crisis therefore requires accelerating the shift away from the dependency in the use of fossil fuels and the reduction of energy consumption in industrial production processes.

(4) Against this background, the measure aims to accelerate the deployment of investments in the decarbonisation of industrial activities through the use of renewable hydrogen fulfilling certain conditions, electrification and/or investments for improving the energy efficiency of industrial activities.

(5) Italy 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 European Economic Area ('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 Italian authorities explained that in the absence of the aid, beneficiaries of projects enabling the reduction in direct GHG emissions and/or the reduction of energy consumption would continue their activities without changes for a period corresponding to the lifetime of the investment that would take place with the aid. Without aid, decarbonisation or energy efficiency projects achieving high

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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.

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

([3]) Commission Staff Working Paper SWD (2022) 616 final, 05/23/2022 - Country Report 2022 - Italy, p. 4.

emission savings are unprofitable. This is due to the high investment costs and, especially for industrial decarbonisation projects, high operating costs necessary for their implementation, and the comparatively limited avoided costs ([4]) and uncertain additional revenues. Therefore, beneficiaries are not expected to have sufficient financial incentives to invest in decarbonisation or energy efficiency technologies without the aid. The lack of economic incentives is aggravated by the current crisis, in which undertakings are facing an even lower availability of financial resources to engage in such new projects. Additionally, the Italian authorities indicate that the existing regulatory framework is not sufficient to achieve national climate objectives. While the EU ETS partially addresses the negative externalities of carbon-intensive activities, they argued that these externalities are not fully reflected in the cost of GHG emissions.

(6a) The compatibility assessment of the measure is based on Article 107(3), point (c), TFEU, in light of sections 1 and 2.6 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.

2.2. Legal bases

(8) The legal bases for the measure are:

- Decree of the Minister of Ecological Transition (currently the Ministry of the Environment and Energy Security) dated 21 October 2022 (Official Journal Italian Republic No. 282 of December 2, 2022), which regulates the terms and general criteria for the granting of subsidies under Mission 2, Component 2, Investment 3.2 “Use of hydrogen in hard-to-abate sectors” (hereinafter the ‘Ministerial Decree’);

- Decree of the Director General of Energy Incentives of the Ministry of the Environment and Energy Security No. 254 of 15 March 2023, which, in application of article 11, paragraph 2 of the Decree of the Minister of Ecological Transition of 21 October 2022, defines the technical-operating procedures for the granting of subsidies under the aforementioned investment 3.2 "Use of hydrogen in hard-to-abate sectors" (hereinafter the ‘Directorial Decree’);

- Decree of the Director General of Energy Incentives of the Ministry of the Environment and Energy Security No. 326 of 8 May 2023 amending and supplementing the Decree of the Director General of Energy Incentives of the Ministry of the Environment and Energy Security No. 254 of 15 March 2023 (hereinafter referred to as the ‘Amending Directorial Decree’).

(9) Aid will be granted to the beneficiaries on the basis of a decision of the Ministry of Environment and Energy Security.

([4]) Notably thanks to reduction in energy consumption and avoided costs of EU ETS allowances.

2.3. Administration of the measure

(10) Invitalia is responsible for administering the measure ([5]). Invitalia is an agency of the Ministry of Economy and Finance aimed at supporting business development and attraction of investments.

2.4. Budget and duration of the measure

(11) The estimated budget of the measure is EUR 550 000 000. The measure will be financed through resources allocated to the Italian Resilience and Recovery Plan (‘Italian RRP’).

(12) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure ([5a]) until 31 December 2025.

2.5. Beneficiaries

(13) The beneficiaries of the measure are enterprises of all sizes active in Italy in specific sectors (recital (16)) whose production processes currently rely on the use of fossil fuels as their energy source or feedstock for their production processes. Credit institutions or other financial institutions are excluded as eligible beneficiaries.

(14) Italy confirms that 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.

(15) Italy 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 regulations[6]. 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

(16) The measure is open to undertakings of all sizes, which are active in industrial sectors listed in Annex I of Directorial Decree ([7]).

([5]) The procedure for the selection and appointment of experts is published on the agency’s website: www.invitalia.it.

([5a]) Article 26, paragraph 2 of the Directorial Decree provides that the granting of aid remains subject to the approval of the aid scheme by a Commission decision.

([6]) 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).

([7]) According to Annex I of the Directorial Decree, eligible industrial sectors range from food and textile industries to manufacturing in the fields of paper and paper products, refined petroleum products,

(17) The measure applies to the whole territory of Italy.

2.7. Basic elements of the measure

2.7.1. Eligible investments

(18) The Italian authorities explain that, in order to be eligible for aid, the investments must allow the beneficiaries to substantially reduce their GHG emissions through the electrification of their production processes, the switch to the use of renewable hydrogen ([7a]), or the reduction of their energy consumption. Under the measure, investments for the use of hydrogen and electrification can be combined. All investments concerned must involve the introduction of at least 10% of hydrogen to replace fossil fuels.

(19) Under the measure, the Italian authorities will grant aid for projects enabling the beneficiaries to achieve either one of the following objectives (or both):

(a) Reduce by at least 40% compared to the situation before the aid, direct greenhouse gas emissions from the industrial installations (hereinafter referred to as ‘GHG emissions reducing investments’); and/or

(b) Reduce by at least 20% compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities (hereinafter referred to as ‘energy consumption reducing investments’).

A) GHG emissions reducing investments

(20) The Italian authorities explain that, in order to be eligible for aid under the measure, GHG emissions reducing investments referred to in recital (19)(a) must be exclusively based on the use of renewable hydrogen, which can be combined with the electrification of the production processes as a residual measure representing less than 40% of the costs of the project.

(21) Under the measure, only investments in equipment apt to rely exclusively on hydrogen as input without additional investments (100% hydrogen-ready equipment) are eligible under the category ‘GHG emissions reducing investments’.

(22) The Italian authorities commit that the hydrogen used in the projects supported by the aid will be produced from renewable energy sources in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources ([8]) and its implementing or delegated acts ([9]). The Italian

chemical and pharmaceutical products, glass and ceramics products, cement and metal, microelectronics.

([7a]) See recital (22).

([8]) OJ L 328, 21.12.2018, p. 82.

([9]) Commission Delegated Regulation (EU) 2023/1185 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold authorities commit to include a condition to that effect in the individual aid granting decisions.

(23) For the purposes of verifying the reduction of GHG emissions prior to the granting of aid, the Italian authorities commit to measure the reduction in direct GHG emissions enabled by the aid under the measure by comparing the level of GHG emissions expected to be generated by a project supported with aid with the average direct GHG emissions occurred over the five years preceding the aid application (average GHG emissions on an annual basis). Actual emissions from the combustion of biomass must also be considered.

(24) The Italian authorities also commit that the comparison of the situation before and after the aided project will be based on the same type and quantity of output, and that the GHG emissions considered will be those resulting directly from the investment supported under the measure, thus excluding GHG emissions reduction occurring at the level of third parties or new facilities ([10]).

(25) For the purposes of verifying the reduction of GHG emissions, the actual use of hydrogen (as opposed to potential use of hydrogen or hydrogen readiness) during the whole year is considered, taking into account potential fluctuations in renewable hydrogen availability. In particular, in order to ensure that the reduction in GHG emissions of 40% is achieved in all supported installations belonging to the category of GHG emissions reducing investments, hydrogen must represent at least 40% ([11]) of the total energy inputs to the technical unit on a yearly basis from the start of the operational phase of the projects.

(26) For the verification of the GHG emission reduction in the relevant installation, the Italian authorities commit to measure emissions at a level that is not narrower than the technical 'unit' level, within the meaning of Section 4.4 the guidance on the ETS Directive ([12]). This means, for example, that if an oven contains several burners, the emissions savings shall be measured at oven level.

(27) According to Italian authorities, a full switch to hydrogen use is currently not possible for all projects due to low renewable hydrogen availability in the Italian hydrogen market and the need for most projects to still rely on limited quantities of fossil fuels for operational reasons (e.g. startup of the machinery). Italy

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for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels (OJ L 157, 20.6.2023, p. 20); and Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (OJ L 157, 20.6.2023, p. 11).

([10]) The setting up of new production facilities for the production of new products that they were not previously produced by the beneficiaries and for which therefore it is not possible to compare the level of emissions after the investment with the level of emissions before the investment (given that the emissions would not relate to the same activity) are not eligible under the scheme.

([11]) Considering a technical unit in which hydrogen was not previously part of the energy input and in which the remainder of energy inputs, compared to the energy inputs replaced by hydrogen, have equal or lower emissions intensities before and after the investment.

([12]) Guidance note on interpretation of the Scope of the EU ETS (europa.eu).

therefore intends to allow that natural gas continues to be used in the installations benefitting from the measure in a blend with renewable hydrogen to the extent that the 40% GHG emission saving requirement (see recital (25)) and the ETS benchmark requirement (see recital (31)) are both fully met and only for a certain period of time. All beneficiaries under the measure are in any event obliged to use at least 75% of renewable hydrogen in the total energy inputs to the technical unit by 2032 and to fully switch to renewable hydrogen by 2036. The Italian authorities consider that such timing will ensure a progressive transition away from natural gas in industrial sectors in Italy in line with the objective of the TCTF. This will be verified during the annual monitoring exercise (see recital (35)).

B) Energy consumption reducing investments

(28) The Italian authorities commit that the reduction in energy consumption enabled by the aid under the measure will be measured by comparing the level of energy expected to be consumed by a project supported with aid to the average energy consumption occurred over the five years preceding the aid application (average consumption on an annual basis).

(29) The Italian authorities also commit that the comparison of the situation before and after the aided project will be based on the same type and quantity of output, and that the energy consumption considered will be that resulting directly from the investment supported under the measure, thus excluding energy consumption reduction occurring at the level of third parties or new facilities ([13]).

(30) In order to verify that the supported investment will reduce energy consumption by at least 20% compared to the situation before the aid, the Italian authorities commit to ensure that for the calculation of the energy efficiency of a project, all energy inputs will be considered both in the situation before and after the project, irrespective of whether fuels are used as energy or as feedstock and whether they are renewable or non-renewable sources.

C) Conditions applying to both GHG emissions reducing investments and energy consumption reducing investments

(31) Additionally, the Italian authorities commit that, in case of investments relating to activities covered by the European Emission Trading System (‘EU ETS’) ([14]), established by Directive 2003/87/EC, the aid granted under the measure must lead to the beneficiary’s installation’s GHG emissions going below the relevant benchmarks for free allocation of allowances set out in Commission Implementing Regulation (EU) 2021/447 ([15]).

([13]) See footnote 10 above.

([14]) The list of industrial plants subject to ETS in Italy is available on the public European register at the following link: https://ec.europa.eu/clima/ets/ in the section “Allocations to Stationary Installations". In addition, the national register can be consulted on the website: https://ariet.isprambiente.it.

([15]) Commission Implementing Regulation (EU) 2021/447 of 12 March 2021 determining revised benchmark values for free allocation of emission allowances for the period from 2021 to 2025 pursuant to Article 10a(2) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 87, 15.3.2021, p. 29).

(32) Aid under the measure cannot be granted for merely complying with applicable Union standards ([16]). To ensure compliance with this requirement, the Italian authorities commit to verify that industrial installations applying for aid already comply with applicable Union standards. Beneficiaries must provide evidence to that effect as part of their application for aid. The Italian authorities commit to verify compliance with applicable Union standards before the granting of aid. Installations that do not fulfil such requirement will not be supported. The Italian authorities will also verify that continuing the beneficiaries' activities without changes does not entail a breach of Union law.

(33) The Italian authorities explain that the aid aims at decarbonising the beneficiaries' production processes or reducing their energy consumption, and not at financing an increase of the beneficiaries' overall production capacity. Only limited capacity increases resulting from technical necessity are allowed, provided that they do not exceed 2% compared to the situation before the aid. The Italian authorities commit to verify compliance with this requirement based on the information submitted by beneficiaries as part of the aid application.

(34) Aid can be granted under the measure only for investments for which works started as of 9 March 2023. The Italian authorities explain that they will allocate the aid based on the eligibility criteria for beneficiaries and projects as described in this decision. The granting authority will check compliance with all conditions as part of the evaluation process of applications.

(35) Under the measure, the beneficiaries are required to submit, before the granting decision, a certified assessment which verifies the historical GHG emissions and/or energy consumption of the installations to be supported under the measure (i.e., the situation before each project's implementation), and estimates the environmental benefits expected to be generated by the proposed investment (i.e., reduction in direct GHG emissions and/or reduction in energy consumption). In addition, the Italian authorities commit to monitor annually the levels of GHG emissions and relevant benchmarks, and the share of renewable hydrogen used in the installations receiving support under the measure against the targets set in recitals (19), (21) and (25). To this end, the Italian authorities commit to ensure that beneficiaries are required to provide annual certificates issued by one or more qualified third-party experts proving the achievement of the environmental benefits expected to be generated by the proposed investment (i.e., reduction in direct GHG emissions and energy consumption) and the shares of hydrogen used in the installations receiving support under the measure against the targets set in recitals (19), (21) and (25). The Italian authorities have informed the Commission that the monitoring activities for the first year of operation of the plants will be

([16]) 'Union standard' means (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings; (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of these guidelines; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable.

carried out by Invitalia. For the following years, it will be assessed whether to extend the existing agreement with Invitalia, or to entrust the activity to another National Agency, such as the Energy Services Operator (GSE), as part of the activities it manages for the ETS, or as part of other activities entrusted to it. This methodology is applied uniformly across the scheme.

2.7.2. *Calculation of the aid amount*

(36) Aid granted under the measure will be quantified based on the methodology described in recitals (37) and (38).

(37) The maximum aid intensity for projects targeting GHG emissions reductions will be 60% of the eligible costs for investments concerning the switch to the use of renewable hydrogen and 30% for investments aimed at electrification. For projects targeting the objective of energy savings, the aid intensity will be limited to 30% for any investments.

(38) The eligible costs under the measure are the investment costs linked to the eligible decarbonisation or energy efficiency project, in particular costs of equipment, machinery or installations needed to achieve the electrification, switch to hydrogen or energy efficiency improvement.

(39) The calculation of the aid amount based on the methodology referred to in points (37) and (38) will be performed on the basis of information submitted by the applicants and verified by technical experts of the State agency Invitalia.

(40) The maximum individual aid amount that may be granted per undertaking will not exceed EUR 200 million per undertaking.

2.7.3. *Deadline for the completion and entry in operation of supported investments*

(41) Aid under the measure is granted subject to the condition that the installation or equipment to be financed by the investment is completed and in operation within 36 months after the date of granting of the aid.

(42) When the 36-month deadline is not met, the Italian authorities will impose a penalty corresponding to the revocation of the aid granted. In the event of revocation, the beneficiary is not entitled to the residual aid still to be disbursed and must repay the benefit already disbursed plus interest and, where applicable, administrative fines.

(43) According to the Italian authorities, the proposed system of penalties, as explained in recitals (41) and (42) is effective, in that it incentivises beneficiaries to implement the investment within the 36-month deadline.

2.8. Compliance with relevant provisions of Union law

(44) The Italian authorities confirm that the 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

(45) The Italian authorities confirm that aid granted under the measure cannot be cumulated with other State aid or de minimis aid ([17]) or with centrally managed funds in relation to the same eligible costs.

2.10. Monitoring and reporting

(46) The Italian 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 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ([18]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(47) By notifying the measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(48) 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.

(49) The measure is imputable to the State, since it is administered by Invitalia, which is an agency of the Ministry of Economy and Finance aimed at supporting business development and attraction of investments (recital (10)) and it is based on the Directorial Decree (as amended) of the Ministry of the Environment and Energy Security (recital (8)). It is financed from the national budget on the basis of resources allocated to the Italian RRP (recital (11)). The measure is therefore financed from State resources.

(50) 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.

([17]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1).

([18]) 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.

(51) The advantage granted by the measure is selective, since it is awarded only to certain undertakings i.e., undertakings active in the industrial sectors listed in Annex I of Directorial Decree (recital (16)).

(52) 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.

(53) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Italian authorities do not contest that conclusion.

3.3. Compatibility

(54) 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.

(55) 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'.

(56) 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 in line with the REPowerEU Plan ([19]), to accelerate the decarbonisation of European industry 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 the swift implementation of investments aimed at reducing the level of GHG emissions of industrial production processes or at increasing the energy efficiency of those processes.

(57) As the aid measure relates to decarbonisation of industrial production processes through investments allowing the use of renewable hydrogen or electrification and/or energy efficiency improvements, it has been assessed on the basis of section 2.6 of the Temporary Crisis and Transition Framework.

(58) The Commission considers that the measure is necessary, appropriate and proportionate to reduce the dependency on imported fuels in the current context and can be declared compatible with the internal market on the basis of Article 107(3), point (c), TFEU for the reasons set out in recitals (58a) to (82). In particular:

(58a) Aid is granted for investments leading to a substantial reduction of greenhouse gas emissions from industrial activities currently relying on fossil fuels as energy

([19]) Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU Plan (COM/2022/230 final).

source or feedstock, or a substantial reduction of energy consumption in industrial activities and processes. The measure therefore complies with point 81 of the Temporary Crisis and Transition Framework

(59) Aid under the measure is granted on the basis of a scheme with an estimated budget (recital (11)). The measure therefore complies with point 81(a) of the Temporary Crisis and Transition Framework.

(60) The maximum individual aid amount that may be granted per undertaking will not exceed 200 EUR million (recital (40)). The measure therefore complies with point 81(b) of the Temporary Crisis and Transition Framework.

(61) The aid is granted in the form of direct grants (recital (7)). The measure therefore complies with point 81(c) of the Temporary Crisis and Transition Framework.

(62) The aid measure covers two broad categories of investments:

a) investments enabling the beneficiaries to reduce by at least 40 % compared to the situation before the aid, direct greenhouse gas emissions from its industrial installation currently relying on fossil fuels as energy source or feedstock (recitals (18) and 19(a)), by means of the electrification of the production processes, or the use of renewable hydrogen to substitute fossil fuels (recitals (20) to (22)). The reduction in direct GHG emissions will be measured by reference to average direct GHG emissions occurred over the five years preceding the aid application, also taking into account actual emissions from the combustion of biomass (recital (23));

b) investments enabling the beneficiaries to reduce by at least 20 % compared to the situation before the aid, energy consumption in industrial installations in relation to the aided activities (recital 19(b)). The reduction of energy consumption will be measured by reference to energy consumption occurred over the five years preceding the aid application (recital (28)).

(63) For GHG emissions reducing investments referred to in recital 61(a), Italy will verify that emissions reductions occur at a level that is not narrower than the technical ‘unit’ level (see recital (26)). To ensure that the reduction in GHG emissions of 40% is achieved in all supported installations belonging to the category of GHG emissions reducing investments, Italy will verify that hydrogen represents at least 40% of the total energy inputs to the technical unit on a yearly basis (see recitals (25) and (35)).

(64) For investments allowing the switch from fossil fuels to renewable hydrogen, the Commission notes that under the measure, the supported installation can still rely partly on fossil fuels (namely natural gas) as the Italian authorities expect that a direct and full switch to hydrogen use will not be possible for all projects due to low renewable hydrogen availability in the Italian hydrogen market (recital (27)). However, the partial use of natural gas in the supported technical unit is only allowed if certain conditions are met (see recitals (20) and (27)). The Commission considers that in the context described by Italy of insufficient availability of renewable hydrogen, a partial use of natural gas is compatible with points 80 and 81(d)(i) of the TCTF. First, a full switch must effectively occur at the latest by

2036 (recital (27)) and in order to ensure that switch, only 100% hydrogen ready equipment is eligible (recital (21)). Second, from the starting of operation, the share of hydrogen is of minimum 40% (recital (25)) and increases over time (75% by 2032 and 100% by 2036) (recital (27)). Third, compliance with these conditions will be monitored by Italian authorities (recital (35)). The Commission considers that these conditions ensure a gradual reduction of the dependency on fossil fuel imports that can be considered as constituting a quick reduction in the dependency of fossil fuel imports aimed for under point 80 of the TCTF. The Commission considers that, by requiring a minimum share of hydrogen equal to 40% from the start of operation of the supported investments, the measure ensures that the beneficiaries achieve a reduction of at least 40% GHG emissions in line with point 81(d)(i) of the Temporary Crisis and Transition Framework (recital (19)(a)). In addition, the increase over time in the minimum shares of hydrogen required under the measure ending in a full switch to hydrogen by 2036 (recital (27)) allows to decrease the dependency on fossil fuels imports and to avoid any lock-in effects. The 100% hydrogen readiness requirement of the equipment supported under the measure (recital (21)) further ensures the avoidance of any lock-in effects.

(65) For investments reducing energy consumption referred to in recital (62)(b), Italy will take into account all energy consumption, irrespective of whether the energy is renewable or not and irrespective of whether it is used as fuel or feedstock (see recital (30)).

(66) For both categories of eligible investments, the Italian authorities confirmed that the comparison between GHG emissions or energy consumption before and after the projects' implementation will be based on the same type and quantity of output (recitals (24) and (29)), thereby ensuring that those improvements in the level of GHG emissions and energy efficiency can be attributed to the supported investment.

(67) The measure therefore complies with point 81(d) of the Temporary Crisis and Transition Framework.

(68) For investments relating to activities covered by the EU ETS, the aid will lead to the beneficiary installation's GHG emissions going below the relevant benchmarks for free allocation set out in Commission Implementing Regulation (EU) 2021/447 (recital (31)) and this will be monitored (recital (35)). The measure therefore complies with point 81(e) of the Temporary Crisis and Transition Framework.

(69) The aid will not be used to finance an increase of the overall production capacity of the beneficiary (recital (33)). As described in recital (33), the measure may only lead to limited capacity increases not exceeding 2% compared to the situation before the aid. The Italian authorities will verify compliance with this requirement based on the information submitted as part of the aid application. According to point 81(f) of the Temporary Crisis and Transition Framework, such limited capacity increases can be presumed to result from technical necessity. The measure therefore complies with point 81(f) of the Temporary Crisis and Transition Framework.

(70) The Italian authorities will ensure that all hydrogen used is produced from renewable energy sources in accordance with the methodologies set out for

renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 and its implementing or delegated acts (recital (21)). In particular, the Italian authorities will include a condition to that effect in the relevant calls for proposals and in the individual aid granting decisions. The measure therefore complies with point 81(g) of the Temporary Crisis and Transition Framework.

(71) The aid will be granted by 31 December 2025 (recital (12)) and it will be subject to the condition that the installation or equipment to be financed by the investment must be completed and in operation within 36 months after the date of granting the aid (recital (41)). Where the deadline for completion and entry into operation is not met, the measure provides a system of penalties. In particular, when the 36-month deadline is not met, the Italian authorities will impose a penalty corresponding to the revocation of the aid amount granted. In the event of revocation, the beneficiary is not entitled to the residual aid still to be disbursed and must repay the benefit already disbursed plus interest and, where applicable, administrative fines (recital (42)). The Commission considers the system of penalties proposed by the Italian authorities effective, in that it incentivises beneficiaries to implement the investment within the 36-month deadline after the granting of the aid. The measure therefore complies with point 81(j) of the Temporary Crisis and Transition Framework.

(72) Aid will only be granted under the measure for investments for which works started as of 9 March 2023 (recital (34)). The measure therefore complies with point 81(k) of the Temporary Crisis and Transition Framework.

(73) The aid will not be granted for merely complying with applicable Union standards (recital (32)). The measure therefore complies with point 81(l) of the Temporary Crisis and Transition Framework.

(74) The aid will induce the beneficiary to undertake an investment that it would not undertake or would undertake in a restricted or different manner without the aid (recital (6)). For projects referred to in point 81(d)(i) of the Temporary Crisis and Transition Framework, it is deemed that beneficiaries would continue their activities without changes, in line with point 81(m) of the Temporary Crisis and Transition Framework. In addition, the Italian authorities explained as regards projects referred to in point 81(d)(i) and in point 81(d)(ii) of the Temporary Crisis and Transition Framework, that in the counterfactual scenario without the aid, beneficiaries would continue their activities without changes for a period corresponding to the lifetime of the aided investment. This is due to (i) insufficient financial incentives, aggravated by the current crisis, (ii) the absence of regulatory requirements imposing beneficiaries to decarbonise industrial processes or to reduce energy consumption, and (iii) the fact that while the EU ETS partially addresses the negative externalities of carbon-intensive activities, these externalities are not fully reflected in the cost of GHG emissions (recital (6)). Additionally, the Italian authorities confirmed that they will verify that continuing the beneficiaries' activities without changes does not entail a breach of Union law and that the aid does not merely help the beneficiary to comply with Union standards (recital (32)). The Commission therefore considers the explanations provided by Italy credible. The aid will thus induce the beneficiaries to undertake investments that they would not undertake or would undertake in a

restricted or different manner without the aid. The measure therefore complies with point 81(m) of the Temporary Crisis and Transition Framework.

(75) The eligible costs under the measure are the investment costs that correspond to the investment costs linked to the project referred to in point 81(d) of the Temporary Crisis and Transition Framework, in particular costs of equipment, machinery or installations needed to achieve the switch to hydrogen, electrification or energy efficiency improvement (recital (38)(38)).

(76) The aid intensity will not exceed the maximum aid intensities set out in point 81(p) of the Temporary Crisis and Transition Framework. For projects targeting GHG emissions reductions, the maximum aid intensity is 60% of the eligible costs for investments concerning the switch to the use of renewable hydrogen and 30% for investments aimed at electrification. For projects targeting the objective of energy savings, the aid intensity will be limited to 30% for any investments (recital (37)). The measure therefore complies with point 81(p) of the Temporary Crisis and Transition Framework.

(77) The Italian authorities indicate that aid granted under the measure cannot be cumulated with other aid or with centrally managed funds in relation to the same eligible costs (recital (45)). The measure therefore complies with point 81(s) of the Temporary Crisis and Transition Framework.

(78) 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[20]. The Italian 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 (recital (32)). 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.

(78a) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.

(79) The Italian 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 Italy. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (5)).

(80) The Italian 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: (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

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

industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (14)).

(81) The Italian authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (46)).

(82) 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 the measure, which contributes to the swift implementation of investments aimed at reducing the level of GHG emissions of industrial production processes or at increasing the energy efficiency of those processes when 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 for such type of measure.

4. CONCLUSION

The Commission has accordingly 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.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: https://competition-cases.ec.europa.eu/search?caseInstrument=SA.

Your request should be sent electronically to the following address:
European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President