

To: Executive Vice-President Margrethe Vestager

Brussels, 1 March 2023

Dear Ms. Vestager,

**Concerns: The draft Temporary Crisis and Transition Framework**

We are writing in response to the leaked draft Temporary Crisis and Transition Framework (“**TCTF**”)<sup>1</sup>. Although this draft is unofficial and may not be final, we are concerned by the direction taken.

We understand the Commission is under pressure to act. Current geopolitical developments and the need to accelerate the energy transition through the deployment of renewable energy and the decarbonisation of industry demand it.

However, as you have underlined,<sup>2</sup> the proposed changes to the Temporary Crisis Framework<sup>3</sup>, come with risks. They are far reaching, even if “temporary”. We are concerned that the risks outweigh the potential benefits, not only in terms of impact on the single market but also on the environment and especially the EU’s climate commitments. We have three concerns:

1. *The lack of green conditionalities*
2. *The risk of inconsistencies with the Guidelines on State aid for climate, environmental protection and energy (“**CEEAG**”)*
3. *The lack of public consultation and transparency*

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<sup>1</sup> As published by [Contexte on 6 February 2023](#).

<sup>2</sup> [Remarks by Executive Vice-President Vestager](#) on the proposal for a State aid Temporary Crisis and Transition Framework, 1 February 2023.

<sup>3</sup> Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia.

## 1. THE LACK OF GREEN CONDITIONALITIES

We have repeatedly advocated that the **Commission has a duty to incorporate environmental protection requirements in its State aid policy at large**, in line with Article 11 of the Treaty on the Functioning of the EU (“TFEU”). In view of the Green Deal objectives and the Union’s climate objectives, **climate and environmental protection cannot be confined to the CEEAG<sup>4</sup> and the relevant sections of the General Block Exemption Regulation<sup>5</sup>. Instead, it must be implemented horizontally and coherently across State aid policy.** The TCTF makes us concerned that the Commission will not live up to this duty.

Against this background, it is problematic that the TCTF does not impose environmental protection requirements. At point 38 of the TCTF, Member States are merely *invited* to set environmental protection or security of supply requirements under section 2.4<sup>6</sup> and under newly proposed section 2.8<sup>7</sup> - respectively based on Article 107(3)(b) and 107(3)(c) TFEU. Looking at the decisions on aid schemes based on section 2.4 TCTF published so far, one can only observe it is clear that very few Member States have included such conditionality.

**There are no legal obstacles to imposing environmental protection requirements in the TCTF where appropriate.** We appreciate that the initial objective of the framework is to remedy a serious disturbance in the economy (pursuant to Article 107(3)(b) TFEU). Yet it has been vastly expanded to include aid measures facilitating the development of certain economic activities or certain economic areas (pursuant to Article 107(3)(c) TFEU). This makes it even more appropriate to impose environmental protection requirements.

Finally, the Commission’s commitment under the TCTF to swiftly assess aid cannot come at the expense of the environment, particularly the Union’s climate objectives. As the current approach will unquestionably undermine the Green Deal and Union’s climate objectives, **we call upon the Commission to subject the approval of aid to environmental protection requirements where appropriate.**

## 2. THE RISK OF INCONSISTENCIES WITH THE CEEAG

**We are concerned about the partial overlap of the material and temporal scope of the CEEAG and the TCTF.** Sections 2.5 (*the acceleration of the rollout of renewable energy and energy storage relevant for REPowerEU*) and 2.6 (*aid for decarbonisation of industrial production processes*) of the TCTF overlap with section 4.1 of the CEEAG (*Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency*). This is especially problematic given the timeframes: whilst the TCTF is earmarked as a ‘temporary’ framework, sections 2.5 and 2.6 are set to run parallel to the CEEAG until 31 December 2025.

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<sup>4</sup> Commission Guidelines on State aid for climate, environmental protection and energy 2022.

<sup>5</sup> Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

<sup>6</sup> Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices.

<sup>7</sup> Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy.

Some of the striking inconsistencies between the two frameworks include the following:

- **Different conditions for similar aid**: For example, the granting of aid for renewable energy is subject to considerably more lenient conditions under the TCTF than under the CEEAG. Aid for the decarbonisation of industry is also subject to a different set of conditions under the TCTF than under the CEEAG.
- **Fast-track approval**: In contrast to the CEEAG, the TCTF provides for a fast-track approval process.<sup>8</sup> This goes against the required in-depth compatibility assessment by the Commission, especially considering the justified complexity of some of the aid categories in the TCTF.<sup>9</sup> Moreover, the Commission will likely greenlight massive aid amounts without the required level of scrutiny, since schemes are not subject to spending limits.
- **Funding gap calculation**: For calculation of the aid, the TCTF reintroduces the concepts of investment and operating aid, linked to maximum aid intensities. While this simplifies the calculation in comparison with the funding gap approach in the CEEAG, it involves an inherent risk of overcompensation<sup>10</sup>.

These inconsistencies lead to (i) confusion on how these frameworks interact, (ii) potential loopholes and (iii) cherry-picking between frameworks providing the least stringent / best-suited conditions. **We urge the Commission to clarify how the TCTF interacts with the CEEAG and to remedy the inconsistencies.** This will prevent undermining State aid control for the purpose of protecting the single market and achieving the Green Deal objectives.

### 3. THE LACK OF PUBLIC CONSULTATION AND TRANSPARENCY

The TCTF has a broad temporal and material scope of application. In combination with the lack of spending limits for schemes, the framework will likely be used as a basis to grant large aid amounts in the coming years.<sup>11</sup> Therefore, **we find it regrettable that the Commission has not extended the consultation beyond the Member States.** Although we understand that the Commission is under pressure to move swiftly, consulting the public or simply publishing the TCTF on its website would increase its legitimacy. It would also provide the Commission with valuable insights beyond those coming from Member States. **We**

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<sup>8</sup> [Communication from the Commission - A Green Deal Industrial Plan for the Net-Zero Age](#), p.9: “The Commission will remain committed to fast procedures under the TCTF, as is already the case for aid approved under the Temporary Crisis Framework, where median approval time has been 19 days.”

<sup>9</sup> The aid measures targeted in sections 2.5 (the acceleration of the rollout of renewable energy and energy storage relevant for REPowerEU), 2.6 (aid for decarbonisation of industrial production processes) and 2.8 (aid for accelerated investments in sectors strategic for the transition toward a net-zero economy) of the TCTF are particularly problematic in that regard. The conditions are not straightforward. As a result, to apply the conditions correctly, the Commission will have to perform a relatively detailed assessment of the aid at issue.

<sup>10</sup> Claw back mechanisms are not the most suited to avoid overcompensation as they are applied ex post and require active monitoring by Member States.

<sup>11</sup> As indicated in your letter to the Member States on 13 January 2023, 672 billion euro of national funding has been mobilised under the State aid Temporary Crisis Framework (9 months after date of adoption).

**therefore encourage the Commission to consult the broader public before taking any decision on the adoption of the TCTF and to make this a common practice in the future.**

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We thank you for taking these points into consideration in view of the final adoption of the TCTF. We remain at your disposal for a further exchange on the inclusion of green conditionalities, on the inconsistencies in the TCTF, and on our suggestions for how to resolve ambiguities in the drafting.

Yours sincerely,

**ClientEarth**

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