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Special report

State aid in times of crisis

Swift reaction but shortcomings in the Commission's monitoring and inconsistencies in the framework to support the EU's industrial policy objectives

CURIA RATIONUM
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Executive summary

I Both the COVID-19 pandemic and Russia's invasion of Ukraine had a severe impact on the EU economy, as well as revealing the interdependence of global value chains. To address the economic disturbance caused, and enable member states to grant state aid swiftly, the Commission adopted temporary state aid frameworks from 2020 to 2023. These set out specific conditions and requirements, which national crisis-related state aid measures had to fulfil to be compatible with the internal market under the Treaty on the Functioning of the EU.

II The aim of this report is to contribute to more effective oversight of state aid in the event of future crises, as well as a more consistent framework for state aid for the years to come. We assessed how effectively the Commission adapted the EU's state aid framework to deal with recent crises, assessed and monitored crisis-related state aid, and evaluated its impact on competition in the internal market. We also examined whether the state aid framework supporting the European Green Deal and other industrial policy objectives was consistent.

III Overall, we conclude that, by adopting temporary frameworks for state aid, the Commission reacted swiftly to member states' need to remedy the economic disruption that followed the outbreak of the COVID-19 pandemic and Russia's invasion of and ongoing war against Ukraine. However, the Commission's assessment of aid measures was limited. Furthermore, it still needs to overcome difficulties in monitoring the state aid measures set up by member states and assessing their impact on competition in the internal market.

IV The temporary crisis frameworks for state aid enabled member states to design state aid measures swiftly, according to common principles, and grant unprecedented amounts of such aid. However, the Commission was not able to conduct economic assessments prior to the adoption of the frameworks, to ensure that aid was limited to the minimum necessary. While the temporary framework for COVID-19 did not sufficiently target undertakings most affected by the crisis, following Russia's invasion of Ukraine, the Commission did establish appropriate objectives and criteria to ensure that support measures effectively targeted undertakings affected by that crisis. Nonetheless, we found that amendments adopted after REPowerEU had the potential to increase the risk of undue market distortions.

V With the introduction of the temporary crisis frameworks, the Commission streamlined its case assessment procedures. Despite the significant increase in state aid expenditure from around €120 billion pre-crisis to over €320 billion in 2020 and 2021, and almost €230 billion in 2022, there is a lack of information on the measures implemented. We also found weaknesses in member states control mechanisms. Meanwhile, during the crises, the Commission reduced its monitoring of state aid.

VI The Commission has not yet evaluated the impact that measures adopted under the first crisis frameworks had on competition in the internal market. This is a lost opportunity to learn how to design better-targeted measures in the future while minimising the distortion of competition.

VII For reporting on the use of state aid, the Commission relies on data provided by member states. As not all of them met their legal reporting obligations, a lack of reliable data hampered the Commission's ability to assess the effectiveness of the temporary crisis frameworks and how well state aid was contributing to the EU's industrial policy objectives.

VIII The Commission improved the rules so that there would be better and more timely information about the spending of public money and to allow businesses to check whether aid granted to competitors was lawful. However, there is still insufficient transparency about who receives state aid.

IX State aid is increasingly used to support the achievement of industrial policy objectives such as enhancing the EU's strategic independence and transitioning to a net-zero economy, but there is now a complex assortment of state aid frameworks with rules that are not always consistent. Moreover, the Commission had not sufficiently assessed the need for, or the potential impact of a new temporary crisis and transition framework to further accelerate investments in key sectors for the transition towards a net-zero economy. Diverse member state approaches to granting state aid may undermine the effective functioning of the internal market. The Commission needs to address this risk.

X On the basis of these conclusions, we recommend that the Commission should:

- strengthen its assessment and monitoring of state aid schemes;
- evaluate the impact of crisis-related aid on competition;
- enhance the transparency of state aid and improve state aid reporting;
- improve analysis of the need for state aid to support EU industrial policy objectives and streamline state aid rules accordingly.

Introduction

Competition and state aid in the EU internal market

01 The Treaty on the Functioning of the European Union (TFEU) promotes fair competition between companies in the EU internal market. A company that receives government support in the form of state aid, such as a subsidy to build a new production plant, gains an advantage over its competitors. Therefore, aid granted by member states or through state resources, which might distort competition and affect trade within the EU by favouring certain undertakings or the production of certain goods is, in general, prohibited in the EU[1].

02 At the same time, under specific circumstances, state intervention may be desirable or even necessary. The TFEU therefore lists several policy objectives for which aid must or might be considered compatible with the internal market[2]. Examples include providing aid to support the development of economically disadvantaged regions in the EU, making good the damage caused by natural disasters or exceptional events, remedying serious disturbance to the economy of a member state, or facilitating the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions such that it would be contrary to the EU's common interests.

Roles and responsibilities in state aid control

03 The management of state aid is an integral part of competition policy. To be compatible with the TFEU, member states must show there is a need for state intervention. For example, where state aid can bring about a material improvement that the market cannot deliver itself, the aid must be an appropriate policy instrument to achieve the intended objective. It must also keep distortion of markets to a minimum, and the amounts granted must be proportionate.

04 In the EU, the Commission is responsible, in cooperation with member states, for keeping existing state aid in those states under constant review[3]. As a general rule,

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[1] Article 107 TFEU.

[2] Article 107(2) and 107(3) TFEU.

[3] Article 108 TFEU.

member states must formally notify the Commission of any plans to grant or amend state aid. The Commission then assesses *ex ante* whether the proposed aid is compatible with the internal market. The notification process ends either with a formal approval decision, if the aid is considered compatible, or an opening decision which expresses doubts. That can ultimately lead to a prohibition if the aid is considered to be incompatible. Member states are not allowed to implement a support measure before receiving the Commission's approval. The Commission must confirm the compatibility of proposed measures and thus their legality and regularity.

05 Under the TFEU, the Commission must monitor state aid in the member states and take steps to identify cases of potentially unlawful aid. It has the power to launch investigations and require a member state to recover incompatible state aid. All decisions and the Commission's underlying assessments are subject to review by the Court of Justice of the European Union.

06 Member states are responsible for designing national state aid schemes in line with EU state aid rules. They must ensure that their administrations grant aid to undertakings in compliance with the Commission's decisions. Member states must report information to the Commission on an annual basis, relating to state aid that has been disbursed[4]. To enhance accountability and transparency in terms of how public money is used, they also have to publish information on the beneficiaries of the aid and the aid they have been granted. Such information also enables undertakings to find out if competitors could have unduly benefited from state aid.

07 Certain state aid does not have to be notified to the Commission, for example, if it falls into one of the categories of aid which the Commission has declared to be generally compatible with the TFEU under the General Block Exemption Regulation[5]. This includes aid for disadvantaged regions or for small and medium-sized enterprises (SMEs) under certain conditions. Aid not exceeding certain thresholds (*de minimis* aid[6]) is excluded from state aid control as it is deemed either to have no effect on trade between member states or not to distort or threaten to distort competition.

08 In its annual State Aid Scoreboard, the Commission reports aggregated data on state aid expenditure along its main state aid policy objectives (culture, employment, environmental protection including energy savings, regional development, research

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[4] Articles 5 and 6 of Commission Regulation (EC) No 794/2004.

[5] Commission Regulation (EU) No 651/2014.

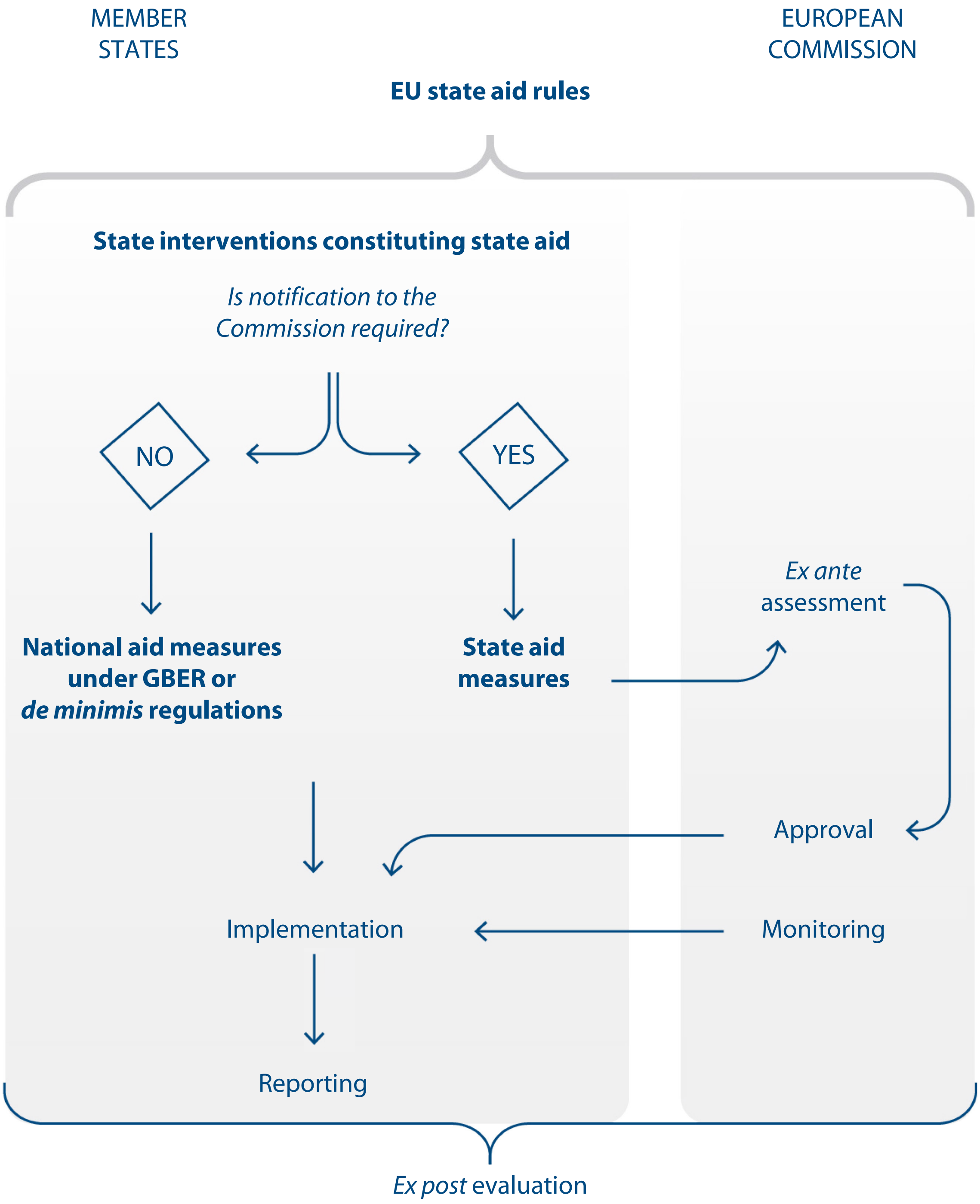
[6] Commission Regulation (EU) 2023/2831.

and development including innovation, remedy for serious disturbance in the economy, etc.).

09 Lastly, for state aid above a certain threshold, member states are required to conduct *ex post* evaluations to enable them to improve the design of future schemes by making them less distortive and more effective, and help the Commission to design better state aid rules.

10 The different aspects of state aid control are shown in ***Figure 1***.

Figure 1 – State aid control process



Source: ECA.

The Commission issues guidelines on how it interprets the state aid legal framework

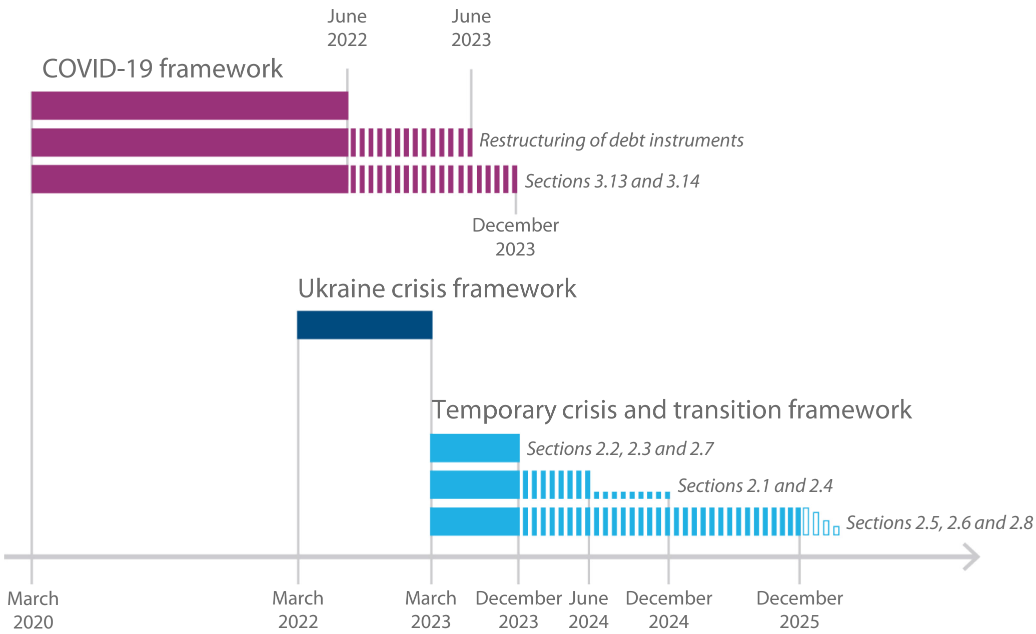
11 Within the legal framework set by the TFEU and secondary legislation (see for example paragraph ***07***) the Commission has a broad discretion in assessing state aid measures and enforcing the EU state aid rules. This involves both economic and social assessments. In order to exercise that discretion, the Commission can adopt guidelines and communications ("soft" law) that define how it assesses the compatibility of a measure with state aid rules.

12 The Commission is bound by the guidelines and communications that it adopts, as long as they do not depart from the rules in the TFEU. These guidelines are not intended to alter existing law but rather to reduce the administrative burden for the Commission and the member states, speed up approval procedures, and enhance legal certainty about how the Commission interprets the legal framework. ***Annex I*** provides an overview of the EU legal and guidance framework for state aid.

The first temporary crisis frameworks related to the COVID-19 pandemic and the Russian invasion of Ukraine

13 First with the onset of the COVID-19 pandemic in March 2020, and then in response to the Russian invasion of Ukraine in February 2022, and to support the transition towards a net-zero economy, the Commission adopted three temporary crisis frameworks on state aid. These were guidelines to enable member states to grant such aid swiftly and thus address the economic disturbance caused (see ***Figure 2***). ***Annex II*** describes the main features of these frameworks.

Figure 2 – The temporary crisis frameworks for state aid control



Note: Individual sections of the frameworks expire(d) at different dates.

Source: ECA.

14 On 19 March 2020, the Commission adopted the first **temporary framework**[7] (the "COVID-19 framework"), recognising that COVID-19 threatened to cause a serious downturn across the whole EU economy. It enabled member states to use the full flexibility to grant aid under state aid rules[8] and complemented other options available to member states under the TFEU where they could also compensate specific companies or sectors for economic damage directly caused by the pandemic[9]. Following adoption, the COVID-19 framework was expanded and amended seven times[10]. It was in force until 30 June 2022, with certain exceptions applicable until the end of 2023.

[7] Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak; 2020/C 91 I/01.

[8] Article 107(3)(b) TFEU.

[9] Article 107(2)(b) TFEU.

[10] C(2020) 2215 of 3.4.2020, C(2020) 3156 of 8.5.2020, C(2020) 4509 of 29.6.2020, C(2020) 7127 of 13.10.2020, C(2021) 564 of 28.1.2021, C(2021) 8442 of 18.11.2021, and C/2022/7902 of 28.10.2022.

15 On 23 March 2022, the Commission adopted a **temporary crisis framework**[11] (the "Ukraine crisis framework") to enable member states to grant limited amounts of aid to businesses directly affected by the Russian invasion or by the sanctions and countersanctions, ensure that businesses had sufficient liquidity, and compensate them for the additional costs caused by exceptionally high gas and electricity prices. In July 2022, the Commission amended the Ukraine crisis framework to reduce the EU's dependency on Russian fossil fuels in line with the REPowerEU Plan, making it possible to grant temporary support for renewable energy, energy storage, renewable heat, and decarbonisation of industrial production processes[12]. After a second amendment in October 2022[13], the Ukraine crisis framework was in force until 9 March 2023.

16 Both frameworks included specific conditions and requirements, which state aid measures of member states had to fulfil to be compatible with the relevant TFEU provisions. These covered, for example, limits to the amount of aid that member states could grant to individual undertakings, restrictions on support for undertakings already in difficulty before the crises, and safeguards regarding potential indirect aid in favour of credit or financial institutions.

The 2023 temporary crisis and transition framework related to the European Green Deal and other industrial policy objectives

17 Under the TFEU, EU and member states are to ensure that the necessary conditions are in place for EU industrial competitiveness, for example, by speeding up structural changes or better exploiting the EU's industrial potential[14]. Both the COVID-19 pandemic and the war in Ukraine had a severe impact on the EU economy and exposed the interdependence of global value chains. The crises demonstrated the critical role of a globally integrated and well-functioning internal market and revealed the importance of strategic autonomy of the EU, which depends, in many areas, on imports from third countries[15]. European companies compete in global markets

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[11] Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia; 2022/C 131 I/01.

[12] C(2022) 5342 of 20.7.2022.

[13] C(2022) 7945 of 28.10.2022.

[14] Article 173 TFEU.

[15] European Commission, EU strategic dependencies and capacities: second stage of in-depth reviews, 2022.

against state-supported companies from other countries, including China, Japan and the US. For example, in 2022, the US adopted the Inflation Reduction Act, a major public support package for investments in domestic energy production, which has a potential to distort international competition[16].

18 In February 2022, the Commission revised the environmental and energy state aid rules and adopted new guidelines on state aid for climate, environmental protection and energy (CEEAG). These guidelines were intended to reflect the policy objectives of the European Green Deal, and enabled member states to support businesses in de-carbonising their production processes and adopting greener technologies. The Commission also amended the General Block Exemption Regulation to facilitate and accelerate support for the green and digital transitions[17], and strengthened the state aid guidelines for important projects of common European interest (IPCEIs)[18], because it expects these projects to contribute to economic recovery, jobs and competitiveness for EU industry. The guidelines supported the implementation of the European Industrial Strategy[19], which seeks to strengthen the internal market and the EU's strategic autonomy as well as to accelerate the green and digital transition of EU industry. The strategy identifies specific industries or sectors such as semiconductors, batteries, or hydrogen as relevant for achieving key EU objectives.

19 On 9 March 2023, as part of its Green Deal Industrial Plan[20] (a strategy to scale up the EU's manufacturing capacity for net-zero technologies) the Commission adopted a **temporary crisis and transition framework**[21]. The aim was to further speed up and simplify procedures for approval of state aid in these sectors while limiting distortions to the internal market and avoiding greater regional disparities that might come about because some member states had greater financial capabilities than others. This

[16] See paragraph ***102***.

[17] Commission Regulation (EU) 2023/1315.

[18] Communication 2021/C 528/02: "Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest".

[19] Communications COM(2020) 102: "A New Industrial Strategy for Europe" and COM(2021) 350: "Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery".

[20] Communication COM(2023) 62: "A Green Deal Industrial Plan for the Net-Zero Age".

[21] Communication 2023/C 101/03: "Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia".

framework prolonged some of the main features of the Ukraine crisis framework (see paragraph *15*) but also introduced new measures, applicable until 31 December 2025, to further accelerate investments in key sectors for the transition towards a net-zero economy (see *Box 1*).

Box 1

Acceleration towards a net-zero economy with the crisis and transition framework

To support the **transition towards a net-zero economy**, the crisis and transition framework enables member states to:

- accelerate the rollout of renewable energy and energy storage,
- support the decarbonisation of industrial production processes,
- grant investment support for the manufacturing of strategic equipment (batteries, solar panels, wind turbines, heat-pumps, electrolysers and equipment for carbon capture usage and storage) and provide state aid for the production of key components and for producing and recycling relevant critical raw materials.

The aid must not exceed certain limits, but the Commission allows higher levels of aid and higher maximum aid ceilings in disadvantaged regions ("assisted areas"). In exceptional cases, in sectors strategic for the transition, member states can provide higher levels of support to individual companies where there is a real risk of investments being diverted away from Europe ("matching aid").

20 In April 2024, the President of the Jacques Delors Institute, Enrico Letta, presented a report requested by the European Council: Much more than a market. The report aims to contribute to the reflection on the future of the single market with specific proposals. It highlights that the progressive relaxation of state aid in response to the recent crises has contributed to limiting the negative effects on the real economy but also produced distortions of competition. It calls for a balance between a stricter enforcement of state aid at national level, progressive expansion of EU level funding support, and a more European approach of the EU's industrial policy while ensuring that the level playing field is not jeopardised by harmful subsidies.

Audit scope and approach

21 This audit assesses how effectively the Commission adapted the EU's state aid framework to deal with recent crises and support sustainable recovery, assessed and monitored crisis-related state aid, and evaluated its impact on competition in the internal market. We examined whether the Commission:

— adapted the framework for state aid effectively to enable member states swiftly to remedy the economic impact of the crises and whether this contributed to targeted allocation of aid;

— reviewed crisis-related state aid cases in good time and based on sound information;

— monitored the implementation of crisis-related state aid effectively and evaluated its impact in good time;

— obtained reliable data from member states on the amounts of state aid granted;

— ensured there was transparency about who received state aid; and

— put forward a consistent state aid framework supporting the European Green Deal and other industrial policy objectives.

22 For this audit, we:

— reviewed the relevant temporary crisis frameworks that the Commission had established for approving national state aid measures since the outbreak of the COVID-19 pandemic in 2020 and the Russian invasion of Ukraine in 2022;

— analysed a sample of 30 crisis-related state aid notifications approved by the Commission from March 2020 to June 2023; and

— examined the information and resources available to the Commission to identify and follow-up infringements of crisis-related state aid rules.

23 As a rule, we selected the sample of notifications focusing on the larger aid budgets planned at the time of the Commission's approval. We also visited Germany, France, the Netherlands, and Poland, and collected information on how the national administrations ensured the compliance of their state aid with these rules and whether they had reported reliable information on state aid expenditure to the Commission. We selected these member states as they disbursed significant amounts of state aid under the crisis frameworks and have relevant state aid measures within the EU industrial policy.

24 While we have conducted audit work on state aid in the past, these reports either do not address the current context[22] or are related to specific aspects of state aid rules such as in cohesion policy and those for financial institutions[23]. Given the unprecedented amounts of state aid, which the Commission approved to remedy the economic disturbance from COVID-19 and Russia's invasion of Ukraine, there is a pressing need for updated and comprehensive scrutiny.

25 We referred to the importance of state aid rules for supporting the achievement of the EU's industrial policy objectives already in other recent reports on batteries[24] and on renewable hydrogen[25]. The fact that many member states chose to use significant amounts of state aid to support economic recovery, strategic autonomy and the transition towards industry with net-zero emissions were additional challenges for the Commission's oversight role.

26 We expect this report to contribute to more effective oversight of state aid in the event of future crises, as well as a more consistent framework for state aid for the years to come.

[22] Special Report 15/2011.

[23] Special Reports 24/2016 and 21/2020.

[24] Special Report 15/2023.

[25] Special Report 11/2024.

Observations

The Commission adopted temporary frameworks swiftly, but conditions for targeting of state aid were not always well-defined

Swift adoption of the first two temporary crisis frameworks by the Commission enabled member states to act promptly

27 In the face of significant economic disturbance, member states must be able to act promptly to support their economies and limit economic damage for undertakings. We therefore assessed how swiftly the Commission put forward its temporary crisis frameworks following the COVID-19 outbreak and the Russian invasion of Ukraine, and whether there was sufficient consultation with member states before the Commission adopted these two crisis frameworks.

28 On 11 March 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak to be a pandemic. Shortly thereafter, member states ordered lockdowns of many business activities in an attempt to contain the further spread of COVID-19. Member states also provided various forms of financial assistance to help undertakings cope with the economic disruption that followed the lockdowns. As a considerable number of these measures constituted state aid, they had to be approved individually by the Commission under the TFEU unless they were covered by existing exemptions (see paragraph ***07***).

29 The Commission adopted a temporary framework for state aid measures during COVID-19 8 days after the WHO declaration. The COVID-19 framework provided a common set of criteria for member states to design their COVID-related state aid measures and committed the Commission to speeding up approval procedures. In the circumstances, the Commission could not conduct a deeper economic assessment of the necessity of the aid. Furthermore, the Commission concluded the consultation with member states on the draft framework in only 2 days, which did not give them sufficient time to conduct an in-depth analysis. In the months that followed, several amendments were needed to keep up with how the pandemic developed and respond to member states' demands for more flexibility.

30 On 23 March 2022, about a month after the Russian invasion of Ukraine, the Commission adopted a temporary crisis framework for state aid measures. Here, member states were given 4 days to provide feedback on the draft framework.

31 We consider that the swift adoption of both temporary crisis frameworks by the Commission enabled member states to act promptly. This provided a common framework for national aid measures, gave legal certainty to member states, and limited their administrative burden. However, such rapid action meant that member states had only very limited time to provide feedback to the Commission.

Insufficient focus of state aid on the undertakings most affected

32 We also assessed whether the Commission had defined objectives and criteria in a way that would ensure that support measures were effectively targeting undertakings most affected by the COVID-19 pandemic while limiting undue distortions to competition.

33 The COVID-19 framework was issued in recognition of the fact that economic activity during and after the COVID-19 outbreak had to be maintained and also that undertakings in good economic health could still suffer significant damage, especially if their liquidity situation deteriorated as a result of the crisis. Member states mostly used the sections of the COVID-19 framework that focused on a need for or shortage of liquidity.

34 However, the conditions under which the Commission considered aid measures to be compatible with the internal market generally did not include any criteria to ensure that the aid addressed liquidity needs. There was also no explicit requirement for member states to demonstrate that undertakings' liquidity issues were caused by the COVID-19 pandemic.

35 A simplified approach for state aid can be justified during a major crisis. This allows member states to provide aid swiftly, in particular in the case of a sudden and generalised economic crisis situation. At the same time, we found that the Commission did not ensure that aid was targeted to the undertakings most affected by the crisis, and that it sometimes went further than addressing a liquidity shortage. Two examples of schemes we examined as part of our sample are provided in ***Box 2***.

Box 2

Intervention logic of national schemes under the COVID-19 framework: Germany and the Netherlands

In **Germany**, low-interest loans for undertakings were a substantial part of pandemic support. For federal lending schemes, implemented under sections 3.1 and 3.3 of the temporary framework, undertakings claiming a liquidity shortage did not need to prove a direct or indirect link to the pandemic.

In the **Netherlands**, direct grants were provided to undertakings under a scheme approved in section 3.1 of the temporary framework, intended to address undertakings' liquidity shortage. Aid amounts were based on lost turnover and fixed costs. Undertakings did not have to provide evidence that lost turnover was caused by the COVID-19 pandemic, and the fixed costs included the depreciation of fixed assets. Although including depreciation in the calculation may support businesses in maintaining the level of investment, there is no direct link between depreciation and liquidity needs.

36 We also note that reports published by the national supreme audit institutions of Germany and France on national aid schemes related to COVID-19 suggest that, in some sectors state aid could reach its short-term objectives although it was not necessarily proportional to the damage undertakings had suffered or to their actual needs, which indicates that state aid could have been granted beyond what was needed[26].

37 Compared to the COVID-19 framework, the objectives of the Ukraine crisis framework were more clearly defined, with an emphasis on liquidity support measures. Member states were only allowed to grant aid to undertakings that were affected by the crisis after the Russian invasion of Ukraine, or they had to determine the aid amount as a function of the increase in natural gas and electricity costs. However, for both temporary crisis frameworks, the Commission has never made public the economic reasoning behind the maximum aid thresholds per undertaking or how economic sectors and sub-sectors particularly badly affected by the crisis, which could receive higher aid, were defined.

[26] Bundesrechnungshof: Final communication to the Federal Ministry of Economics and Climate Protection about the audit of extraordinary economic aid (November and December aid) for 2020; Cour des comptes: State-guaranteed loans – An effective response to the crisis, necessary follow-up.

38 The Commission amended the Ukraine crisis framework in July 2022 in line with REPowerEU, a plan to reduce the EU's dependency on Russian fossil fuels. Support for renewable energy and the decarbonisation of industrial production processes was already possible under the guidelines on state aid for climate, environmental protection and energy (CEEAG)[27], but given the Russian invasion of Ukraine, the Commission considered that three main simplifications were needed to accelerate investments on a temporary basis:

— removing the requirement to carry out a public consultation on competition effects and proportionality of support measures as usually required under the CEEAG;

— facilitating public funding without competitive bidding procedures, provided that the maximum percentage of state aid that could be granted per beneficiary ("aid intensity") was respected;

— no longer applying all the common assessment principles defined in the state aid modernisation package[28]; in particular, the Commission would not assess potential negative impacts on competition or carry out a "balancing test" to check that the negative effects of such measures could be offset by positive effects as required under the CEEAG.

39 Under the CEEAG, member states had to demonstrate that aid was needed and that a project (or the reference project for schemes) would not be carried out without such aid. Following the amendment of the Ukraine crisis framework, the Commission generally considered the aid as having an incentive effect (in other words, that the beneficiaries would not make the investments without the aid). This, however, was not supported by an economic analysis.

40 For the Ukraine crisis framework, we consider that the Commission initially established appropriate objectives and criteria to ensure that support measures effectively targeted undertakings affected by the crisis. Later amendments adopted after REPowerEU led to further simplification removing certain safeguards against the risk of market distortions. We also found that the Commission did not conduct

[27] Communication 2022/C 80/01: "Guidelines on State aid for climate, environmental protection and energy 2022".

[28] Communication COM/2012/0209: "EU State Aid Modernisation (SAM)"; SWD(2020)0257: Commission Staff Working Document Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance, p. 20.

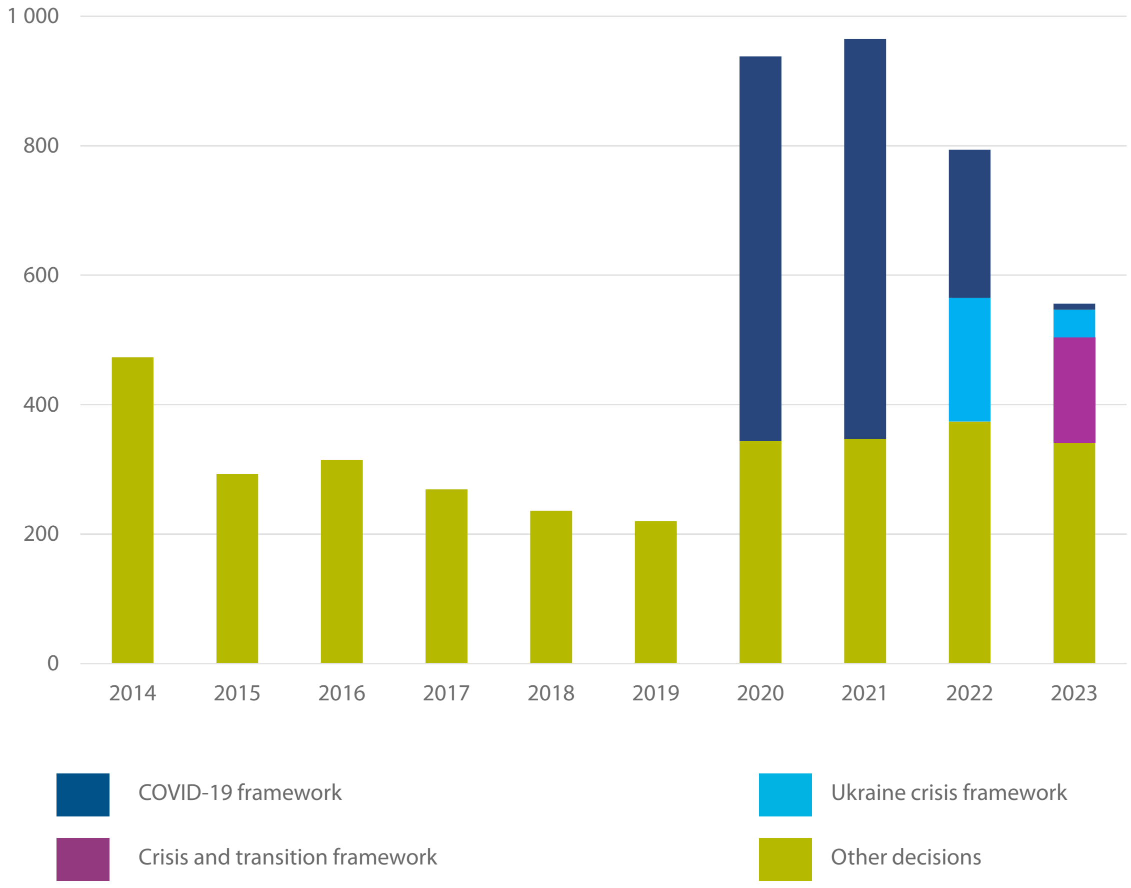
economic assessments prior to the adoption of the frameworks to ensure that aid was limited to the minimum necessary and that the COVID-19 framework did not sufficiently target the undertakings most affected by the crisis.

The Commission's review of crisis-related state aid cases was rapid but often based on limited information on measures adopted by member states

Significant increase in state aid decisions by the Commission since the COVID-19 outbreak

41 During the COVID-19 pandemic in 2020 and 2021, the number of state aid decisions adopted by the Commission nearly quadrupled compared to pre-2020 levels (from around 250 to 950 each year). Most of the increase was due to decisions under the COVID-19 framework (around 600 each year). In 2022, the total number of state aid decisions fell to around 800, of which around half were taken either under the COVID-19 framework or under the Ukraine crisis framework. In 2023, the number of decisions fell to fewer than 600, one third of which were related to either the Ukraine crisis framework or the crisis and transition framework (see ***Figure 3***).

Figure 3 – Number of state aid decisions per year, 2014-2023



Source: ECA based on Commission data.

The Commission assessed the majority of the national aid schemes notified under the first two temporary crisis frameworks in less than a month

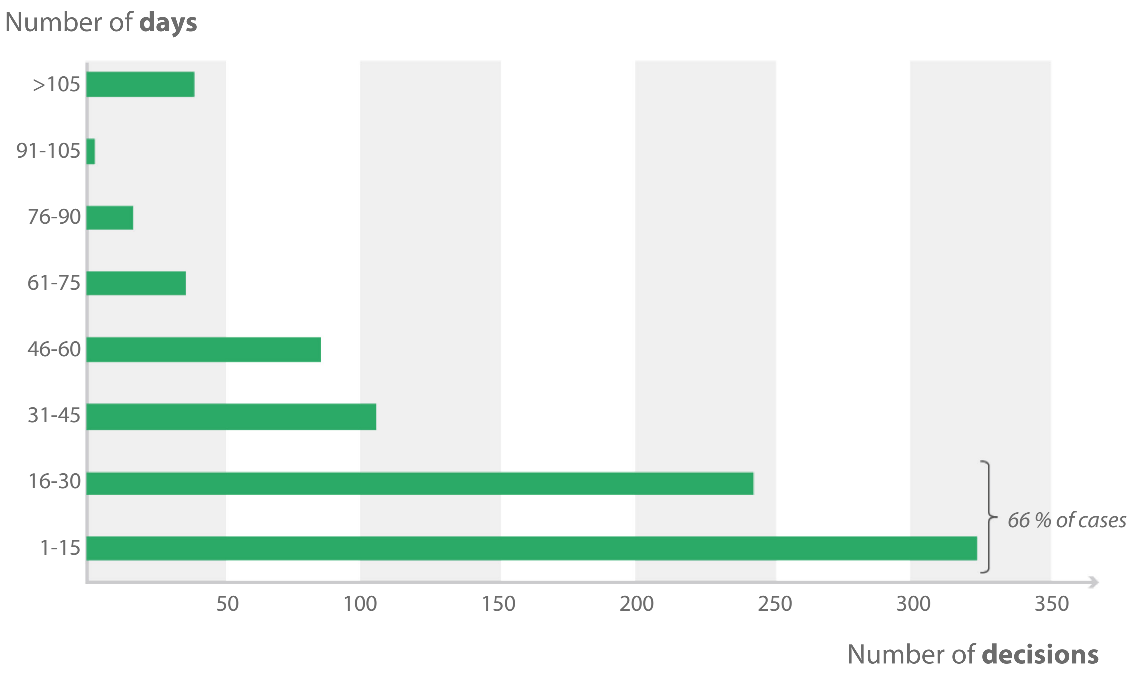
42 Member states had to notify all state aid measures they intended to adopt under the crisis frameworks to the Commission and provide supporting documents such as the draft national legislation governing the intended measures. In general, the Commission has 2 months to adopt a decision following the complete notification of a measure[29]. Given the circumstances, the Commission had to assess and approve these measures as fast as possible while avoiding undue distortion of competition. We examined how quickly the Commission had conducted its assessments.

43 The Commission approved 693 measures under the COVID-19 framework and 157 under the Ukraine crisis framework. The number of decisions does not include

[29] Article 4(5) of Council Regulation (EU) 2015/1589.

later amendments to these measures. In 66 % of the cases, less than 1 month elapsed between member states' first contact with the Commission ("pre-notification") and the Commission's final decision after formal notification (see ***Figure 4***). This is in contrast to an average of 2.5 months for assessments of COVID-related aid measures approved outside the TF. As the crisis and transition framework was only adopted in March 2023 and assessment procedures were ongoing, we did not assess the duration of Commission assessment procedures for decisions taken under the crisis and transition framework.

Figure 4 – Duration of Commission assessment under the framework for COVID-19 and the Ukraine crisis framework



Note: Including pre-notification, excluding amendment decisions.

Source: ECA, based on Commission data.

44 We also found that only a few decisions of the Commission for approving state aid have been challenged in the EU Courts, which upheld them in most cases. For instance, in the aviation sector, which was particularly hit by the COVID-19 restrictions competitors challenged the Commission decisions taken under both the TFEU and the COVID-19 framework on the grounds that the Commission had not properly assessed the cases in all relevant respects, or had failed to state reasons. By the end of June 2024, we found that the EU General Court and the Court of Justice had delivered judgments on COVID-19 state aid to airlines in 26 cases. The General Court annulled Commission decisions in 10 cases, while in the 16 remaining cases, Commission decisions were upheld. The Court of Justice dismissed further appeals in six of these cases.

45 We therefore consider that following the adoption of the first two temporary crisis frameworks, the Commission succeeded in significantly reducing the length of the assessment procedure. Decisions approving state aid were mostly upheld by EU Courts.

Commission often lacked details on measures implemented by member states under the temporary crisis frameworks, notably "umbrella schemes"

46 Under the temporary crisis frameworks, member states had to demonstrate that state aid measures were necessary, appropriate and proportionate to remedy serious disturbance to the economy of the member state and that all framework conditions were respected[30]. We therefore examined whether the Commission checked that measures complied with the criteria set out in the frameworks when assessing the notified national schemes and other applicable state aid rules.

47 Based on our analysis of a sample of 30 crisis-related state aid notifications approved by the Commission, we found that the Commission limited its assessment to verifying whether measures complied, or member states committed to comply with the frameworks. However, it did not examine the details of each notified scheme, including the national conditions for granting aid. Moreover, it did not assess whether aid could be provided by less distortive means, or whether member states had already adopted other general measures or state aid measures, which addressed undertakings' liquidity needs. Since it was unclear how the crises would develop and support from the state was needed quickly, member states were often unable to provide clear information on budgets and sent figures that were more or less arbitrary. Under state aid rules, the Commission must, however, be able to examine the effects of a scheme on competition, which entails assessing the budgets notified by member states. During the crises, the Commission's assessment did not examine the overall amount of aid notified.

48 In this context, we noted that individual member states notified "umbrella schemes" to the Commission. These consisted of several crisis response measures and

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[30] See temporary framework COVID-19, paragraph 19, Ukraine crisis framework, paragraph 51, and crisis and transition framework, paragraph 57.

often several aid instruments such as grants, loans or different types of tax relief. These measures and instruments had to comply with the temporary framework, but the national conditions for granting the aid were unknown. Approval allowed member states to adopt many different aid measures without further notification to the Commission, and thus significantly reduced the administrative burden. The Commission approved such schemes under all frameworks on the condition that member states committed to respecting all criteria.

49 Germany was one of the many member states that notified umbrella schemes to the Commission under the COVID-19 framework and made extensive use thereof. The content of its federal umbrella schemes was essentially copied from the COVID-19 framework, without further details about the different support measures. These still had to be designed and adopted at the appropriate national administrative levels. An example of one such scheme in Germany is given in ***Box 3***.

Box 3

The use of "umbrella schemes": an example from Germany

In Germany, under the federal framework "Small amounts of aid 2020" (Commission case No. SA.56790, including successive schemes), national and regional authorities adopted 231 different COVID-19-related support measures. These covered different aid instruments such as grants or subsidised loans awarded under specific conditions and involving more than €90 billion in nominal state aid expenditure.

These support measures underlying the umbrella scheme were not assessed or subject to approval by the Commission and were implemented under the Commission decision approving the umbrella scheme.

50 When assessing notifications of umbrella schemes, the Commission only had very limited information about the nature and extent of the specific support measures, which member states were adopting and implementing under these schemes. The Commission essentially relied on member states complying with the conditions of the notified schemes, which the Commission had found to comply with the temporary frameworks, without it having further information on the funding mechanisms they eventually put in place. While the exact number of approved umbrella schemes is not available, we estimate that schemes covering more than one aid instrument account for over a third of the total amount of COVID-19-related aid approved by the Commission. The number is likely to be higher as there are also schemes that cover a single aid instrument, which consist of many underlying measures. We consider that the use of umbrella schemes by member states poses a particular risk for the Commission's monitoring of state aid.

Member states' checks for compliance with crisis-related state aid rules were largely based on beneficiaries' self-declarations

51 Under Article 108(1) TFEU the Commission, together with the member states, has to keep existing aid systems in those states under constant review. The temporary crisis frameworks set maximum amounts of aid for each undertaking and contained sometimes complex cumulation rules if undertakings received aid under the same or different framework sections. The role of the member states and their authorities in state aid is to ensure compliance with the rules and support the Commission in its tasks. For the four member states we visited during this audit, we examined whether the relevant member state authorities had put in place means of checking compliance and whether these were effective.

52 While in the Netherlands crisis aid is mostly centrally managed, in the larger member states, many authorities are involved in the management of state aid. However, of the four member states we visited during this audit, only Poland had a central state aid register. All relevant authorities had to upload state aid data within 7 days of it being granted and other authorities were able to use this data for checks. Such a register is not mandatory in the EU but member states may establish one voluntarily. By 1 January 2026 member states must ensure that at least information on *de minimis* aid granted is registered in a central register at national or EU level to monitor the respect for the *de minimis* aid ceilings[31]. In the absence of a central register, and to confirm compliance with the cumulation rules when granting aid, authorities in Germany, France, and the Netherlands to a large extent relied on undertakings' self-declarations.

53 In 2020, other support became available through the €25 billion Pan European Guarantee Fund (PEGF) set up by the EIB Group in response to the COVID-19 pandemic and backed by 22 member states. PEGF aid could be added to other aid measures implemented by member states, provided that, for certain measures, the overall amount of loans did not exceed the ceilings laid down in the COVID-19 framework. However, only the relevant national authorities in Poland had information on final PEGF beneficiaries, because a complementary scheme was being implemented at national level. In the other member states we visited, the relevant authorities did not

[31] Article 6 of Commission Regulation (EU) 2023/2831.

have this information. There is therefore a risk that the aid granted through the PEGF was not taken into consideration when applying the cumulation rules.

54 Under the COVID-19 framework, aid could not be granted to undertakings that were already in difficulty before the pandemic, i.e. on 31 December 2019, although exceptions applied for micro and small enterprises. To check compliance with this requirement, the member states visited usually relied on undertakings' self-declarations.

55 We consider that member states did not always have effective control mechanisms in place and often relied on beneficiaries' self-declarations to ensure that state aid was awarded in line with the conditions of the temporary frameworks and the Commission's decisions authorising the measures. In those member states where many authorities are involved in granting aid and there is no central register for state aid, it was challenging for the national authorities to cross-check cumulation rules.

The Commission reduced its monitoring of state aid schemes during the crises and has not yet evaluated the impact of temporary frameworks on competition

In spite of significantly higher state aid expenditure since 2020, the Commission has reduced its efforts to monitor state aid

56 As part of its supervisory role, the Commission has to check whether member states comply with its state aid decisions, including notified budgets, and general state aid rules (such as the General Block Exemption Regulation). The Commission therefore conducts a periodic monitoring exercise[32] on the basis of publicly available information, information received from market participants on how member states apply state aid rules, and targeted in-depth reviews for a number of aid schemes. Up till now, the Commission has selected those schemes using a risk-based approach. We examined how the Commission's monitoring changed over time and whether the results were adequate and available in good time to inform the Commission about the effectiveness of the temporary frameworks.

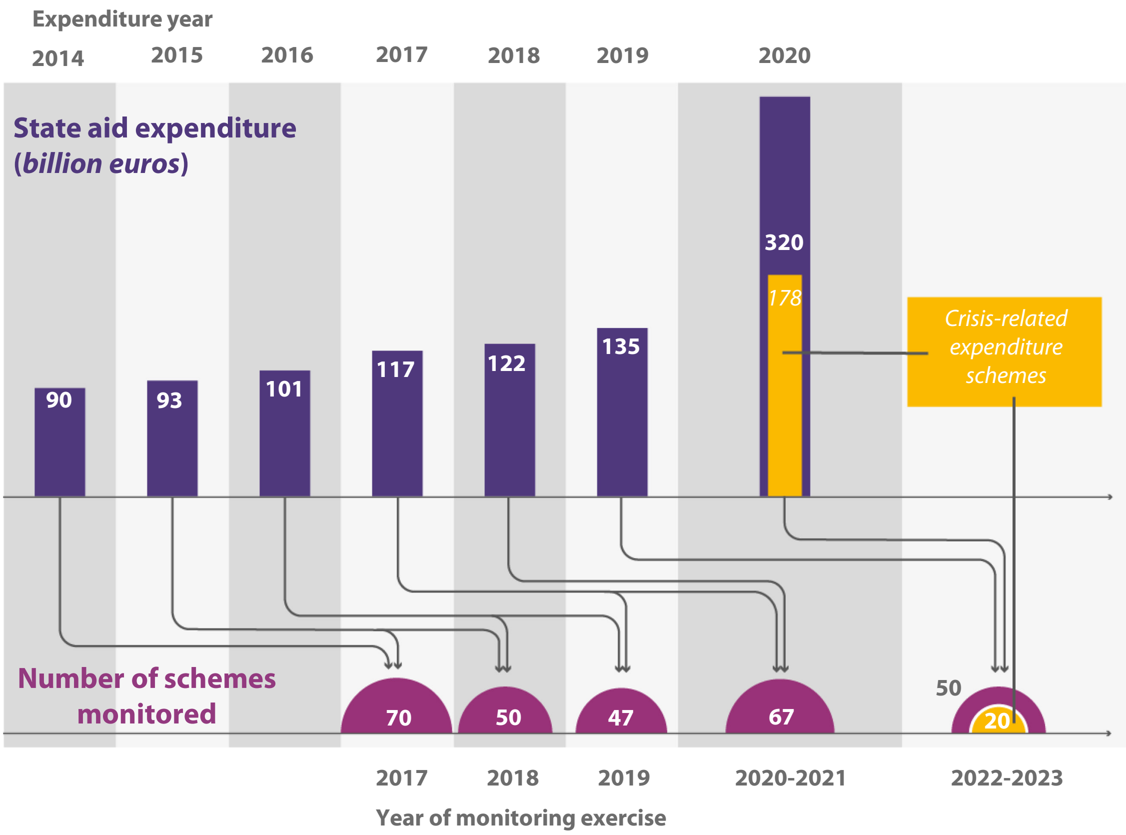
57 Since 2020, the Commission has continued to collect general information on the implementation of state aid. However, its monitoring exercise was not intended or

[32] SWD(2020)0257: Commission Staff Working Document Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance, p. 37.

designed to identify unnotified aid but instead to verify the correct implementation of aid schemes. Apart from the possibility for interested parties to lodge complaints against alleged unlawful aid, the Commission currently has no structured approach to detect cases of unnotified aid.

58 Before 2020, the Commission had selected between around 50 and 70 aid schemes every year for an in-depth review. Due to the increased workload with regard to the assessment of notified measures (see paragraph *41*), in 2020, the Commission decided to conduct, temporarily for the duration of the crises, in-depth monitoring only once every 2 years (see *Figure 5*). In 2024, the Commission decided to return to annual monitoring.

Figure 5 – Annual state aid expenditure, 2014-2020 and number of schemes monitored, 2017-2023



Source: ECA based on Commission data.

59 This change had several consequences.

- It led to an increased time lag (i.e. an extra year) between the date of the monitoring exercise and the period covered. From the outset, this reduced the usefulness of the monitoring information for the Commission.

- As a similar number of schemes were checked in 2021 and 2023 as before the crisis (between 50 and 70), the Commission’s monitoring was at roughly half of the pre-crisis level, despite the fact that there had been a significant increase in the number of national schemes and aid notified since then.

- Aid notified and granted under the COVID-19 framework in 2020 was only covered by monitoring in 2023, but the monitoring also covered pre-crisis aid granted in 2019. In other words, the Commission’s monitoring exercises have only covered some of the aid notified and granted under the COVID-19 framework and no aid notified under the Ukraine crisis framework. Again, this reduces the insights that the Commission can gain from its monitoring.

60 When we examined the 2022-2023 monitoring exercise, we found that the Commission’s risk assessment was inadequately documented. It did not allow us to conclude that all potential risks had been systematically identified, evaluated and prioritised.

61 For each selected scheme subject to an in-depth review, the Commission assessed the compliance of the national legal bases for granting the aid with its decision approving the scheme or, where applicable, with the COVID-19 framework. It also checked a small sample of individual aid awards. While these checks were comprehensive and well-documented, the small sample size (8 to 10 aid awards for each selected scheme) did not allow the Commission to draw conclusions on whether the schemes’ overall implementation was in line with state aid rules. Where granting authorities had relied on undertakings’ self-declarations without carrying out any further checks to confirm that they were compliant with cumulation rules or that they were not in difficulties before the crisis, the Commission did not carry out any additional checks but invited member states to establish a mechanism to check the self-declaration information.

62 We consider that the way in which the Commission collected and analysed general state aid information did not sufficiently focus on detecting state aid that had not been notified. The Commission’s risk assessment did not allow us to conclude that all potential risks had been systematically identified, evaluated and prioritised. The changes made to the Commission’s periodic monitoring of state aid in 2020 resulted in a more limited coverage of national schemes and a greater time lag. So far, only the first year of the COVID-19 framework has been covered.

The Commission has not yet evaluated the impact on competition in the internal market of measures adopted under the first two crisis frameworks

63 Evaluations conducted under state aid rules provide evidence about both the direct impact of the aid on beneficiaries and the indirect effects, for example, whether the aid was proportional or whether any distortions it might cause in the internal market would be minimised. The results of such evaluations should be taken into account when designing new frameworks or state aid schemes. We therefore reviewed whether the Commission had taken the necessary steps to ensure that the impact of the first two crisis frameworks on competition in the internal market was evaluated.

64 Evaluations by member states are required for a range of aid schemes, including those falling under the General Block Exemption Regulation, when the scheme's annual aid budget exceeds €150 million, as well as under various state aid guidelines, such as the guidelines on state aid for climate, environmental protection and energy, or the framework for state aid for research and development and innovation. The member states concerned usually draft an evaluation plan for approval by the Commission, taking into account the common methodology for state aid evaluation. However, given the need for urgent adoption, the temporary crisis frameworks did not include provisions relating to evaluation.

65 Three out of four member states visited made some effort to look into the impact of crisis-related state aid. In Germany and the Netherlands, the relevant ministries were planning to conduct evaluations of aid programmes in 2024 and 2025 in this regard.

66 By June 2024, the Commission had conducted a study on the impact of state aid related to COVID-19 on turnover and the probability of default of undertakings. The study concludes that such aid played a significant role in helping firms throughout the crisis[33]. However, the study did not cover the effects of the aid on competition, for example in sectors with a potentially higher risk for distortion. Since reliable data from member states was lacking, the study was limited to Spain, Italy, and Poland, thereby omitting those member states with the highest state aid expenditure. The Commission has not yet planned an evaluation of the impact of the Ukraine crisis framework.

[33] Study on the effectiveness of COVID-Aid on firms.

67 We consider that the lack of *ex post* evaluation for the first two temporary crisis frameworks is a lost opportunity to learn how to design better-targeted measures in the future while minimising the distortion of competition.

Member states granted aid under the temporary frameworks below the amounts approved, but reporting is unreliable

68 The Commission relies on member states to provide timely, comprehensive and accurate data. Member states thus need to have systems in place to collect the relevant information from the granting authorities for state aid. We therefore examined whether member states had reported such data to the Commission and whether it had used this data for its monitoring and reporting. We also assessed whether the Commission had provided sufficient transparency about crisis-related state aid and how effectively it had supervised member states' compliance with their transparency obligations for their reporting of state aid.

Data shows that crisis-related state aid expenditure remained significantly below the amounts initially approved

69 According to the Commission, member states had notified COVID-19 state aid measures amounting to €3.05 trillion, out of which €2.86 trillion concerned measures under the temporary framework for COVID-19. However, these were only the nominal values and were not equivalent to the potential advantage passed on to undertakings (the "aid element"), which depends on the type of aid instrument. For example, the advantage is significantly lower for repayable instruments, such as loans, than for grants.

70 Member states reported state aid expenditure for COVID-19 schemes that was significantly lower than the budgets for state aid that they had notified to the Commission, and which amounted to around €1.1 trillion in nominal amounts, corresponding to an aid element of €472 billion. For measures following the Russian invasion of Ukraine, the situation was similar by the end of 2022, when member states had reported over €66 billion of expenditure in nominal amounts or around 10 % of the notified budgets (see ***Table 1***).

Table 1 – Notified budgets and expenditure under the temporary frameworks (by end 2022)

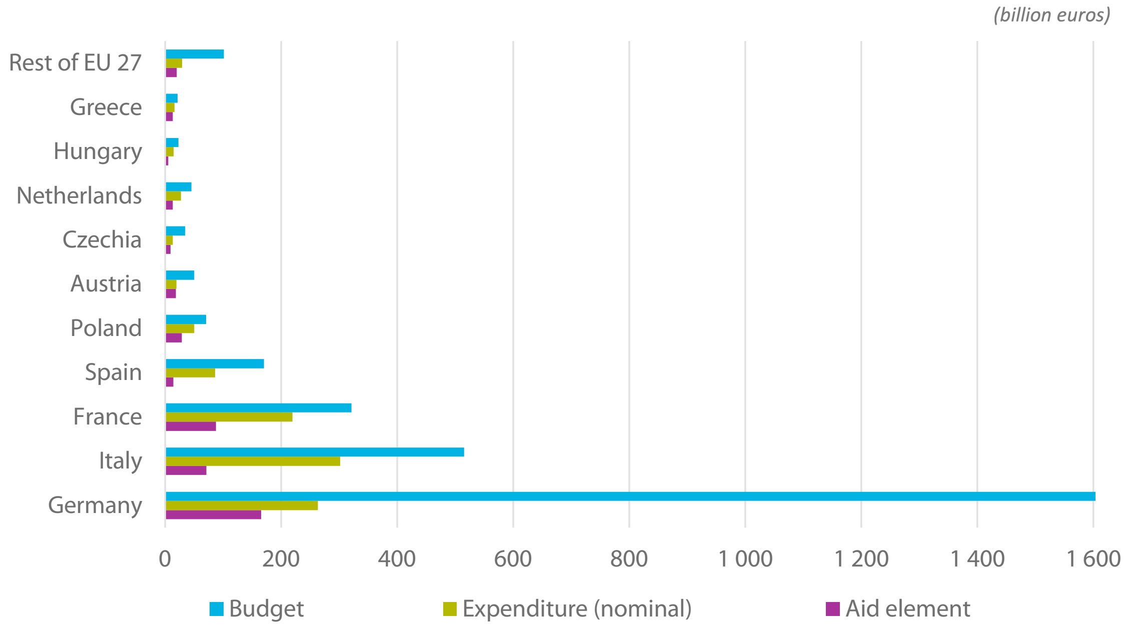
(billion euros)

	Notified budgets	Expenditure (nominal amounts)	Aid element
COVID-19	3 049	1 097	472
Ukraine crisis	679	66	39

Source: State Aid Scoreboard 2023.

71 There were however significant differences in the overall amounts notified by member states. For example, under the COVID-19 framework, Germany had notified crisis measures which accounted for more than half of the total budget notified by all EU-27 member states. However, by the end of 2022, Germany's reported nominal expenditure was around 15 % of the initially notified budgets, as shown in ***Figure 6***.

Figure 6 – COVID-19 – expenditure compared to notified budgets by end 2022

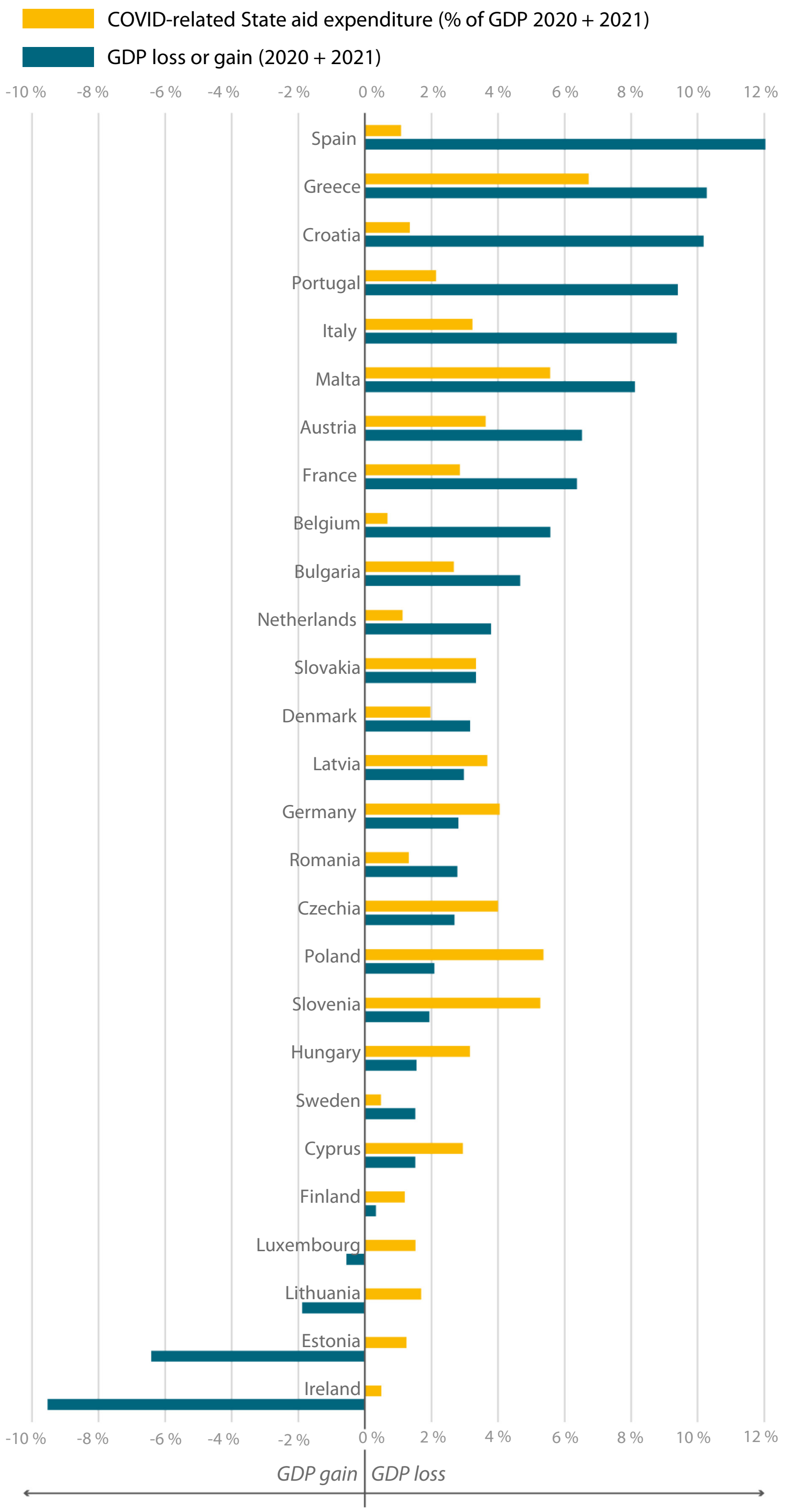


Source: ECA, based on State aid Scoreboard 2023.

72 By the end of 2022, Germany, France and Italy had reported the largest amounts of state aid expenditure under the COVID-19 framework (see ***Figure 6***). However, this needs to be seen in the context of the size of their economies and the economic damage they suffered from the COVID-19 pandemic. There is no sound methodology to assess this relationship, but as a very rough approximation in its scoreboard for state aid in 2022 and 2023, the Commission compared the expenditure to gross domestic product (GDP) and the GDP loss rate in 2020 and 2021, assuming that the GDP loss in these 2 years was almost entirely due to the COVID-19 pandemic[34]. Based on this comparison, Germany, France and Italy did not disburse unusually high amounts of aid (see ***Figure 7***). We note that on the basis of this analysis for the member states, the Commission further concluded that the temporary state aid measures adopted during the COVID-19 crisis were proportionate and necessary in view of the economic damage suffered. However, as there is limited correlation between the GDP loss and state aid expenditure at member state level, without a thorough analysis at sectoral level it is questionable whether one can draw such conclusions.

[34] State aid Scoreboard 2023, p. 286.
State aid Scoreboard 2022, p. 43.

Figure 7 – State aid expenditure (aid element) compared to GDP change by end 2021



Note: GDP loss rate calculated as gap between actual GDP and trend GDP (sum of loss rate in 2020 and 2021).

Source: ECA, based on State aid Scoreboard 2023 and AMECO database (accessed 15 May 2024).

73 In a state aid policy brief from February 2024[35], figures from the Commission indicated that it had approved state aid measures for nearly €730 billion between March 2022 and end of June 2023, either under the Ukraine crisis and crisis and transition framework or directly under the TFEU, with €141 billion in nominal amounts granted to undertakings by member states. The amount of aid notified differs significantly between member states. Germany and France notified more than 70 % of state aid in absolute amounts but as some of the measures are still in force, it is too early to draw any conclusions about actual uptake.

The Commission lacks reliable data on total crisis-related state aid granted by member states, and data by economic sector or size of businesses

74 The Commission's main tool for reporting is the state aid scoreboard (see paragraph ***08***). It is based on member states' annual state aid expenditure reports and is intended to provide a transparent and publicly accessible source of information on the overall state aid situation and the Commission's synopsis thereof[36]. For reporting, member states use the Commission's state aid reporting tool (SARI2).

75 For our sample of crisis-related notifications, during our audit visits we found that not all member states reported comprehensive and accurate data on state aid to the Commission (see examples from Germany and France in ***Box 4***).

[35] The use of crisis State aid measures in response to the Russian invasion of Ukraine (until end-June 2023), European Commission, 2024.

[36] Article 6(2) of Commission Regulation (EC) No 794/2004.

Box 4

Shortcomings in reporting state aid data: examples from Germany and France

In **Germany**, the relevant federal ministry used a complex process to collect data on crisis-related state aid from federal and regional authorities and public banks. During our audit, we identified reporting errors of more than €30 billion due to a largely manual procedure for collecting and centralising the data and incorrect interpretation of the Commission's reporting guidelines. For some aid schemes, at the time the aid was granted, the authorities could not allocate the expenditure to a specific Commission decision, as this was dependant on the total amount undertakings eventually received and which was not known at that time.

In **France**, the relevant coordinating body had to collect data from the granting authorities such as public banks, ministries and local authorities. For some large aid schemes, expenditure reported in the Commission's state aid reporting tool and its survey varied significantly. For one of the cases reviewed by us, the difference amounted to more than €23 billion. The French national authorities could not explain why this was the case and which amounts were correct. In addition, the French authorities calculate the aid element differently from the Commission. The latter meant it was not always possible to distinguish the nominal amounts of loans granted from the aid paid, affecting the cross-country comparability of data.

76 When a state aid measure was amended or extended, member states reported the amounts paid after the update had entered into force under the new decision number in the state aid reporting tool. This was in line with Commission guidelines. However, as amendments sometimes related to several schemes approved by different Commission decisions, it was not always possible to attribute the amounts to a particular aid scheme or instrument, which thus resulted in inaccurate reporting. This was a particular weakness for umbrella schemes (see paragraph *48*).

77 None of the three temporary crisis frameworks included any specific reporting requirements by economic sector or by type of undertaking over and above the annual reporting of expenditure. Member states made extensive use of the possibility in the state aid reporting tool to report expenditure as not sector-specific or to select multiple sectors per aid instrument. As a result, the Commission does not have a breakdown of state aid data by sector or type of undertaking.

78 Between 2020 and 2023, the Commission conducted six voluntary surveys in which it asked member states to provide details on the aid awarded by scheme, instrument, type of undertaking and sector. This last criterion was important, because individual economic sectors, e.g. tourism, aviation, the aerospace industry and energy suppliers benefited from particularly high levels of state aid during the crises. During our audit, we found that survey responses were often inaccurate or incomplete, or contradicted data in the Commission's state aid reporting tool, for example relating to information provided on the economic sector or type of undertaking. Moreover, member states were not made aware in advance that they would have to collect and provide this information to the Commission.

79 The Commission used the results of the surveys in state aid policy briefs in which it provided an overview of the use of crisis-related state aid. To date, the Commission has published five such policy briefs[37]. It has provided information therein on the uptake of these measures and the instruments used, but there has not yet been any detailed analysis of the aid awarded per sector or type of enterprise. Despite these gaps, in 2022, the Commission concluded that the temporary state aid measures adopted during the COVID-19 crisis were proportionate and necessary in view of the economic damage suffered (see paragraph ***70***)[38].

80 Based on our analysis, we consider that the Commission does not currently have complete and reliable data on the state aid granted by member states. It neither has data on overall amounts of such aid nor the amounts granted to different economic sectors, including those where the EU is pursuing an active industrial policy (such as batteries, hydrogen, semiconductors). The cross-country comparability of the data is affected by the limited quality of data reported by member states. This hampers its ability to assess the effectiveness of the temporary crisis frameworks and the effect of state aid in contributing towards the EU's industrial policy objectives. We consider that it is difficult to draw conclusions on whether the crisis aid was proportional and necessary without state aid sectoral data. The economic damage differs considerably between sectors, and aid instruments and levels of support per sector may also vary significantly between member states. Nonetheless, the Commission does not have adequate data by sector.

[37] The use of COVID-19-related state aid measures by EU Member States (Issue 1/2021, Issue 1/2022); Looking back at the State aid COVID Temporary Framework: the take-up of measures in the EU (Issue 3/2022); The use of crisis State aid measures in response to the Russian invasion of Ukraine (Issue 1/2023, Issue 1/2024).

[38] State Aid Scoreboard 2022, p. 44.

The Commission and some member states did not ensure sufficient transparency about the beneficiaries of state aid

81 In 2012, as part of state aid modernisation, the Commission introduced enhanced transparency rules so that better information could be provided about the spending of public money and companies could check whether aid granted to competitors was lawful. Under the temporary crisis frameworks, the Commission required member states to publish relevant information on each individual amount of aid above €100 000 within 12 months of it being granted (above €10 000 for agriculture and fisheries).

82 As crisis-related state aid could be approved under various provisions of Article 107 TFEU, simplified transparency rules applied. For example, there was no transparency obligation for aid granted under Article 107(2)(b) TFEU to an undertaking that had to suspend business due to a national lockdown during the COVID-19 pandemic. Similarly, no transparency obligations applied for beneficiaries of COVID-related aid measures outside the temporary frameworks unless these decisions related to individual undertakings. Where transparency was mandatory, we noted that there were sometimes different deadlines of between 3 and 12 months from the time aid was granted but we were not able to identify clear reasons for this.

83 For their reporting, the Commission had provided member states with an IT tool, the transparency award module (TAM), where they could upload data on beneficiaries and amounts granted. Alternatively, member states were also free to use national or regional state aid websites for this purpose.

84 Three of the four member states we visited, Germany, France and the Netherlands, use the TAM. However, we found that information on individual aid amounts for a large majority of measures was often published late in these three member states. In Germany and France, it was sometimes delayed for up to 2 years beyond the 12-month deadline. In Germany, some granting authorities decided to use regional websites to publish transparency data, which resulted in fragmentary publication and incomplete TAM data. In addition, for all three member states using the TAM, we identified other shortcomings in the data disclosed (see example of France in ***Box 5***).

Box 5

Inconsistent and incomplete data in the TAM: France

By the end of 2022, France had reported expenditure of €123.7 billion for a COVID-19 guarantee scheme approved by the Commission (with subsequent amendments) under case no. SA.56709.

We found that €23.6 billion (19 % of that total) was for aid awards below €100 000. No reporting of these were required under the transparency rules.

By the end of 2023, the TAM contained beneficiaries accounting for €337 million, i.e. less than 0.4 % of the €100.1 billion of aid subject to the transparency obligations.

85 Poland uses its own reporting tool and publishes state aid information on a national website. Compared to the other three member states, the Polish transparency register was comprehensive and aid awards were published in good time.

86 The Commission periodically reviews member states' compliance with transparency obligations by comparing the state aid expenditure data they have recorded in its reporting tool (SARI2) with the records published in the TAM. In 2023, the Commission assessed member states' compliance with transparency obligations for aid granted in 2021. During its previous review in 2022, it assessed member states' compliance for 2018, 2019 and 2020. Although such checks provide valuable information on member states' compliance with transparency obligations, the approach has obvious limitations. Transparency and expenditure data are not directly comparable and the Commission has no assurance that data in SARI2 are accurate. Therefore, the Commission cannot provide a reliable estimate of the level of non-compliance with transparency provisions.

87 The Commission followed up cases of non-compliance in relation to transparency obligations with the member states concerned. However, the only legal means by which the Commission can enforce transparency obligations is infringement procedures. So far, the Commission has not taken this step.

88 The Commission has not yet published information on compliance with transparency obligations. Users of the Commission's IT tool or member states' own state aid websites are thus currently not aware that the information is potentially unreliable.

89 Due to an inconsistent framework for transparency and as not all member states meet their transparency obligations, we consider that the required transparency about the beneficiaries of state aid is currently not ensured.

Inconsistencies in the different frameworks and guidelines for state aid currently supporting the European Green Deal and other industrial policy objectives

State aid is increasingly used to support the achievement of industrial policy objectives

90 The EU's strategic independence and the need to maintain and develop key industries within the EU has become a major political topic in recent years. The energy crisis that followed Russia's invasion of Ukraine highlighted the EU's dependence on fossil fuels and accelerated efforts towards net-zero carbon emissions[39]. In recent years, the EU's industrial policy has also evolved from a more horizontal approach to one where support is provided to selected industries. This is also reflected in the rules for state aid where, after the adoption of the IPCEI guidelines and the CEEAG, the crisis and transition framework marks the latest step in this process. While the IPCEI guidelines and the CEEAG apply in principle to all sectors, the crisis and transition framework applies to a set of enumerated sectors strategic for the transition towards a net-zero economy[40] (see ***Box 1***).

91 The Commission identified accumulated investment needs of around €92 billion over the 2023-2030 period to boost the EU's manufacturing capability for certain strategic net-zero technologies, focusing on wind, solar panels, heat pumps, batteries, and electrolysers for hydrogen[41]. State aid has also become more important in supporting the development of production for semiconductors or cloud infrastructure services to ensure security of supply and strengthen the EU's sovereignty.

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[39] Communication from the Commission C/2023/1711 Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, paragraph 7.

[40] See Section 2.8 of the crisis and transition framework.

[41] SWD(2023) 68: Commission Staff Working Document – Investment needs assessment and funding availabilities to strengthen EU's Net-Zero technology manufacturing capacity.

92 We found that the Commission has no precise figures about the total state aid for industry in the EU-27 and therefore does not publish such data. However, according to estimates, between 2019 and 2021 such aid may amount to more than €400 billion[42]. Moreover, there is also no reliable data on the amounts for specific industrial sectors and by member state, including those where the EU is pursuing specific industrial policy objectives.

Further adaptation of state aid rules has resulted in a complex set of frameworks not always consistent or supported by economic analysis

93 State aid can improve the efficiency of market outcomes or contribute to achieving public policy objectives when the market is unlikely to deliver such outcomes on its own. For example, this is where undertakings do not bear the full cost of reducing their carbon dioxide emissions without aid but society or where nascent innovative technologies are not sufficiently exploited because investors underestimate their real prospects. In such cases, state aid should address market or other systemic failures at the lowest possible cost for taxpayers and with the fewest possible distortions of competition in the internal market.

94 The Commission should therefore check whether the negative effects of such measures can be offset by positive effects ("balancing test") and define the conditions under which it considers aid necessary and proportional to address market or systemic failures, and assess its incentive effect for the beneficiaries. We analysed whether the applicable state aid frameworks contributed to enhancing sustainable growth and enabling member states to clearly address market or other systemic failures using state aid along a common set of assessment principles.

95 Since the beginning of the COVID-19 pandemic, the Commission has further adapted state aid rules to support the recovery of the EU economy, strengthen its strategic autonomy, and facilitate the transition towards a net-zero economy. There are currently several frameworks and guidelines that can support these objectives in different ways (see paragraphs ***18*** and ***19***).

96 Support to facilitate the transition towards a net-zero economy is still possible under the General Block Exemption Regulation[43], and other frameworks that pursue

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[42] Piechucka, J. et al.; Industrial Policies, Competition and Efficiency: The need for State aid control, Journal of Competition Law & Economics, 2023, 00, pp. 1-24.

[43] Commission Regulation (EU) No 651/2014.

horizontal objectives, such as the state aid framework for research and development and innovation[44] or the regional aid guidelines[45]. In addition, the Commission can assess state aid directly under Article 107(3)(c) TFEU, for example, to strengthen security of supply, resilience, and digital sovereignty in semiconductor technologies. This means that different conditions may apply for the same measure under various frameworks. We already observed in another report where in a relevant IPCEI, measures were either assessed under the CEEAG or under the General Block Exemption Regulation, which led to confusion among some project developers[46].

97 These guidelines and frameworks focus on different stages of the value chain and set different conditions for the approval of aid. However, they are not always consistent in defining market failure, the maximum amount of state aid that can be granted for each beneficiary ("aid intensity"), cumulation rules or the requirement for *ex post* evaluation (see ***Annex III***).

98 Moreover, during our audit, the Commission could not justify the application of different levels of aid intensity or cumulation rules. Overall, this results in a complex set of frameworks and guidelines applicable to state aid in support of the EU's industrial policy objectives.

The Commission has neither sufficiently assessed the need for the temporary crisis and transition framework nor its potential impact

99 Having more ways for member states to provide state aid to undertakings represent a risk for the effective functioning of the internal market, because member states with greater budgetary means may outspend others and distort competition by providing higher state aid in certain sectors. We therefore checked whether the Commission had properly assessed the need for the crisis and transition framework and its potential impact.

100 In its 2021 Better Regulation guidelines, the Commission undertakes to assess all its major policy initiatives. However, we found that the Commission did not assess the impact of the crisis and transition framework prior to its adoption, unlike for the

[44] Communication 2014/C 198/01: "Framework for State aid for research and development and innovation".

[45] Communication 2021/C 153/01: "Guidelines on regional State aid".

[46] Special Report 11/2024.

CEEAG where it did conduct an impact assessment to assess the benefits of state aid[47]. According to the Commission, this was due to the crisis situation that prevailed in 2023.

101 The Commission consulted member states in early 2023 and also received input from industry representatives. However, it did not carry out an economic assessment on the need for state aid but justified it in the eligible sectors by the need for strategic autonomy and to ensure increased production levels in the EU. Additionally, the Commission has not yet assessed the impact of existing state aid in these sectors, including measures financed by EU cohesion policy or the Recovery and Resilience Facility.

102 The Commission explains this with the need for rapid action following the adoption of the Inflation Reduction Act (IRA) and other initiatives in the United States in 2022 (see ***Box 6***), and for further efforts to accelerate the green transition.

Box 6

The IRA and other initiatives in the United States

The **IRA** is a US budget reconciliation measure. It was presented with the aim of curbing inflation by increasing taxation and then spending this revenue through tax credits for investments in domestic energy production and manufacturing to reduce US carbon emissions. By attracting foreign investment from undertakings which decide to invest in the United States rather than in the EU because of higher amounts of available aid, the IRA has the potential to distort competition with the EU. Alongside the IRA, the **Defense Production Act** was invoked in June 2022 to accelerate the domestic production of clean energy technologies such as solar, heat pumps or fuel cells. Lastly, the purpose of the **Chips and Science Act** of August 2022 was to strengthen domestic manufacturing and supply chains, and invest in research, development, science and technology.

103 The Commission did not present any assessment of the potential impact of the IRA on the EU economy before adopting the crisis and transition framework. A preliminary assessment on the impact of the IRA published in October 2023 was

[47] SWD(2022) 19: Impact assessment accompanying the Guidelines on State aid for climate, environmental protection and energy 2022.

inconclusive[48]. Recent studies[49] have indicated that the IRA's impact might be more limited than initially thought. This also then raises a question related to the appropriate level of additional public support for the EU economy.

104 In contrast to other guidelines, the crisis and transition framework does not provide certain safeguards. For example, in sections 2.5 and 2.6, the Commission considers that aid meeting the conditions set out in these sections has an incentive effect or, under section 2.8, it does not see a need to compare the planned funding with no aid scenarios. There is no clawback mechanism to ensure that aid remains limited to the minimum necessary. The need for investment in the enumerated eligible sectors is described very briefly and generally, such as to support private investment to address the productive investment gap in strategic sectors for the transition towards a net-zero economy. This also includes providing incentives for fast deployment in response to global challenges where new investments might be diverted to non-EU countries.

105 Up to now, a higher aid intensity for assisted areas has been intended to promote or facilitate regional development and territorial cohesion, as laid down in the regional aid guidelines[50]. This principle also applies under other frameworks or guidelines, such as the CEEAG, or for research and development and innovation[51], in view of the specific difficulties that undertakings face in those areas[52].

106 Our analysis also showed that higher aid intensity for assisted areas under the crisis and transition framework was inconsistent with that in other guidelines without having demonstrated an underlying economic reason. A large undertaking implementing a project under section 2.8 of the framework could receive more than double the aid amount if it invested in an assisted area where the standard of living is abnormally low or where there is serious underemployment ("a" area) compared to

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48 Communication COM(2023) 684 "Report on EU policy initiatives for the promotion of investments in clean technologies".

49 German Council of Economic Experts (2023): The Inflation Reduction Act: Is the new U.S. industrial policy a threat for Europe?; Gros, D. et al., The EU and the US Inflation Reduction Act – No rose without thorns (2023); Rusch, J. et al., Macroeconomic effects of the Inflation Reduction Act, De Nederlandsche Bank (2023).

50 Communication 2021/C 153/01: "Guidelines on regional State aid".

51 Communication 2022/C 414/01: "Framework for State aid for research and development and innovation".

52 Communication 2021/C 153/01: "Guidelines on regional State aid", paragraph 4.

non-assisted areas, i.e. 35 % instead of 15 %. However, under the CEEAG for example, standard aid intensities are higher, but can only be increased by a maximum of 15 % in view of the difficulties undertakings face in “a” areas.

107 Under certain state aid guidelines common benefits are identified *ex ante*, and aid is then permitted on the basis of pre-defined conditions designed to ensure the necessity, appropriateness and proportionality of the aid measure, and a balanced distortion of competition. However, for the crisis and transition framework, there is no evidence that the criteria ensure that aid is limited to the minimum necessary, is appropriate and is proportionate.

108 Under the crisis and transition framework, member states can also grant aid without ensuring that any distortion in competition is offset by common benefits. Consequently, the benefits of each measure are likely to differ since investment needs vary across different sectors and parts of the value chain. The Commission argues that sufficient safeguards are in place to avoid member states outspending each other and any potential distortions of competition in the internal market, mainly because the state aid frameworks covered in this audit are temporary. However, there is a risk that even temporary exemptions may have a longer-term impact on internal market competition. The Commission has not specified yet how a future state aid framework supporting EU industrial policy objectives should look. There is also a risk that member states may use the crisis and transition framework or other future frameworks to attract investments from member states that do not provide aid. As a consequence, state aid could be concentrated in certain member states and may undermine the integrity of the internal market.

109 We also consider that the Commission has not sufficiently assessed the need for the crisis and transition framework and its potential impact. It also remains unclear how the Commission intends to tackle the risk of internal market distortion resulting from the increasingly varied member state approaches to granting state aid through temporary crisis frameworks. Contrary to the temporary crisis and transition framework, IPCEIs inherently possess a European dimension, because they require cross-border cooperation between undertakings. However, IPCEIs do not ensure a level playing field for undertakings in different member states when it comes to accessing public funding[53]. Addressing these challenges may require a more comprehensive response, one that goes beyond what can be done under the state aid framework.

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[53] Special report 15/2023, paragraphs 65-69.

Conclusions and recommendations

110 We conclude that by adopting temporary frameworks for state aid, the Commission reacted swiftly to the member states' need to use state aid to remedy the economic disturbances caused by the COVID-19 pandemic and Russia's invasion of Ukraine. However, its assessment of the national aid measures was limited and the Commission faced difficulties both in monitoring the measures set up by member states under the temporary crisis frameworks and in assessing their impact on competition in the internal market. These difficulties stem largely from the lack of reliable state aid information from member states.

111 The Commission's temporary crisis frameworks for state aid enabled member states to design state aid measures swiftly according to common principles and with a view to limiting economic damage. While providing legal certainty and easing the administrative burden, the Commission could however not conduct any economic assessments prior to the adoption of the frameworks to ensure that aid would be limited to the minimum necessary. For the Ukraine crisis framework, the Commission established appropriate objectives and criteria to ensure that support measures effectively targeted the undertakings most affected by the crisis. This was less the case for the COVID-19 framework. However, amendments to the Ukraine crisis framework introduced through REPowerEU risk increasing undue market distortions (see paragraphs ***27***-***40***).

112 Following the adoption of the first two temporary crisis frameworks, the Commission managed to reduce the time taken to assess aid schemes notified by member states to less than the 2 months required by legislation. However, the Commission often lacked further detailed information about the measures implemented by member states. This was the case for national umbrella schemes in particular. These enabled member states to adopt a large number of state aid measures without further notification, but also pose a significant risk to the Commission's effective monitoring of state aid. Moreover, we found that member states did not always have effective control mechanisms in place and often relied on beneficiaries' self-declarations, making cross-checking compliance with cumulation rules challenging, especially in member states that lack a central register for state aid (see paragraphs ***41***-***55***).

113 In spite of a significant increase in state aid expenditure since 2020, the Commission's periodic monitoring decreased temporarily during the crises, resulting in a limited coverage of national schemes and longer time lags, before deciding to return

to annual monitoring in 2024. This reduced the usefulness of the monitoring exercise for the Commission in terms of checking whether member states were complying with its state aid decisions and rules. Finally, despite the fact that member state budgets and approaches for state aid varied significantly as did economic damage across sectors, the Commission's study on the impact of state aid related to COVID-19 did not cover the effects on competition. Therefore lessons remain to be learned on how to design better-targeted measures in the future (see paragraphs *56*-*67*).

Recommendation 1 – Strengthen the assessment and monitoring of state aid schemes

The Commission should strengthen its oversight by:

(a) enhancing the assessment of the expected impact of notified state aid schemes;

(b) improving the monitoring of aid measures, in particular under umbrella schemes, and of the actual aid granted under the various schemes;

(c) promoting the use of central registers for state aid at member state or EU level to facilitate the monitoring of cumulation rules, for example by building on the future central register for *de minimis* aid;

(d) selecting aid measures implemented by member states for compliance checks with the EU state aid framework, based on sound methodology and a representative sample of cases.

Target implementation date: 2025.

Recommendation 2 – Evaluate the impact of crisis-related state aid on competition

The Commission should evaluate the impact of state aid granted during recent crises on competition in the internal market, including the extent to which this aid was a remedy for economic disturbance, and the extent to which it contributed towards supporting recovery. This evaluation should focus on sectors with a potentially higher risk of distortion of competition.

Target implementation date: 2028.

114 Member state reporting indicates that crisis-related state aid expenditure remained significantly below the level of financial support approved by the Commission. However, the Commission currently lacks reliable data on the state aid granted by member states, nor does it have the overall amounts of such aid nor the amounts granted to different economic sectors, including those targeted by the EU's industrial policy. The Commission is currently also unable to ensure cross-country comparability of data reported by member states. This limitation hampers its ability to assess the effectiveness of the temporary crisis frameworks and the contribution of state aid to the EU's industrial policy objectives. We consider that drawing conclusions on whether crisis aid was proportionate or necessary is difficult without sectoral data on state aid, yet member states are currently not required to report such data (see paragraphs *68*-*80*).

115 Finally, as the transparency obligations are not consistent across the EU state aid framework and not all member states meet their legal reporting obligations, there is currently insufficient transparency about the beneficiaries of state aid. This deficiency reduces accountability and the amount of information available about the spending of public money (see paragraphs *81*-*89*).

Recommendation 3 – Enhance the transparency of state aid and improve state aid reporting for evidence-based policy making

The Commission should:

(a) enhance accountability and transparency by aligning its transparency rules for state aid under future frameworks to ensure that member states publish complete and accurate information on state aid granted for all crisis schemes in a timely and consistent manner;

(b) address the data gap in member states' implementation of state aid by collecting more granular sectoral data and reporting this in its annual State Aid Scoreboard.

Target implementation date: (a) when adopting a future framework and (b) 2026.

116 State aid is increasingly used to support the achievement of industrial policy objectives such as enhancing the EU's strategic independence and transition to a net-zero economy. However, the flexibility of state aid rules has resulted in a complex set of different state aid frameworks with rules that are not always consistent. The Commission has also not sufficiently assessed the need for the temporary crisis and transition framework or its potential impact. Diverse member state approaches to granting state aid may lead to a distortion of the internal market. The Commission needs to address this risk, which may require a more comprehensive response going beyond what can be done under the state aid framework (see paragraphs *90*-*109*).

Recommendation 4 – Improve analysis of the need for state aid to support EU industrial policy objectives

The Commission should simplify and streamline the state aid framework to support EU industrial policy objectives and make such aid conditional on sound analysis of data that provides clear evidence both of market failure on the one hand and efficiency gains for the EU internal market on the other.

Target implementation date: 2026.

This report was adopted by Chamber II, headed by Mrs Annemie Turtelboom, Member of the Court of Auditors, in Luxembourg at its meeting of 11 September 2024.

For the Court of Auditors

Tony Murphy
President

Annexes

Annex I – EU legal and guidance framework for state aid

PRIMARY LAW

Treaty on the Functioning of the European Union

Articles

"SOFT" LAW

Definition of State Aid — **107(1)** — Notice on the notion of state aid

SECONDARY LAW

106(2)

Services of general economic interest decision

Services of general economic interest framework
Services of general economic interest communication

108

Implementing Regulation
Commission Regulation (EC) 794/2004

Procedural Regulation
Council Regulation (EU) 2015/1589

108(4)

Enabling Regulation
Council Regulation (EU) 2015/1588

General Block Exemption Regulation
Commission Regulation (EU) No 651/2014

***De minimis* Regulation**
Small amounts of aid exempted from state aid control
Commission Regulation (EU) 2023/2831

Services of general economic interest (SGEI) *de minimis* regulation
Commission Regulation (EU) 2023/2832

107(3)

Horizontal rules
IPCEI communication, regional aid guidelines, framework for research, development and innovation, communication on training aid, communication on state aid for disadvantaged and disabled workers, guidelines for rescuing and restructuring aid, guidelines on risk finance aid, etc.

Sector-specific rules
Guidelines on state aid for climate, environmental protection and energy (CEEAG), broadband guidelines, guidelines on state aid to airports and airlines, guidelines on state aid to maritime transport, etc.

Temporary Framework for Covid (TF)

Temporary Crisis Framework (TCF)

Temporary Crisis and Transition Framework (TCTF)

Source: ECA.

Annex II – Main features of the temporary crisis frameworks for state aid

<table>
<tr><th>COVID-19 framework</th><th>Ukraine crisis framework</th><th>Crisis and transition framework</th></tr>
<tr><td colspan="3">Duration</td></tr>
<tr><td>19 March 2020 – 30 June 2022, except for the conversion and restructuring of debt instruments (to 30.6.2023), and sections 3.13 and 3.14 (to 31.12.2023)</td><td>23 March 2022 – 8 March 2023</td><td>9 March 2023 – 31 December 2023 (sections 2.2, 2.3 and 2.7)
9 March 2023 – 30 June 2024 (sections 2.1 and 2.4)
9 March 2023 – 31 December 2024 (section 2.1 – primary agricultural sector, fisheries and aquaculture sectors)
9 March 2023 – 31 December 2025 (sections 2.5, 2.6 and 2.8)</td></tr>
<tr><td colspan="3">Open to undertakings in difficulty prior to the crisis?</td></tr>
<tr><td>No, but exceptions for micro and small enterprises</td><td>Yes</td><td>Yes, in general, but aid under section 2.8 is not open to undertakings in difficulty</td></tr>
<tr><td colspan="3">Options for state aid</td></tr>
<tr><td>3.1 Limited amounts of aid
Temporary limited amounts of aid for undertakings that find themselves facing a sudden shortage or even unavailability of liquidity
<u>Main criteria</u>
• Maximum aid amount of €2.3 million per undertaking, except for fishery and aquaculture sector (< €345 000 per undertaking) and primary production of agricultural products (< €290 000 per undertaking)
• Aid not restricted to undertakings affected by the crisis</td><td colspan="2">2.1 Limited amounts of aid
Temporary limited amounts of aid to undertakings affected by the Russian war of aggression against Ukraine, the sanctions imposed or the retaliatory counter measures
<u>Main criteria</u>
• Maximum aid amount of €2 million/€2.25 million per undertaking, except for the fisheries and aquaculture sector (< €300 000 / €335 000 per undertaking) and primary production of agricultural products (< €250 000 / 280 000 per undertaking)
• Aid can only be granted to undertakings affected by the crisis</td></tr>
<tr><td>3.2 Aid in the form of guarantees on loans
To ensure access to liquidity to undertakings facing a sudden shortage
<u>Main criteria</u>
• Fixed guarantee premiums apply, with exceptions
• Overall amount of loans should remain below double the annual wage bill or below 25 % of the beneficiary's turnover, unless an appropriate justification is provided
• Guarantee limited in time (6 years) and amount with exceptions</td><td colspan="2">2.2 Liquidity support in the form of guarantees
To ensure access to liquidity to undertakings affected by the current crisis
<u>Main criteria</u>
• Fixed guarantee premiums apply, with exceptions
• Overall amount of loans should remain below 50 % of energy costs over the last 12 months or below 15 % of the beneficiary's annual turnover, unless an appropriate justification is provided
• Guarantee limited in time (6 years) and amount with exceptions</td></tr>
</table>

<table>
<tr><th>COVID-19 framework</th><th>Ukraine crisis framework</th><th>Crisis and transition framework</th></tr>
<tr><td>Relate to investment and/or working capital loans</td><td colspan="2">Relate to investment and/or working capital loans</td></tr>
<tr><td>3.3 Aid in the form of subsidised interest rates for loans
To ensure access to liquidity to undertakings facing a sudden shortage
<u>Main criteria</u>
Minimum interest rates apply, with exceptions
Limited duration (6 years), with exceptions
Overall amount of loans < double the annual wage bill or < 25 % of the beneficiary's turnover, unless an appropriate justification is provided
Relate to investment and/or working capital needs</td><td colspan="2">2.3 Liquidity support in the form of subsidised loans
To ensure access to liquidity to undertakings affected by the current crisis
<u>Main criteria</u>
Minimum interest rates apply, with exceptions
Limited duration (6 years), with exceptions
Overall amount of loans should remain below 50 % of energy costs over the last 12 months or below 15 % of the beneficiary's annual turnover, unless an appropriate justification is provided
Relate to investment and/or working capital needs</td></tr>
<tr><td>3.4 Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions
Aid in the form of guarantees or loans under sections 3.1, 3.2, 3.3 and 3.12 may be channelled through credit institutions and other financial institutions as intermediaries under specific conditions</td><td colspan="2">2.4 Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices
<u>Main criteria</u>
Eligible costs as depending on price increases and consumption
Aid limited to 50 % of eligible costs and €4 million per undertaking, with exceptions for beneficiaries suffering from a reduction in economic performance, which can under certain condition receive aid up to €150 million</td></tr>
<tr><td>3.5 Short-term credit insurance
Commercial and political risks associated with exports to the countries listed in the Annex to the short-term export-credit insurance communication are temporarily non-marketable until 31 March 2022</td><td rowspan="3">2.5 Aid for accelerating the rollout of renewable energy, storage, and renewable heat relevant for REPowerEU
Accelerate the deployment of solar capacity, wind power capacity, geothermal energy capacity, electricity and thermal energy storage, renewable heat as well as the production of renewable hydrogen, biogas and biomethane from waste and residues
<u>Main criteria</u>
Competitive bidding, with exceptions for tax advantages and small projects under certain conditions</td><td rowspan="3">2.5 Aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU
Accelerate and expand the availability of renewable energy in a cost-effective way with a view to quickly reducing dependency on fossil fuel imports to accelerate the energy transition and achieve lower and less volatile energy prices through investment aid, and to accelerate the rollout of renewable energy and energy storage; operating aid to accelerate the rollout of renewable energy and for energy storage
<u>Main criteria</u>
Competitive bidding or administratively set by the member state on the basis of data on the investment cost (investment aid)</td></tr>
<tr><td>3.6 Aid for COVID-19 relevant research and development
Aid for R&D projects on COVID-19 and other relevant antiviral research under certain conditions</td></tr>
<tr><td>3.7 Investment aid for testing and upscaling infrastructures
Investment aid for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant products</td></tr>
</table>

COVID-19 framework	Ukraine crisis framework	Crisis and transition framework
3.8 Investment aid for the production of COVID-19 relevant products **3.9 Aid in form of deferrals of tax and/or social security contributions** Aid schemes that consist of temporary deferrals of taxes or of social security contributions which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 pandemic, for example, in specific sectors, regions or of a certain size	• Preserve operating incentives and price signals and address windfall profits • Commission generally considers that without aid, beneficiaries would continue their activities without changes (incentive effect)	• Aid granted in the form of two-way contracts for difference, through a competitive bidding process or with the strike price administratively set to cover expected net costs (operating aid) • Commission generally considers that without aid, beneficiaries would continue their activities without changes (incentive effect)
3.10 Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak Aid schemes designed to avoid lay-offs during the COVID-19 outbreak for undertakings in specific sectors, regions or those of a certain size that are particularly affected by the COVID-19 outbreak **3.11 Recapitalisation measures** Aid in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak under specific eligibility and entry conditions <u>Main criteria</u> • Without the state intervention the beneficiary would go out of business or would face serious difficulties to maintain its operations • Common interest to intervene • The beneficiary is unable to find affordable financing on the market • Recapitalisations must not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak • Appropriate state remuneration • The recapitalisation measure needs to contain appropriate incentives so the recapitalization is redeemed when the economy stabilizes	**2.6 Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures** Facilitate investments in the decarbonisation of industrial activities, especially through electrification and technologies using renewable and electricity-based hydrogen, and in energy efficiency measures in industry forms <u>Main criteria</u> • Aid may not exceed 10 % of the budget under a scheme, with certain exceptions Investment must reduce direct greenhouse gas emissions by 40 % or reduce energy consumption by 20 % • Competitive bidding, or eligible costs calculated as the difference between cost of the aided project and the cost savings, with maximum aid intensity of 40 % with bonuses for SMEs and investments exceeding the minimum requirements for reduction of greenhouse gas emissions or energy consumption • Address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in place a clawback mechanism defined *ex ante* • The Commission generally considers that without aid, beneficiaries would continue their	**2.6 Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures** Facilitate investments in decarbonisation of industrial activities, accelerate electrification and energy efficiency measures in industry, and produce renewable and electricity-based hydrogen <u>Main criteria</u> • Aid may not exceed 10 % of the budget under a scheme or €200 million, with certain exceptions. Investment must reduce direct greenhouse gas emissions by 40 % or reduce energy consumption by 20 % • Competitive bidding, or eligible costs calculated as the difference between the cost of the aided project and cost savings, with maximum aid intensity of 40 % with bonuses for SMEs and investments exceeding the minimum requirements for reduction of greenhouse gas emissions or energy consumption. Eligible costs may also correspond to the investment costs for equipment, machinery or installations needed to achieve electrification, switch to hydrogen or hydrogen-derived fuels or energy efficiency improvement, with maximum aid intensities applying • Address windfall profits, including in times of extremely high electricity or natural gas prices, by putting in

<table>
<tr><th>COVID-19 framework</th><th>Ukraine crisis framework</th><th>Crisis and transition framework</th></tr>
<tr>
<td>3.12 Aid in the form of support for uncovered fixed costs
<u>Main criteria</u>
Uncovered fixed costs, not covered by the profit contribution, incurred between 1 March 2020 and 30 June 2022
Minimum decline in turnover of 30 %
Maximum aid amount of €12 million per undertaking
Maximum aid intensity of 70 %, except for micro and small enterprises (90 %)</td>
<td>activities unchanged (incentive effect)</td>
<td>place a clawback mechanism defined in advance
Commission generally considers that without aid, beneficiaries would continue their activities unchanged (incentive effect)</td>
</tr>
<tr>
<td>3.13 Investment support towards a sustainable recovery
Aid to overcome an investment gap in the economy due to the crisis
<u>Main criteria</u>
Maxim aid intensity: 15 %, with SME bonus of 10 percentage points or bonus for small enterprises of 20 percentage points, with exceptions for assisted areas
Maximum aid amount of €10 million per undertaking
Increased ceilings for guarantees and loans</td>
<td colspan="2">2.7 Aid for additional reduction of electricity consumption
<u>Main criteria</u>
Achieve the reduction in electricity consumption covered by Articles 3 and 4 of Regulation (EU) 2022/1854
Financial compensation is paid for additional unconsumed electricity compared to expected consumption
Aid must be granted in a competitive bidding process
Remuneration to be granted on the basis of actual additional reduction in electricity consumption</td>
</tr>
<tr>
<td>3.14 Solvency support
Aid as in incentive for private investments into equity, subordinated debt or quasi-equity
<u>Main criteria</u>
In the form of public guarantees or similar measures for specific investment funds to invest in final beneficiaries
Only SMEs and small mid-caps are eligible
Specific conditions for risk-sharing apply
Maximum amount of finance provided is €10 million per undertaking</td>
<td></td>
<td>2.8 Aid for accelerated investments in sectors for the transition towards a net-zero economy
Supporting private investment to address the productive investment gap in sectors strategic for the transition towards a net-zero economy
Provide 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 European Economic Area
<u>Main criteria</u>
Investment aid for production of relevant equipment for the transition towards a net-zero economy, namely batteries, solar panels, wind turbines, heat pumps, electrolysers, and equipment for carbon capture, usage and storage (CCUS); or the production of key</td>
</tr>
</table>

COVID-19 framework	Ukraine crisis framework	Crisis and transition framework
		components; or the production or recovery of related raw materials • Aid may not be provided to facilitate the relocation of production activities between member states • Incentive effect presumed if beneficiary applies before the start of works • Maximum aid intensity of 15 %, 20 % ("c" areas) or 35 % ("a" areas), with top-ups for SMEs applying under aid schemes • Maximum aid amount of €150 million, €200 million ("c" areas) or €350million ("a" areas) under aid schemes • Individual aid possible up to the amount of subsidy that a beneficiary would demonstrably receive for an equivalent investment in a third country jurisdiction outside the European Economic Area, under specific conditions, including requirements for investment in assisted areas

Source: ECA.

Annex III – Comparison of state aid guidelines supporting recovery and transition

Condition	IPCEI Communication	CEEAG guidelines	Crisis and transition framework (2.5, 2.6 and 2.8)
Market failure	Important market or systemic failures or societal challenges	Residual market failures (that remain unaddressed by other policies and measures)	Not needed
Aid intensity	Funding gap (counterfactual)	(1) Competitive bidding process takes place, with exceptions (2) Deemed proportionate if maximum aid intensities in section 4 are respected for specific types of aid	2.5: Competitive bidding or administratively set 2.6: Difference between costs and costs saving or additional revenues, or through competitive bidding 2.8: Maximum aid intensity or matching aid
Clawback	Yes	Yes	No
Maximum aid amounts	No	No	2.5: No 2.6: 200 million, with potential derogation if justification is appropriate justification 2.8: €150 million, €250 million or €350 million, depending on area, no maximum for matching aid
SME bonus	No	Yes	Yes
Cumulation with centrally managed funds	Total public funding does not exceed most favourable rate	Need for an overcompensation check	2.5 and 2.6: Possible for different eligible costs 2.8: Cumulation rules only address other state aid, not centrally managed funds
Incentive effect	Yes	Yes	2.5 and 2.6: Presumed incentive effect 2.8: Presumed if application is submitted before works commence
Necessity and proportionality	Confirmed on the basis of the funding gap, with potential clawback	Necessity: address residual market failure and incentive effect Proportionality: aid limited to minimum needed – see maximum aid intensities	Necessity: Presumed Proportionality: Presumed if maximum aid intensity is respected
Impact assessment	No	Yes	No
Negative effects to be considered	Balancing test: negative effects concern the foreseeable impact on competition between undertakings in the product markets concerned Risk of overcapacity, risk of market foreclosure and dominance and the risk of subsidy race between member states	Balancing test: negative effects defined by project type (impact on competition and trade)	No balancing test needed
***Ex post* evaluation**	The Commission may ask for an *ex post* evaluation	Yes, the Commission may ask for schemes, *de facto* required for schemes > €150 million annually or > €750 million over the total duration	Not foreseen

Source: ECA.

Abbreviations

CEEAG: Guidelines on state aid for climate, environmental protection and energy

GDP: Gross domestic product

IPCEI: Important project of common European interest

IRA: Inflation Reduction Act

SMEs: Small and medium-sized enterprises

TFEU: Treaty on the Functioning of the European Union

Glossary

Aid element: Measure of the economic advantage undertakings derive from state aid rather the aid’s nominal amount, making it possible to compare state aid from different instruments such as direct grants, subsidised loans, or guarantees.

Aid scheme: Act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings.

Assisted areas: Areas designated in regional aid maps in which the standard of living is abnormally low or where there is serious underemployment (“a” areas), or which fulfil certain socioeconomic criteria (“c” areas).

Better regulation: Concept that guides EU policy and law-making, based on the principles that regulation should achieve its objectives at minimum cost and be designed in a transparent, evidence-based manner with citizen and stakeholder involvement.

Centrally managed funds: EU funding managed by the EU institutions, agencies, joint undertakings or other bodies, rather than directly or indirectly under the control of member states.

Clawback: Mechanism to ensure that excess state aid is recovered if an investment turns out to be more profitable than expected.

Cumulation: Combination of one state aid measure with other such measures.

De minimis state aid: Amount of state aid below which no Commission approval is necessary.

European Green Deal: EU growth strategy adopted in 2019, aiming to make the EU climate-neutral by 2050.

Funding gap: Shortfall between the amount of money needed to fund an operation and the amount currently available.

Gross domestic product: Basic measure of the overall size of a country's economy.

Important projects of common European interest: Large cross-border projects by multiple member states aimed at overcoming important market or systemic failures. They aim at enabling breakthrough innovation and support infrastructure investments of great importance for the Union and having clearly defined positive spill-over effects on the internal market and the society as a whole.

Incentive effect: Change of behaviour induced by state aid such as a decision to undertake an activity that would not have been undertaken otherwise, or to undertake it in a particular location or on a larger scale.

Industrial Policy: Set of actions to establish the conditions necessary to make industry competitive.

Infringement procedure: Procedure whereby the Commission takes action, in various stages, against an EU member state that fails to meet its obligations under EU law.

Market failure: Market situation in which the interests of individual producers or service providers cause them to act in ways that do not benefit the common good. An example would be a company that refrains from investing in a new low-carbon technology and placing it on the market, because it will not be able to reap the benefits on the market.

Maximum aid intensity: Total amount of support that can be paid, expressed as a percentage of eligible costs.

Net-zero economy: An economy with net-zero greenhouse gas emissions.

(Pre-)notification of state aid: Procedure by which a member state gives the Commission advance notice of proposed state aid for informal feedback on its compatibility with EU law, prior to mandatory notification.

REPowerEU: EU initiative to end dependence on fossil fuels, diversify energy supplies and accelerate the clean energy transition.

State aid: Direct or indirect government support to a business or an organisation, putting it at an advantage over its competitors.

Strategic autonomy: Capacity to act independently in strategically important policy areas without being overly reliant on other countries.

Undertaking: Any entity, such as a company, providing goods or services on a given market.

Replies of the Commission

https://www.eca.europa.eu/en/publications/sr-2024-21

Timeline

https://www.eca.europa.eu/en/publications/sr-2024-21

Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber II – Investment for cohesion, growth and inclusion, headed by ECA Member Annemie Turtelboom. The audit was led by ECA Member George-Marius Hyzler, supported by Romuald Kayibanda, Head of Private Office and Annette Farrugia, Private Office Attaché; Friedemann Zippel, Principal Manager; Sven Kölling, Head of Task; Kevin Deceuninck, Christophe Grosnickel, Alexandra Klis-Lemieszonek and Aleksandar Latinov, Auditors. Jennifer Schofield provided linguistic support. Agnese Balode provided graphical support.

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Following the economic disturbance caused by the COVID-19 pandemic and Russia's invasion of Ukraine, the Commission adapted its state aid framework and approved since 2020 a significant increase of state aid for undertakings. We assessed how effectively the Commission adapted the EU's state aid framework, monitored and evaluated crisis-related state aid. We also examined the consistency of the state aid framework supporting the European Green Deal and other industrial policy objectives. We conclude that the Commission reacted swiftly to member states' needs for state aid, but there were shortcomings in the Commission's monitoring of aid and in the consistency of rules. We recommend that the Commission strengthen its monitoring of state aid, evaluate its impact on competition and streamline the relevant state aid rules for supporting EU industrial policy objectives.

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