



Council of the  
European Union

**Brussels, 4 April 2023**  
**(OR. en)**

**8125/23**  
**ADD 1**

**RC 9**

**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 April 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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No. Cion doc.:	SWD(2023) 76 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Accompanying the document REPORT FROM THE COMMISSION Report on Competition Policy 2022

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Delegations will find attached document SWD(2023) 76 final.

Encl.: SWD(2023) 76 final



EUROPEAN  
COMMISSION

Brussels, 4.4.2023  
SWD(2023) 76 final

**COMMISSION STAFF WORKING DOCUMENT**

*Accompanying the document*

**REPORT FROM THE COMMISSION**

**Report on Competition Policy 2022**

{COM(2023) 184 final}

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## INTRODUCTION

The present Staff Working Document is composed of two parts. The first part presents the main legislative and policy developments in 2022 across the three competition instruments: Antitrust (including cartels), mergers and State aid. In the second part, specific enforcement actions are detailed in a sectoral overview.

### I. LEGISLATION AND POLICY DEVELOPMENTS

#### 1. ANTITRUST AND CARTELS

##### Articles 101, 102 and 106 TFEU

According to Article 101 TFEU, anti-competitive agreements are prohibited as incompatible with the internal market. Article 101 TFEU prohibits agreements with an anti-competitive object or effects where companies coordinate their behaviour instead of competing independently. However, even if a horizontal or a vertical agreement could be viewed as restrictive it might be allowed under Article 101(3) TFEU if it ultimately fosters competition (for example by promoting technical progress or by improving distribution).

Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position or to acquire such a position. Dominant undertakings, as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits the abusive behaviour by dominant undertakings that, for example, directly or indirectly impose unfair purchase- or selling prices or other unfair trading conditions.

Finally, Article 106 TFEU prevents Member States from enacting or maintaining in force measures contrary to the Treaty rules regarding public undertakings and undertakings to which Member States grant special or exclusive rights.

Preserving market discipline to secure the functioning of the Single Market is essential especially in times of crisis. Effective enforcement of the EU competition rules is of vital importance to the digital transformation of the EU economy and a resilient recovery after the pandemic; antitrust enforcement can contribute in tearing down remaining barriers to the Single Market and eliminating restrictions in the development of clean technologies and the free flow of resources necessary for the circular economy and the objectives of the European Green Deal. The present Staff Working Document highlights the recent antitrust and cartel decisions, while the graphs below give an overview of antitrust enforcement activity in the past ten years, including also decisions rejecting complaints<sup>1</sup>.

Alongside enforcement, reforms are also crucial to ensure competition policy is fully effective: the Commission advanced on its review agenda encompassing a large number of its key block exemption regulations, guidelines and notices as well as moved forward the work on a number of ongoing initiatives to ensure fair competition in the single market.

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<sup>1</sup> Cases AT.39999, *Concurrence/Samsung*; AT.40629, *Services postaux*; AT.40626, *Strutture Trasporto Alto Adige S.p.A. and Trenitalia S.p.A.*; AT.40562, *Polish biodiesel supplies*; AT.40665, *Toyota*; AT.40609, *Polish fuel app* and AT.40758, *Minerva*.

Figure 1: Antitrust and cartel decisions 2013-2022

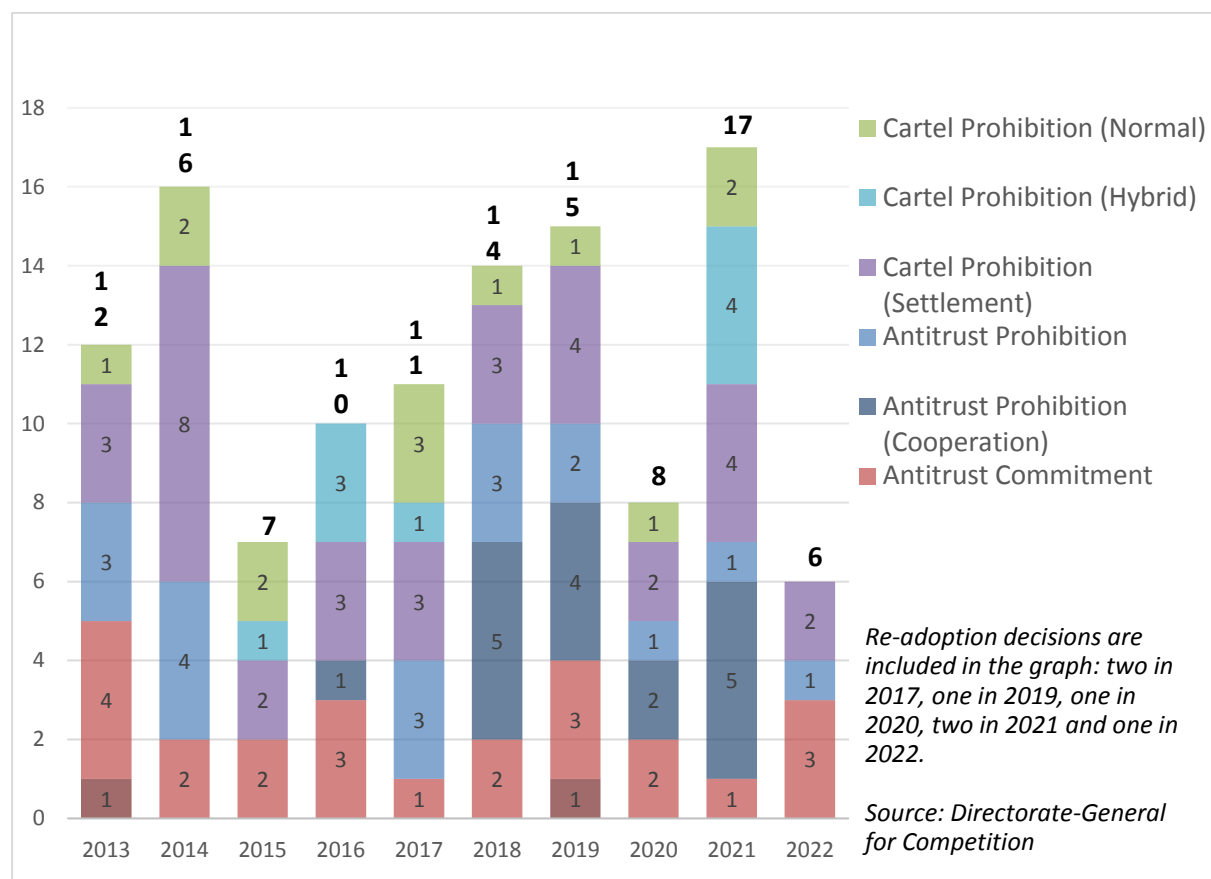
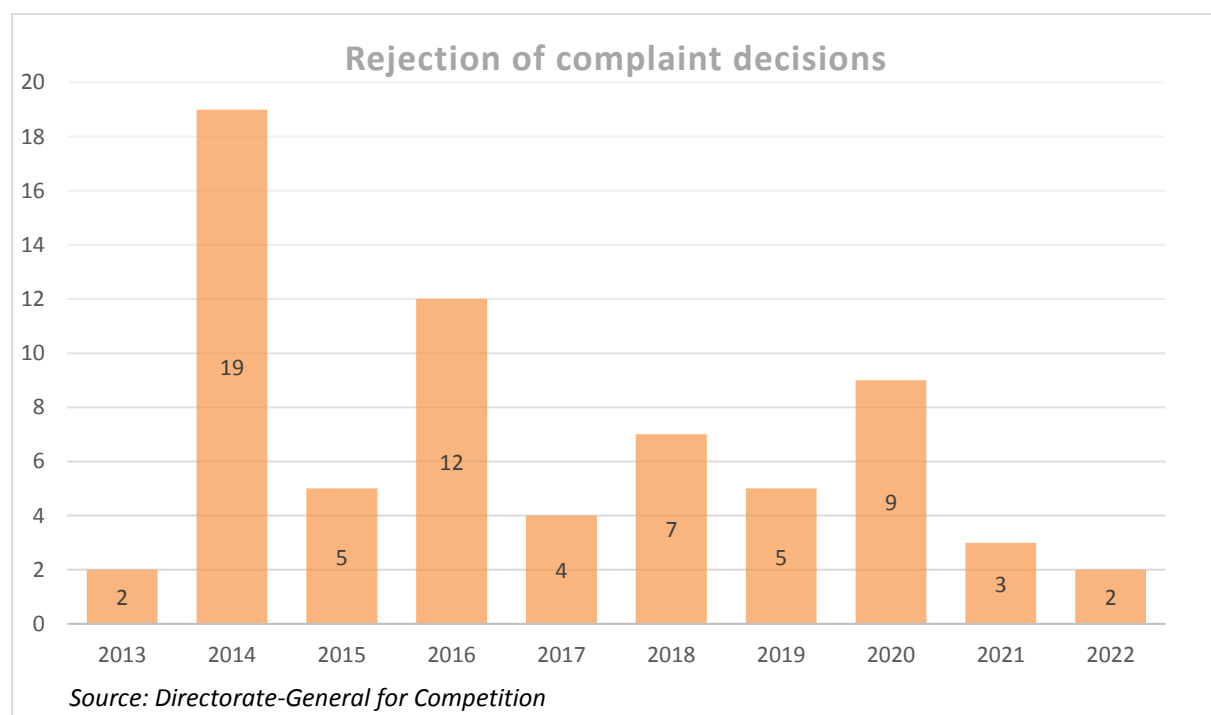


Figure 2: Rejection of complaints 2013 – 2022



## 1.1. Review of antitrust rules and guidance

### *1.1.1. Evaluation of antitrust procedural rules*

In March 2022, the Commission announced the evaluation of its antitrust procedural rules, Regulation 1/2003<sup>2</sup> and its implementing regulation, Regulation 773/2004<sup>3</sup>. The Commission, national competition authorities ('NCAs'), lawyers, businesses and other stakeholders have now had almost 20 years of practice and experience in the application of these regulations. Given the changes to the economic landscape that have taken place over the past 20 years, such as the digitisation of the global economy, an evaluation was considered timely.

On 30 June 2022, the Commission launched a public consultation, with the aim of collecting in-depth and high quality evidence that will provide a basis for the assessment of the performance of the antitrust procedural framework<sup>4</sup>. This consultation closed on 6 October 2022. As part of the evaluation process, the Commission is also commissioning an evaluation support study, organising workshops on specific topics that will come out of the consultation process and engaging with NCAs. The objective is to publish a Staff Working Document with the results of the evaluation process by mid-2024.

### *1.1.2. Informal guidance and COVID-19 related guidance*

The Commission's revised Notice on informal guidance adopted on 3 October 2022<sup>5</sup> updates the circumstances in which the Commission would consider issuing informal guidance letters on the application of EU competition rules to undertakings facing genuine uncertainty about the legality of their actions. The previous Notice from 2004<sup>6</sup> adopted a strict approach, which limited the circumstances in which the Commission could provide informal guidance, and was never used for that reason.

The revised Notice introduces more flexible conditions to enable the Commission to use this tool to the benefit of legal certainty, especially for those undertakings involved in emerging ways of doing business or those facing crisis and emergency situations. Whilst the Commission will use its discretion to decide how and when to provide guidance in each specific case, it is ready to engage and will ensure that its guidance reflects today's needs and business realities.

In light of the relative improvement of the sanitary situation in Europe and the relaxation of restrictions, the Commission has also withdrawn the Temporary Framework for assessing

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<sup>2</sup> Council Regulation (EC) No 1/2003 of 16.12.2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L, 4.1.2003, p. 1.

<sup>3</sup> Commission Regulation (EC) No 773/2004 of 7.4.2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18.

<sup>4</sup> See: [https://competition-policy.ec.europa.eu/antitrust/legislation/regulation-12003\\_en](https://competition-policy.ec.europa.eu/antitrust/legislation/regulation-12003_en)

<sup>5</sup> Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters), OJ C 381, 4.10.2022, p. 9.

<sup>6</sup> Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters), OJ C 101, 27.4.2004, p. 78.

antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak<sup>7</sup>.

### *1.1.3. Guidance on vertical agreements*

The Commission finalised its impact assessment for the revision of the 2010 Vertical Block Exemption Regulation<sup>8</sup>, together with the 2010 Guidelines on Vertical Restraints<sup>9</sup>, after conducting an additional targeted consultation on draft guidance relating to information exchange in the context of dual distribution in February 2022 and publishing the results together with an expert report on that topic<sup>10</sup>.

On 10 May 2022, the Commission adopted the new Vertical Block Exemption Regulation ('VBER')<sup>11</sup>, accompanied by the Guidelines on Vertical Restraints ('Vertical Guidelines')<sup>12</sup>. The VBER, together with the Vertical Guidelines, entered into force on 1 June 2022.

The Commission continued its evaluation of the Motor Vehicle Block Exemption Regulation ('MVBER') regime<sup>13</sup>. From 6 July to 30 September 2022, the Commission ran a public consultation and a call for evidence on the proposed amendments to the MVBER regime, namely: (i) prolongation of the MVBER for five additional years until 31 May 2028; and (ii) amendments to the Supplementary Guidelines.

### *1.1.4. Guidance on horizontal agreements, including on sustainability*

The Commission continued its impact assessment for the revision of the two horizontal block exemption regulations on research and development agreements and on specialisation agreements ('R&D BER'<sup>14</sup> and 'Specialisation BER'<sup>15</sup> respectively, together 'HBERs'), together with the Horizontal Guidelines<sup>16</sup>.

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<sup>7</sup> The Antitrust COVID Temporary Framework allowed the Commission to assess business cooperation projects in response to situations of urgency stemming from the coronavirus outbreak. It also introduced the possibility for the Commission to provide companies with written comfort via ad hoc "comfort letters" on specific and well-defined cooperation projects falling within its scope. See: Communication from the Commission Withdrawal of Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, OJ C 381, 4.10.2022, p. 3.

<sup>8</sup> Commission Regulation (EU) No 330/2010 of 20.4.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

<sup>9</sup> Guidelines on Vertical Restraints, OJ C 130, 19.5.2010, p. 1.

<sup>10</sup> See: [https://competition-policy.ec.europa.eu/public-consultations/2018-vber\\_en](https://competition-policy.ec.europa.eu/public-consultations/2018-vber_en)

<sup>11</sup> Commission Regulation (EU) 2022/720 of 10.5.2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 134, 11.5.2022, p. 4.

<sup>12</sup> Communication from the Commission, Guidelines on vertical restraints, OJ C 248, 30.6.2022, p. 1.

<sup>13</sup> Commission Regulation (EU) No 461/2010 of 27.5.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52, and the Commission Notice on supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, OJ C 138, 28.5.2010, p. 16.

<sup>14</sup> Commission Regulation (EU) No 1217/2010 of 14.12.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 335, 18.12.2010, p. 36.

<sup>15</sup> Commission Regulation (EU) No 1218/2010 of 14.12.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43.

<sup>16</sup> Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.1.2011, p. 1.



On 1 March 2022, the Commission launched a public consultation on the draft revised HBERs and Horizontal Guidelines<sup>17</sup>, to gather stakeholder feedback on the changes proposed to address the issues identified in the evaluation of the current rules<sup>18</sup>. The public consultation ended on 26 April 2022 and it generated considerable interest from stakeholders. Many comments focused on the newly introduced chapter on sustainability agreements in the Horizontal Guidelines and on the revised chapters on information exchange and standardisation. In addition, several stakeholders commented on the proposals for revision of the R&D BER as regards competition in innovation.

The competition rules play an important role in supporting the European economy to achieve the goals of the European Green Deal<sup>19</sup>. For that reason, the draft Horizontal Guidelines include a new chapter on sustainability agreements that aims to answer calls for guidance and legal certainty from stakeholders on how to factor in sustainability considerations in the analysis of agreements between competitors under Article 101 TFEU.

The draft chapter on sustainability agreements aims at clarifying how the Commission would assess these types of agreements between competitors under Article 101 TFEU so that companies can consider this when conducting their self-assessment. In particular, the chapter provides guidance on the types of agreements that do not restrict competition and, therefore, fall outside Article 101 TFEU. For agreements affecting certain parameters of competition, the chapter indicates when these have to be assessed by object or by effect and it clarifies, building on the general 2004 Guidelines on Article 101(3), how sustainability benefits are considered under Article 101(3) TFEU so that they can outweigh the competition restrictions. This aspect is novel, in that it articulates more clearly the approach to three categories of sustainability benefits, namely (i) use value benefits, (ii) non-use value benefits and (iii) collective benefits.

The Commission aims to adopt revised HBERs and Horizontal Guidelines before the current HBERs expire on 30 June 2023<sup>20</sup>.

#### *1.1.5. Collective bargaining of solo self-employed persons*

The number of solo self-employed persons in the EU is relatively high and has grown substantially in recent years, mainly due to the emergence of digital labour platforms. While this trend has enhanced the accessibility and flexibility of the labour market, it has also led to difficult working conditions for some people. To address this issue, the Commission had

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<sup>17</sup> See: [https://competition-policy.ec.europa.eu/public-consultations/2022-hbers\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en)

<sup>18</sup> See: Commission Staff Working Document “Evaluation of the Horizontal Block Exemption Regulations”, SWD(2021) 104 final, 6.5.2021, available at [https://competition-policy.ec.europa.eu/system/files/2021-05/HBERs\\_evaluation\\_SWD\\_en.pdf](https://competition-policy.ec.europa.eu/system/files/2021-05/HBERs_evaluation_SWD_en.pdf)

<sup>19</sup> European Commission, Directorate-General for Competition, Competition policy brief 2021-01, September 2021, available at <https://data.europa.eu/doi/10.2763/962262>

<sup>20</sup> On 8 December 2022, the Commission adopted two regulations extending the period of validity of the HBERs by six months, to ensure sufficient time for the Commission to complete the process for the adoption of the new regulations: Commission Regulation (EU) 2022/2455 of 8 December 2022 amending Regulation (EU) No 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 321, 15.12.2022, p. 1; Commission Regulation (EU) 2022/2456 of 8 December 2022 amending Regulation (EU) No 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 321, 15.12.2022, p. 3.

launched in June 2020 a process to assess whether there is a need for measures at EU level to ensure that EU competition law does not stand in the way of collective agreements of self-employed persons aiming to improve their working conditions<sup>21</sup>. Following extensive consultation and the publication of draft Guidelines in December 2021 on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, the Commission adopted the final version of the Guidelines on 29 September 2022<sup>22</sup>.

Based on established case-law of the Court of Justice of the European Union<sup>23</sup>, the Guidelines describe situations when solo self-employed persons may be comparable to workers, and clarify that their collective agreements then fall outside the scope of Article 101 TFEU. This covers economically dependent solo self-employed persons, those working side-by-side with workers and those providing their services through digital labour platforms.

Furthermore, the Guidelines clarify that in certain cases, where self-employed persons who are not in a situation comparable to that of workers have difficulties in influencing their working conditions because of a weak negotiating position, the Commission will not intervene against certain categories of collective agreements. This concerns situations where there is an imbalance in bargaining power or certain situations where collective agreements are being concluded by self-employed persons pursuant to national or Union legislation, e.g. authors and performers, self-employed audiovisual translators or freelance journalists, as long as the collective agreements are covered by national or Union law<sup>24</sup>.

## **1.2. Important cartel judgments by the Courts of the European Union**

In 2022, the Courts of the European Union largely confirmed the Commission's cartel enforcement practice. In particular, the Courts confirmed the Commission's jurisdiction to tackle cartels that operate on a worldwide basis, the notion of single and continuous infringement as interpreted by the Commission, the legality of staggered hybrid procedures, as well as the methodology used by the Commission for the calculation of fines. The judgments of the Courts also shed light on important aspects in relation to the application of the Leniency Notice.

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<sup>21</sup> See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules_en)

<sup>22</sup> Communication from the Commission - Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons, OJ C 374, 30.9.2022, p. 2.

<sup>23</sup> Judgment of the Court of Justice of 4.12.2014, Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, EU:C:2014:2411; judgment of the Court of Justice of 21.12.1999, Case C-67/96, *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, EU:C:1999:430.

<sup>24</sup> This is for example the case of Directive (EU) 2019/790 of the European Parliament and of the Council ('Copyright Directive'), which has set out the principle that authors and performers are to be entitled to receive appropriate and proportionate remuneration when they license or transfer their exclusive rights for the exploitation of their works and any other subject matter protected by copyright and related rights. Authors and performers tend to be in a weaker contractual position than their counterparty/-ies, and the Copyright Directive provides for the possibility to strengthen their contractual position in order to ensure fair remuneration in contracts for the exploitation of their work. The Copyright Directive grants flexibility to Member States to implement this principle using different mechanisms (including collective bargaining), as long as they comply with Union law.

### 1.2.1. The Commission's jurisdiction

In the *Airfreight* cases<sup>25</sup>, the General Court confirmed the Commission's jurisdiction, under Article 101 TFEU and Article 53 EEA, to tackle worldwide cartels that restrict competition within the EEA.

The airlines contested the Commission's jurisdiction over their worldwide cartel (consisting of a set of bilateral and multilateral contacts) on the grounds that part of that cartel concerned sales outside the EEA. The General Court first recalled that conduct outside the territory of the EEA falls under the Commission's jurisdiction on the basis of either the implementation test (*i.e.*, when the conduct is implemented in the territory of the EEA) or the qualified effects test (see below), the two tests being alternative<sup>26</sup>.

The General Court assessed the worldwide cartel under the qualified effects test and found that the Commission was right to consider that it had jurisdiction over the aspects of the worldwide cartel that affected the EEA, as it was foreseeable that those aspects would have an immediate and substantial effect in the internal market or within the EEA<sup>27</sup>. The Commission therefore did not have to demonstrate the actual effects of the worldwide cartel in the EEA, its probable effects being enough to recognise the Commission's jurisdiction.

The General Court also confirmed that the Commission was entitled to apply the qualified effects test to the worldwide cartel taken as a whole because all its aspects served the same anticompetitive objective. As a result, it was not possible for the airlines to escape the application of Article 101(1) TFEU by combining several types of conduct that pursued the same objective, but which, taken individually, were incapable of producing an immediate and substantial effect in that market<sup>28</sup>.

In the *Optical Disk Drives* cases, the Court of Justice confirmed the Commission's finding that, although the cartel contacts took place outside the EEA, they were implemented on a worldwide basis, including the EEA, and that, as a result, the Commission had jurisdiction<sup>29</sup>.

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<sup>25</sup> Judgments of the General Court of 30.3.2022 in Cases T-323/17, *Martinair Holland v Commission*, EU:T:2022:174; T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175; T-325/17, *Koninklijke Luchtvaart Maatschappij v Commission*, EU:T:2022:176; T-326/17, *Air Canada v Commission*, EU:T:2022:177; T-334/17, *Cargolux Airlines v Commission*, EU:T:2022:178; T-337/17, *Air France-KLM v Commission*, EU:T:2022:179; T-338/17, *Air France v Commission*, EU:T:2022:180; T-340/17, *Japan Airlines v Commission*, EU:T:2022:181; T-341/17, *British Airways v Commission*, EU:T:2022:182; T-342/17, *Deutsche Lufthansa and Others v Commission*, EU:T:2022:183; T-343/17, *Cathay Pacific Airways v Commission*, EU:T:2022:184; T-344/17, *Latam Airlines Group SA and Lan Cargo SA v Commission*, EU:T:2022:185; T-350/17, *Singapore Airlines and Singapore Airlines Cargo v Commission*, EU:T:2022:186.

<sup>26</sup> See, for example, the judgment of the General Court of 30.3.2022 in Case T-323/17, *Martinair Holland v Commission*, EU:T:2022:174, paragraphs 102-103.

<sup>27</sup> See, among others, the judgment of the General Court of 30.3.2022 in Case T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175, paragraph 161.

<sup>28</sup> See, among others, the judgment of the General Court of 30.3.2022 in Case T-340/17, *Japan Airlines Co. Ltd v Commission*, EU:T:2022:181, paragraphs 154-155.

<sup>29</sup> Judgments of the Court of Justice of 16.6.2022 in Cases C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478; C-698/19 P, *Sony Optiarc and Sony Optiarc America v Commission*, EU:C:2022:480; C-699/19 P, *Quanta Storage v Commission*, EU:C:2022:483; and C-700/19 P, *Toshiba Samsun Storage Technology and Toshiba Samsung Storage Technology Korea v Commission*, EU:2022:484.

### 1.2.2. *Single and continuous infringement*

In litigation relating to the ***Trucks cartel***, a cartel relating to the coordination of prices and the timing and pricing related to the introduction of emission technologies to comply with the European emissions standards<sup>30</sup>, the General Court confirmed that, in order to find a single and continuous infringement, the Commission is not required to demonstrate that each of the various instances of a conduct falls within Article 101 TFEU. Instead, there is a single and continuous infringement when there is a demonstration that the various instances of a conduct form part of an overall plan designed to achieve a single anti-competitive objective<sup>31</sup>.

In the ***Airfreight*** cases, the General Court confirmed the qualification of a worldwide cartel (consisting of a set of bilateral and multilateral contacts) as a single and continuous infringement in so far it affected the EEA. It nonetheless reduced the fines imposed on specific carriers due to the inability of the Commission to prove their participations in certain elements of the single and continuous infringement<sup>32</sup>.

In the ***Optical Disk Drives*** cases, in which the parties concerned coordinated their behaviour through a network of bilateral contacts, the Court of Justice confirmed that the participation of an undertaking in a single and continuous infringement does not require its direct participation in *all* the anticompetitive conduct of which that infringement is comprised<sup>33</sup>.

The ***Optical Disk Drives*** cases were also the opportunity for the Court of Justice to confirm that the Commission is entitled to find that an undertaking participated in a single and continuous infringement when it participated only passively (*i.e.*, by merely being in copy of emails) in that infringement<sup>34</sup>.

Finally, in the ***Optical Disk Drives*** cases, the Court of Justice also ruled on the issue of the dual characterisation of an infringement. According to the Court of Justice, where a single and continuous infringement consists of separate practices that are, taken in isolation, also characterised as individual infringements of Article 101(1) TFEU, the Commission is required to identify and legally characterise each of those separate infringements. As a consequence, the Court of Justice concluded that the mere mention in a statement of objections of the possibility to qualify the single and continuous infringement as separate infringements was not sufficient to observe the parties' rights of defence<sup>35</sup>.

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<sup>30</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48. More specifically, as regards the emission technologies, the truck manufacturers agreed to (i) coordinate the timing for the introduction of emission technologies; and (ii) pass on to customers the costs for the emissions technologies required in order to comply with the European emissions standards.

<sup>31</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48, paragraph 208.

<sup>32</sup> Namely *Air Canada, British Airways, LAN and SAS*. See, among others, the judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraphs 514-543 and 582-587.

<sup>33</sup> See, among others, the judgments of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraph 64; C-698/19 P, *Sony Optiarc and Sony Optiarc America v Commission*, EU:C:2022:480, paragraph 61.

<sup>34</sup> See, among others, the judgment of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraphs 128-130.

<sup>35</sup> See, among others, the judgment of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraphs 67-79.

### *1.2.3. Staggered hybrid procedures*

In a judgment concerning the ***Trucks cartel***<sup>36</sup>, the General Court confirmed the legality of ‘staggered hybrid procedures’ in cartel matters<sup>37</sup>.

In that case, the Commission had adopted first a settlement decision in respect of the undertakings which had submitted a formal request for settlement. The Commission continued its investigation concerning the applicant, who had withdrawn from the settlement procedure and addressed to it a prohibition decision with fines. The applicant claimed that the Commission had breached the presumption of innocence and its right of defence by adopting the settlement decision before the decision addressed to it. However, the General Court confirmed that the Commission was entitled to follow such a staggered hybrid procedure in the context of the application of Article 101 TFEU.

The General Court emphasised that the Commission’s decision not to follow the settlement procedure does not, in itself, entail an infringement of the presumption of innocence, the rights of the defence or the duty of impartiality<sup>38</sup>. The General Court further examined the precise circumstances of the case and recognised that the Commission had observed those principles, thereby fully upholding the Commission’s decision and the amount of the fine.

### *1.2.4. The calculation of cartel fines*

In the ***Airfreight*** cases, the General Court confirmed the methodology used by the Commission regarding the calculation of the fines and its application of the 2006 Fining Guidelines<sup>39</sup>.

First, the General Court recognised that the Commission was entitled, in order to determine the basic amount of the fines, to take into account the entire amount of sales linked to the airfreight services, without being required to split that amount into its component elements<sup>40</sup>. The General Court thus dismissed the argument from the airlines according to which the basic amount of the fines should have been calculated by reference to the revenues derived specifically from the surcharges that constituted the single and continuous infringement.

Second, the General Court confirmed that the “sales in the EEA” also covered sales to customers outside the EEA, as these sales have a link with the EEA<sup>41</sup>.

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<sup>36</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48.

<sup>37</sup> See also the judgment adopted by the Court of Justice in 2021 regarding staggered hybrid procedure in Case C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

<sup>38</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48, paragraphs 99-105.

<sup>39</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2.

<sup>40</sup> Judgments of the General Court of 30.3.2022 in Cases T-325/17, *Koninklijke Luchtvaart Maatschappij v Commission*, EU:T:2022:176, paragraph 306; T-337/17, *Air France-KLM v Commission*, EU:T:2022:179, paragraphs 404-408; T-338/17, *Air France v Commission*, EU:T:2022:180, paragraph 296 ; T-340/17, *Japan Airlines v Commission*, EU:T:2022:181, paragraph 307.

<sup>41</sup> Judgments of the General Court of 30.3.2022 in Cases T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175, paragraph 778; T-340/17, *Japan Airlines Co. Ltd v Commission*, EU:T:2022:181, paragraph 369; T-343/17, *Cathay Pacific Airways v Commission*, EU:T:2022:184, paragraph 557.



#### 1.2.5. Application of the Commission's Leniency Notice

In the *Airfreight* cases – and more specifically in the *Air Canada* case -, the General Court held that the Commission did not breach the right of defence of *Air Canada* when it refused its request to withdraw its leniency application and accompanying documents at a late stage of the administrative proceedings.

The General Court recalled that any statement made vis-à-vis the Commission in connection with a leniency application forms an integral part of its file, since the Commission may use such statements as evidence<sup>42</sup>.

In addition, the General Court ruled that removing from the file evidence that was originally provided by an undertaking that ultimately terminated its cooperation before the adoption of the Commission's decision would undermine the effectiveness of the leniency procedure. This is because the Commission would be deprived of evidence that is essential to establish the infringement at a stage where the possibility of making up for that lack of evidence would be considerably reduced, and because this would leave the Commission to the goodwill of the leniency applicant<sup>43</sup>.

#### 1.2.6. The duration of proceedings

In the *Reinforcing steel bars* cartel, the General Court confirmed that the Commission was entitled to impose fines on undertakings for their participation in the cartel even though it had started 30 years before the Commission adopted its final decision<sup>44</sup>.

The Commission had originally adopted two infringement decisions against the applicants in 2002<sup>45</sup> and in 2009<sup>46</sup> that were subsequently both annulled on procedural grounds, namely the use of the wrong legal basis for the 2002 decision<sup>47</sup>, and the insufficient consultation of representatives from EU Member States for the 2009 decision<sup>48</sup>. The Commission ultimately adopted a final decision in 2019 and granted a 50% reduction of the amount of the fines due to the length of the procedure<sup>49</sup>.

The General Court dismissed the argument of the applicants according to which the duration of the proceedings was excessive and that the Commission no longer had the power to impose sanctions<sup>50</sup>. The General Court fully confirmed the Commission's decision and considered

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<sup>42</sup> Judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraph 547.

<sup>43</sup> Judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraph 552.

<sup>44</sup> Judgments of the General Court of 9.11.2022 in Cases T-655/19, *Ferriera Valsabbia and Valsabbia Investimenti v Commission*, EU:T:2022:689; T-656/19, *Alfa Acciai v Commission*, EU:T:2022:690; T-657/19, *Feralpi v Commission*, EU:T:2022:691 and T-667/19, *Ferriere Nord v Commission*, EU:T:667/19.

<sup>45</sup> Decision C(2002) 5087 final of 17.12.2002.

<sup>46</sup> Decision C(2009) 7492 final of 30.9.2009 as amended by Decision C(2009) 9912 final of 8.12.2009.

<sup>47</sup> Judgment of the Court of First Instance of 25.10.2007 in Joined Cases T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, *SP SpA t. al. v Commission*, EU:T:2007:317.

<sup>48</sup> Judgments of the Court of Justice of 21.9.2017 in Cases C-85/15 P, C-86/15 P, C-87/15 P, C-88/15 P und C-89/15 P, *Feralpi Holding SpA et. al. v Commission*, EU:C:2017:709; EU:C:2017:717; EU:C:2017:716; EU:C:2017:713.

<sup>49</sup> Decision C(2019) 4969 final of 4.7.2019.

<sup>50</sup> See, among others, the Judgment of the General Court of 9.11.2022 in Case T-667/19, *Ferriere Nord v Commission*, EU:T:2022:692, paragraph 229.

that the duration of the proceedings was not unreasonable given the number of appeals lodged and the complexity of the case<sup>51</sup>.

#### 1.2.7. The right of defense

In the *Qualcomm* case, the General Court annulled the Commission's decision, finding inter alia a number of procedural irregularities which affected *Qualcomm's* rights of defense<sup>52</sup>. In 2018, the Commission imposed a EUR 997 million fine on *Qualcomm*, finding that the firm had abused its dominant position on the worldwide market for chipsets compatible with the Long Term Evolution (LTE) standard. *Qualcomm* agreed to make 'significant payments' to *Apple* on condition that *Apple* would exclusively use *Qualcomm* chipsets in its devices. The Commission found these exclusivity payments capable of having anticompetitive effects by reducing *Apple's* incentives to switch to competing LTE chipset providers. *Qualcomm* challenged the decision, arguing that the Commission had made procedural errors and that its assessment of anticompetitive effects was insufficient. The General Court annulled the Commission's decision in its entirety, finding a number of procedural irregularities, which - according to the General Court - affected *Qualcomm's* rights of defence. The General Court also disagreed with the Commission's analysis of the anticompetitive effects of the exclusivity payments.

### 1.3. The fight against cartels remains a top priority

Cartels are considered the ultimate threat to competition. The detection and sanctioning of cartels therefore represents an essential concern for the Commission. Following the strong enforcement record of 2021, the Commission used the year 2022 as an opportunity to build up a new stream of cartel cases, relying on information from leniency applicants as well as leads obtained from its own *ex officio* efforts. In addition, the relaxation of the sanitary restrictions towards the end of 2021 enabled the Commission to again carry out unannounced inspections in a number of different sectors. This compensated, at least partially, for the investigatory gap caused by the impact of the Covid-19 pandemic on the travelling logistics.

The pandemic not only impacted the Commission's powers to conduct inspections, but it also changed the working habits in many sectors of the EU economy. The increased number of employees, who work from their homes, affects the location of potential evidence for an alleged cartel conduct and consequently the scope of the Commission's inspections. The Commission has therefore, for the first time in many years, made use of its powers to search the private home of individuals in parallel with an inspection of the business premises of the employer concerned.

In addition, the Commission further reinforced its *ex officio* policy to generate new cartel cases. The *ex officio* strategy consists of several elements, such as the whistle-blower tool, the cooperation with other authorities and external stakeholders and the support of a dedicated forensic intelligence analysis unit within DG Competition that often complement each other during the different stages of an investigation. DG Competition continuously builds up its

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<sup>51</sup> See, among others, the Judgment of the General Court of 9.11.2022 in Case T-667/19, *Ferriere Nord v Commission*, EU:T:2022:692, paragraph 252.

<sup>52</sup> Judgment of the General Court of 15.6.2022 in Case T-235/18, *Qualcomm v Commission*, EU:T:2022:358.

expertise in this field, which is confirmed by a growing number of investigations initiated based on its *ex officio* work.

The Commission also continues to invest in the strengthening of its leniency policy. On 25 October 2022, the Commission published a Frequently Asked Questions document to provide guidance on its leniency policy and practice<sup>53</sup>. This includes clarifications on the application of the Leniency Notice and details on the legal protections and benefits that the leniency programme offers, sets out new practical arrangements, such as the identification of Leniency Officers that companies or their legal representatives can contact for informal advice on leniency or for guidance on submitting a leniency application, and signals the Commission's intention to discuss potential leniency applications on a “no-names” basis, without the need to disclose the sector, the parties involved or any other details identifying the potential cartel.

The *eLeniency* tool, introduced in 2019, was key to an effective continuation of the leniency programme throughout the pandemic, since it allowed leniency applicants to file submissions online 24/7 with the same safeguards as if the statements had been dictated at the Commission's premises. The Commission further built on this success and upgraded the tool in 2022 to increase its functionality<sup>54</sup>. The *eLeniency* tool now enables an efficient two-way interaction with parties, including in the settlement procedure, while safeguarding the confidentiality of the documents submitted or displayed in the system.

In July 2022, the Commission fined the metal packaging producers *Crown* and *Silgan* a total of EUR 31.5 million in a settlement procedure for taking part in a cartel concerning metal cans and closures in Germany<sup>55</sup>. The cartel consisted of two legs, namely 1) regular bilateral exchanges on the parties' past annual sales volumes of metal closures to their customers, and 2) in the context of the introduction of metal cans and closures coated with a (then) new BPA-free lacquer in Germany, exchanges of information concerning their intentions to impose a surcharge and to shorten the minimum durability recommendations compared to BPA-containing lacquers. *Crown* was granted a reduction of the fine of 50% under the Leniency Notice and both companies were granted a reduction of 10% under the Settlement Notice.

In November 2022, the Commission fined *Sunpor*, *Synbra*, *Synthomer*, *Synthos* and *Trinseo* a total of EUR 157 million for participating in a cartel concerning purchases on the styrene monomer merchant market<sup>56</sup>. This most recent purchasing cartel case shows the Commission's intention to pursue a wide range of different types of cartels, including more traditional price- and market fixing cartels as well as e.g. purchasing or labour market cases or collusion on other elements than price and output. The cartel investigations in these cases contribute to clarifying the borderlines of legitimate cooperation between undertakings.

In June 2022, the Commission informed *České dráhy* and *Österreichische Bundesbahnen*, the Czech and Austrian rail incumbents, of its preliminary view that they have breached EU

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<sup>53</sup> See the press release of 25.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6373](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6373)

<sup>54</sup> See the press release of 30.9.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5845](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5845)

<sup>55</sup> Case T.40522, *Metal packaging*, see also the press release of 12.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4483](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4483)

<sup>56</sup> Case AT.40547, *Styrene monomer*; see also the press release of 29.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7168](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7168)



antitrust rules by colluding in the market for used passenger railway wagons with the aim to distort competition in the rail passenger transport market<sup>57</sup>.

In July 2022, the Commission informed *Alcogroup S.A.* and its subsidiary *Alcodis S.A.* (together ‘*Alcogroup*’) as well as *Lantmännen ek för* and its subsidiary *Lantmännen Agroetanol AB* (together ‘*Agroetanol*’) of its preliminary view that, together with *Abengoa S.A.*, which settled the case in December 2021<sup>58</sup>, they had breached EU antitrust rules by colluding to influence the wholesale price formation mechanism for ethanol in Europe<sup>59</sup>.

In December 2022, the Commission informed *Deutsche Bank* and *Rabobank* of its preliminary view that the two banks breached EU antitrust rules by exchanging commercially sensitive information and colluding on their pricing and trading strategies with respect to Euro-denominated Sovereign, SSA (Supra-Sovereign, Foreign Sovereign, Sub-Sovereign/Agency), Covered and Government Guaranteed bonds<sup>60</sup>.

The Commission remains committed to investigating possible anticompetitive conduct affecting the achievement of the green and digital transition. It has, amongst other, conducted unannounced inspections in the automotive sector concerning possible collusion in relation to the collection, treatment and recovery of end-of-life cars and vans which are considered waste<sup>61</sup>.

Cartel decisions 2022:

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Metal packaging	12/07/2022	31.522.000	2	Settlement
Styrene monomer	29/11/2022	157.072.000	5	Settlement
<b>Total</b>		<b>188.594.000</b>		

## 1.4. Cooperation within the European Competition Network and with national courts

### 1.4.1. Cooperation with national competition authorities within the European Competition Network

Since 2004, the Commission and the NCAs in all EU Member States cooperate through the European Competition Network (ECN)<sup>62</sup>. The objective of the ECN is to ensure that EU competition law is applied in an effective and coherent manner against companies engaging in business practices that restrict competition in the EU.

In 2022, the Commission continued to ensure the coherent application of Regulation 1/2003<sup>63</sup>

<sup>57</sup> See the press release of 10.6.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3585](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3585)

<sup>58</sup> Case AT.40054, *Ethanol benchmarks*, see also the press release of 10.12.2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6769](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6769)

<sup>59</sup> Case AT.40054, *Ethanol benchmarks*.

<sup>60</sup> Case AT. 40512, *Euro denominated bonds*; see also the press release of 6.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7409](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7409)

<sup>61</sup> See the press release of 15.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1765](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1765)

<sup>62</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43 and OJ C 374, 13.10.2016, p. 10.

<sup>63</sup> See Fn. 2.

on the implementation of the rules on competition (Articles 101 and 102 TFEU) through the ECN. Two of the key supporting cooperation mechanisms in this Regulation are the obligation of NCAs to inform the Commission on a new investigation at the stage of the first formal investigative measure and to consult the Commission on envisaged decisions. In 2022, 148 new investigations were launched within the network and 78 envisaged decisions were submitted.

In addition to those cooperation mechanisms set out in Regulation (EC) No 1/2003, other ECN cooperation work streams equally ensure a coherent enforcement of the EU competition rules. The ECN members meet regularly to discuss cases at early stages, policy issues, as well as matters of strategic importance. In 2022, 45 meetings across horizontal working groups and sector-specific sub-groups were organised, where competition authorities' officials exchanged views.

#### *1.4.2. The ECN+ Directive*

The ECN+ Directive<sup>64</sup>, empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust, entered into force on 4 February 2019. The ECN+ Directive aims to ensure that when applying the same legal provisions – the EU antitrust rules – NCAs have the effective enforcement tools and the resources necessary to detect and sanction companies that infringe Articles 101 and 102 TFEU. It also aims to ensure that they can take their decisions in full independence, based on the facts and the law. The new rules contribute to the objective of a genuine single market, promoting the overall goal of an open, competitive and innovative internal market creating jobs and growth.

Member States had to transpose the Directive into national law by 4 February 2021. On 19 March 2021, the Commission sent Letters of Formal Notice, opening infringement procedures against 22 Member States for non-communicating the transposing measures by the deadline. In September 2022, the Commission sent a Reasoned Opinion, the second step of the infringement procedure, to four Member States that still did not notify any transposing measures. In December 2022, 21 Member States have notified full transposition of the Directive and three Member States at least partial transposition. The Commission will check the completeness and conformity of their national transposition measures. The Commission keeps assisting the remaining Member States in the last stages of their transposition processes.

#### *1.4.3. Cooperation with national courts*

In addition to its cooperation with NCAs in the context of the ECN, the Commission also continued its cooperation with national courts. The Commission supports national courts in enforcing the EU competition rules in an effective and coherent manner by providing case-related information or opinions on matters of substance or by intervening as *amicus curiae* in proceedings pending before the national courts.

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<sup>64</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11.12.2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3.

#### *1.4.4. Private enforcement*

Directive 2014/104/EU on antitrust damages actions ('the Damages Directive')<sup>65</sup> aims at ensuring that anyone harmed by infringements of the EU competition rules can effectively avail itself of the right to compensation before national courts. As noted in the report on the implementation of the Damages Directive to the European Parliament and the Council of December 2020<sup>66</sup>, since the adoption of the Damages Directive in 2014, the number of damages actions before national courts has increased significantly, and actions for damages have become much more widespread in the EU. This has also resulted in a number of references for a preliminary ruling to the Court of Justice under Article 267 TFEU which contribute to the further clarification of central aspects of private enforcement of EU competition law as well as to the interpretation of the Damages Directive. A significant number of damages actions are still follow-on actions, where the person harmed by a competition law infringement claims damages following a final decision of a competition authority.

The Commission continues to monitor the application of the Damages Directive by the national courts of the Member States with a view to reviewing it, once sufficient experience from the application of its rules is available.

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<sup>65</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26.11.2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1.

<sup>66</sup> Commission Staff Working Document on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26.11.2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union SWD(2020) 338 final, 14.12.2020.

## 2. MERGER CONTROL

### EU merger control

The purpose of EU merger control is to ensure that market structures remain competitive while enabling smooth restructuring of the industry. This applies not only to EU-based companies, but also to any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur.

EU merger control ensures that all firms active in EU markets can compete on fair and equal terms. Proposed transactions which may distort competition are subject to close scrutiny by the Commission. If necessary to protect competition, the Commission can give merging firms the possibility to dispel competition concerns by offering commitments. If sufficient commitments cannot be found or agreed upon, the Commission may prohibit the transaction. In its assessments, the Commission takes into account efficiencies possibly brought about by mergers. Efficiencies may have positive effects on costs and innovation, for example, provided that they are verifiable, merger-specific and likely to be passed on to consumers.

### Recent enforcement trends

The Commission's enforcement activity remained at a high level with a total number of 368 merger decisions adopted in 2022 (371 notifications). Moreover, in 2022 the Commission received 26 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a NCA or vice versa. The Commission accepted to examine two transactions following a referral pursuant to Article 22 of Council Regulation (EC) No 139/2004 (the 'EU Merger Regulation')<sup>67</sup> and referred one transaction pursuant to Article 9 of the EU Merger Regulation to be examined by NCAs.

The vast majority of mergers notified in 2022 did not raise competition concerns and were speedily reviewed. The simplified procedure was applied in 78 % of all notified transactions under the EU Merger Regulation in 2022. Nevertheless, in 2022, the Commission's merger enforcement was intensive due to the large number of notified transactions as well as the complexity of a significant number of cases. Moreover, the Commission intervened in 14 cases. An increasing number of notified transactions concerned already concentrated industries. Reviewing such transactions required the Commission to carefully assess their potential impact on competition, employing sophisticated quantitative techniques and comprehensive qualitative investigative tools.

In 2022, the Commission opened in-depth investigations (the "Phase II") in eight cases. These cases concerned diverse sectors of the economy, including woodboard panels, retail motor fuel markets, retail markets for the supply of fixed internet services and audio-visual services, the entire book value chain in French-speaking countries, green aluminium products, the

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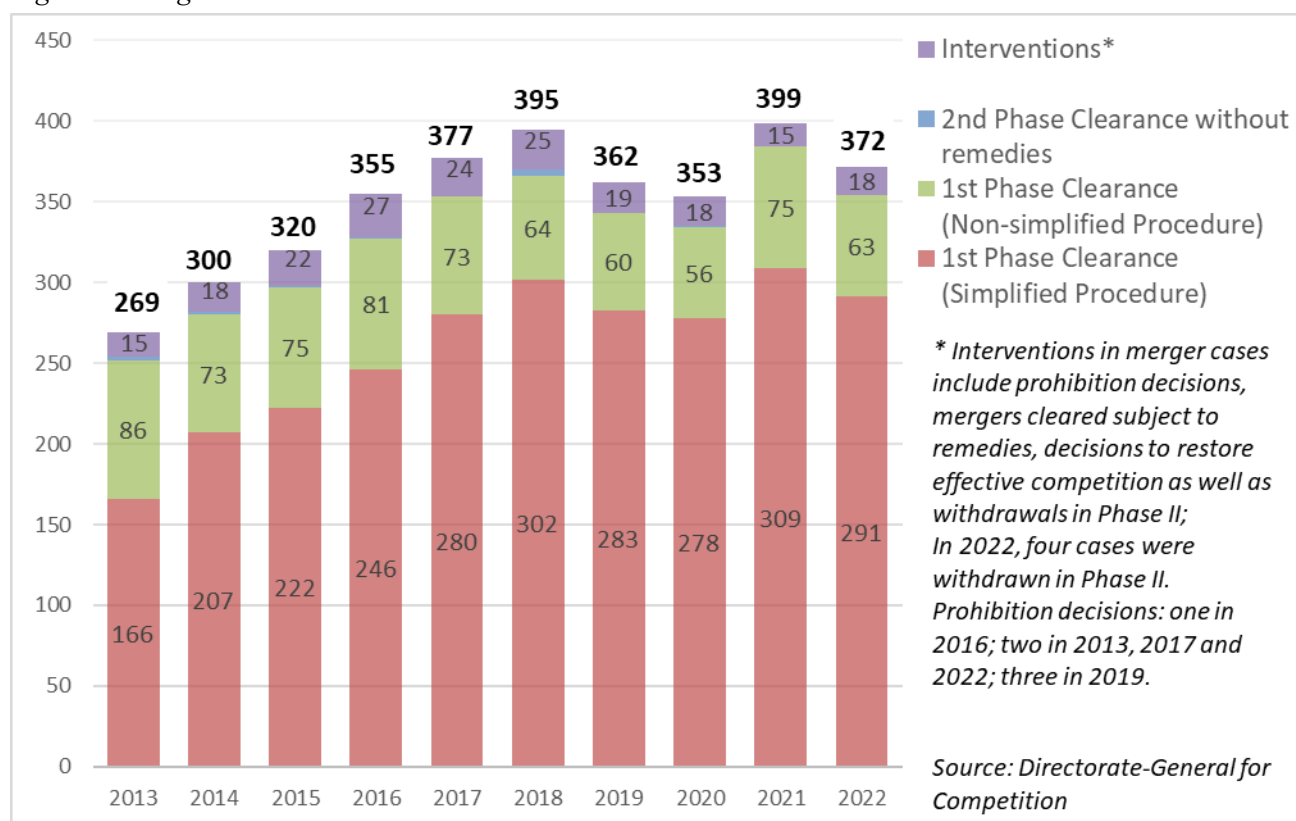
<sup>67</sup> Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1.

market for accommodation online travel agencies, video games as well as virtualisation software.

In line with the trends of recent years, the Commission in 2022 assessed mergers involving digital issues. For example, the Commission, following an in-depth assessment, adopted a clearance decision in *Meta/Kustomer*, a transaction involving the market for the supply of customer relationship management ('CRM') software, and opened an in-depth investigation into the proposed acquisition of *Activision* by *Microsoft*, as the transaction may significantly reduce competition on the markets for the distribution of console and PC video games, including multi-game subscription services and/or cloud game streaming services, and for PC operating systems.

The Commission's merger enforcement activities remained at levels similar to the most recent years. The Commission adopted 368 merger decisions in various sectors of which 291 were approved following a simplified procedure. The Commission intervened in 14 proposed acquisitions, of which 12 transactions were approved subject to conditions. Four notified transactions were abandoned by the parties and withdrawn in Phase II during the in-depth investigation. Finally, the Commission prohibited two transactions in 2022<sup>68</sup>.

Figure 3: Merger outcomes 2013-2022



<sup>68</sup> Cases M.9343 *Hyundai Heavy Industries Holdings (HHIH) / Daewoo Shipbuilding & Marine Engineering CO., Ltd (DSME)* and M.10188 *Illumina / Grail*, prohibition decision of 6 September 2022

Most remedies accepted by the Commission in 2022 consisted of divestitures of tangible or intangible assets. This confirms the Commission's general preference for structural remedies in merger cases as they are best suited to address competition concerns arising from a concentration in a durable manner.

In addition to remedies offered in Phase II investigations, in 2022, the Commission also cleared transactions subject to remedies where the notifying parties offered comprehensive remedy packages already in phase I, including in some complex transactions such as the acquisition of *Equans* by *Bouygues*<sup>69</sup> or *Celanese's* acquisition of *DuPont's* Mobility and Materials Business<sup>70</sup>.

In 2022, following *Illumina's* premature implementation of its acquisition of *GRAIL* in 2021 prior to the outcome of merger review of the transaction and the subsequent prohibition decision of 2022, the Commission adopted interim measures pursuant to Article 8(5)(c) of the EU Merger Regulation to restore and maintain the conditions of effective competition<sup>71</sup>.

Finally, on 21 February 2022, the Commission concluded on a breach of Article 21 of the EU Merger Regulation and ordered Hungary to withdraw its veto on the acquisition of two Hungarian subsidiaries of *AEGON* by *VIG*, both active in the insurance sector, by 18 March 2022<sup>72</sup>.

## **2.2. The evaluation of selected procedural and jurisdictional aspects of EU merger control**

Following a stakeholders' consultation in May/June 2022, the Commission finalised its impact assessment on policy options for further simplification of merger procedures<sup>73</sup>. On 28 October 2022, the Commission's Regulatory Scrutiny Board adopted a positive opinion on the impact assessment report. Once adopted, the revised Implementing Regulation and Notice on a simplified procedure will allow for further simplification through the introduction of new categories of simplified cases, the streamlining of the Commission's merger procedures, as well as the introduction of electronic notification as the default way of notifying merger transactions.

## **2.3. Market definition notice**

In 2022, the Commission continued its review of the 1997 Commission Notice on the definition of relevant market for the purposes of Community competition law ('the Market Definition Notice')<sup>74</sup>. Market definition is an important first step in the assessment of merger cases and of most antitrust cases and is used to define the boundaries of competition between

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<sup>69</sup> Case M.10575, *Bouygues / Equans*; see also the press release of 19.7.2022:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4603](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4603)

<sup>70</sup> Case M. 10721, *Celanese / DuPont*; see also the press release of 11.10.2022:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6114](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6114)

<sup>71</sup> Case M.10938, *Illumina / Grail* (Interim measures under Article 8(5)(c)). These Interim measures replace the Interim measures imposed by the Commission pursuant to the decision in Case M.10493 pursuant to Article 8(5)(a) of the Merger Regulation adopted on 29 October 2021.

<sup>72</sup> Case M.10494, *VIG / Aegon CEE* (Art. 21 procedure). The transaction had already been unconditionally approved by the Commission on 12 August 2021, see: Case M.10102.

<sup>73</sup> See: [https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification_en)

<sup>74</sup> Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5.



companies. It is the first time since its adoption in 1997 that the Notice is being revised. Based on the results of the evaluation of the Market Definition Notice, summarised in a Staff Working Document of July 2021<sup>75</sup>, the Commission launched a public consultation on a draft revised Market Definition Notice on 8 November 2022, to run until mid-January 2023. The main objective of the draft revised Market Definition Notice is to offer more guidance, transparency and legal certainty for businesses to facilitate compliance, including through concrete examples. It also aims at contributing to a more efficient enforcement by the Commission and NCAs. The Commission aims at adopting the revised Market Definition Notice before the end of 2023.

#### 2.4. Significant judgments by EU courts in merger control

On 23 February 2022, the General Court dismissed the actions by *UPS* and *ASL* for damages totalling EUR 2 billion<sup>76</sup>. According to the Court, the conditions for non-contractual liability pursuant to Article 340 TFEU were not fulfilled in the *UPS* case. However, the Court ordered the Commission to pay 1/3 of the costs of *UPS*, as a compensation for the Commission's sufficiently serious breach of its due process rights during the administrative procedure leading to the prohibition decision in 2013. *UPS* appealed the judgment. In the *ASL* case, the Court ruled that a simple general reference to *UPS*' claims as the basis for its own claims was inadmissible.

In an important judgment on 'gun jumping', the Union Courts confirmed the Commission's approach. On 18 May 2022, the General Court upheld in its entirety the Commission decision in *Canon*<sup>77</sup>. The General Court ruled that a partial implementation of a concentration via a parking structure contributes to the envisaged ultimate change of control and can be fined concurrently for breaches of Articles 4(1) and 7(1) of the EU Merger Regulation.

On the same day, the General Court also dismissed the appeal brought by *Wieland* against the 2019 Commission's decision prohibiting the acquisition by *Wieland* of *Aurubis Rolled Products* and *Aurubis'* stake in *Schwermetall*<sup>78</sup>. In its judgment, the General Court confirmed that the Commission's approach to market definition of copper products was appropriate and reflected market reality. It also upheld the Commission's assessment of the risk of creation of a significant impediment to effective competition in the markets for rolled copper products in the EEA. Furthermore the General Court confirmed the Commission's rejection of the commitments proposed by *Wieland* as neither effective nor comprehensive.

On 22 June 2022 the General Court upheld the Commission's 2019 decision prohibiting the creation of a joint venture by *Tata Steel* and *thyssenkrupp*<sup>79</sup>. In its judgment, the General

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<sup>75</sup> Commission Staff Working Document, Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9.12.1997, SWD (2021) 199 final, 12.7.2021, [https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation\\_market-definition-notice\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation_market-definition-notice_en.pdf)

<sup>76</sup> Judgments of the General Court of 23.2.2022 in parallel Cases T-834/17, *UPS v Commission*, EU:T:2022:84 and T-540/18, *ASL v Commission*, EU:T:2022:85. The judgment in T-834/17 was appealed by UPS.

<sup>77</sup> Judgment of the General Court of 18.5.2022, Case T-609/19, *Canon Inc. v European Commission*, EU:T:2022:299.

<sup>78</sup> Judgment of the General Court of 18.5.2022, Case T-251/19, *Wieland-Werke AG v European Commission*, EU:T:2022:296.

<sup>79</sup> Judgment of the General Court of 22.6.2022, Case T-584/19, *thyssenkrupp AG v European Commission*, EU:T:2022:386.

Court fully upheld the Commission's assessment and confirmed the finding of a significant impediment to effective competition in the European Economic Area markets for certain automotive steel products, where the merger was found to eliminate an important competitive constraint, and packaging steel products where the merged entity would achieve dominance in certain segments of the market. The General Court further found that the Commission correctly concluded that the remedies offered by the parties were insufficient to eliminate the identified significant impediments to effective competition.

Lastly, the General Court upheld the Commission's referral decisions under Article 22 of the EU Merger Regulation in the *Illumina/GRAIL* case, which marked the first time that the Commission applied its recalibrated approach to merger referrals under Article 22 of the EU Merger Regulation. It followed the announcement by EVP Vestager that the Commission would no longer discourage Member States from requesting a referral of cases which are not notifiable in that Member State, to ensure that mergers involving companies whose (low) turnover does not appropriately reflect their importance for competition can be subject to merger review. In March 2021, the Commission published guidance in that respect. *Illumina* supported by *GRAIL* challenged the Commission's decisions of 19 April 2021 to accept jurisdiction over the case after such a referral. On 13 July 2022, the General Court dismissed the action<sup>80</sup>. The impact of this judgment is very significant, as the General Court confirmed, *inter alia*, that transactions referred under Article 22 of the EU Merger Regulation do not need to fall within the scope of the merger control rules of the Member State requesting the referral. The judgment of the General Court is currently under appeal before the Court of Justice.

### 3. STATE AID CONTROL

**State aid control** is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the single market.

The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, State aid, which contributes to well-defined objectives of common interest without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the internal market (under Article 107(3) TFEU).

The objectives of the Commission's control of State aid are to ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints, that aid does not restrict competition but addresses market failures for the benefit of society as a whole. In addition to this, the Commission acts to prevent and recover State aid which is incompatible with the internal market.

The Commission continued to apply in 2022 the Temporary Framework for State aid measures to support the economy in the COVID-19 pandemic, adopted in 2020 and amended for a total of six times, while embarking on a path of phase-out. It allowed well-targeted public support to remedy the serious disturbance in the economy of Member States by

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<sup>80</sup> Judgment of the General Court of 13.7.2022, Case T-227/21, *Illumina, Inc. v European Commission*, EU:T:2022:447.



countering the disruptions caused by the pandemic and to preserve the continuity of economic activity. In addition, the Commission adopted in March 2022 a Temporary Crisis Framework to enable Member States to use the flexibility foreseen under State aid rules to support the economy in the context of Russia's invasion of Ukraine, while limiting negative consequences to the level playing field in the Single Market.

To prepare the exit from the economic and social crisis caused by COVID-19 and by Russia's invasion of Ukraine towards a sustainable and resilient recovery of the EU economy with focus on green and digital transition and an increased independence on fossil fuels, DG Competition together with other Commission services continued to assist Member States in preparing their Recovery and Resilience Plans (RRPs). In addition to dealing as swiftly as possible with State aid cases on RRF measures, DG Competition continued to provide practical guidance on State aid notifications<sup>81</sup> and guiding templates to assist Member States in the design of the State aid elements of their RRP in line with EU State aid rules and to provide guidance on the State aid-related aspects of the types of investments which are expected to be common to most of those plans<sup>82</sup>.

In addition to crisis response and recovery, the Commission adopted in 2022 revised EU Guidelines for State aid for climate, environmental protection and energy ('CEEAG'), the revised Framework for State aid for the promotion of research and development and innovation ('RDI Framework'), new Broadband Guidelines, revised Agricultural Guidelines and Block Exemption Regulation and revised Fisheries Guidelines and Block Exemption Regulation. It also continued its work on revising the General Block Exemption Regulation targeted to the green and digital transition, consulting Member States on an updated draft in September, and on the revision of the Fisheries *de minimis* Regulation. The review of the sector specific rules and guidance is elaborated further in the second part of the Staff Working Document in the sectoral overview below.

### **3.1. Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia**

On 23 March 2022, the Commission adopted a Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia ('TCF')<sup>83</sup>. The TCF allows liquidity support for all undertakings directly or indirectly affected by the crisis and aid to undertakings, in particular energy-intensive commercial consumers, to compensate for part of their increase in energy costs due to the price shock since the Russian invasion, while including a number of safeguards to preserve the level playing field.

On 20 July 2022, the TCF was amended<sup>84</sup> to complement the Winter Preparedness Package<sup>85</sup> and in line with the objectives of the REPowerEU plan<sup>86</sup>.

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<sup>81</sup> See: [https://competition-policy.ec.europa.eu/system/files/2022-02/practical\\_guidance\\_to\\_MS\\_for\\_notifications\\_under\\_RRF.pdf](https://competition-policy.ec.europa.eu/system/files/2022-02/practical_guidance_to_MS_for_notifications_under_RRF.pdf)

<sup>82</sup> See: [https://competition-policy.ec.europa.eu/state-aid/coronavirus/rrf-guiding-templates\\_en](https://competition-policy.ec.europa.eu/state-aid/coronavirus/rrf-guiding-templates_en)

<sup>83</sup> Communication from the Commission - Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 131I, 24.3.2022, p. 1.

<sup>84</sup> Communication from the Commission – Amendment to the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 280, 21.7.2022, p. 1. This first

On 28 October 2022, the Commission adopted a Communication replacing the previous TCF with an updated TCF<sup>87</sup>. It sets the main principles for potential recapitalisations, especially for energy companies, increases the maximum allowed aid levels for small aid amounts, and provides additional flexibility for guarantees for energy companies to cover their liquidity needs. It also simplifies and adjusts the rules for aid granted in view of increased energy costs.

A particular need for liquidity support has emerged in the energy sector, most notably related to an increased need for financial collaterals for trading activities on the energy market. The TCF reflects this particularity by a more permissive temporary regime for this type of liquidity support. The Commission has accepted sector specific schemes in Denmark, Belgium and Finland<sup>88</sup>.

In 2022, the Commission adopted 195 decisions, approving 182 national measures notified by 27 Member States. The overall budget that Member States notified to the Commission under such State aid measures amounted to around EUR 670 billion. Some 53% of the approved aid had been notified by Germany, 24% by France and 7% by Italy<sup>89</sup>, which however does not represent the amounts actually paid out.

### **3.2. Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak**

The Commission had adopted in March 2020 a Temporary Framework for State aid measures for State aid measures to support the economy in the current COVID-19 outbreak (Temporary Framework)<sup>90</sup> to enable Member States to use the full flexibility foreseen under State aid rules to support the economy. The Temporary Framework, which was initially established with an expiry date of 31 December 2020, provided a number of aid measures that the Commission considers compatible under Article 107(3)(b) and Article 107(3)(c) TFEU, such as limited amount of aid and State guarantees for loans. The aim of the Temporary Framework was to allow Member States to tackle the difficulties undertakings are encountering as a result of the pandemic whilst maintaining the integrity of the EU internal market and ensuring free and fair competition. The Temporary Framework included certain

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amendment included provisions for Member States to provide support to accelerate the rollout of renewable energy and to facilitate the decarbonisation of industrial processes.

<sup>85</sup> Proposal for a Council Regulation on coordinated demand reduction measures for gas, COM/2022/361 final, 20.07.2022.

<sup>86</sup> Communication from the Commission, REPowerEU Plan, COM(2022) 230 final, 18.05.2022.

<sup>87</sup> Communication from the Commission - Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 426, 9.11.2022, p. 1. This Temporary Crisis Framework replaces the Temporary Crisis Framework adopted on 23 March 2022, as amended on 20 July 2022 ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

<sup>88</sup> Case SA.104273, *Belgium - TCF - State aid scheme in the context of the economic crisis caused by Russia's aggression against Ukraine*; Case SA.104602, *Denmark – TCF - Guarantee scheme for financial collaterals for electricity and gas companies*; Case SA.104224, *Finland – TCF - State Aid liquidity support in the energy sector*; Case SA.104267, *Finland - TCF - Subsidised loans in energy sector*.

<sup>89</sup> Source: Directorate-General for Competition.

<sup>90</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91 I, 20.3.2020, p. 1, as amended by Commission Communications C(2020) 2215, OJ C 112I, 4.4.2020, p. 1; C(2020) 3156, OJ C 164, 13.5.2020, p. 3; C(2020) 4509, OJ C 218, 2.7.2020, p. 3; C(2020) 7127, OJ C 340I, 13.10.2020, p. 1 and C(2021) 564, OJ C 34, 1.2.2021, p. 6, C(2021) 8442, OJ C 473, 24.11.2021, p. 1 and C(2022) 7902 of 28 October 2022.

requirements related to the green and digital transformation. Large undertakings that have received recapitalisation aid need to report on how the aid received supports their activities in line with EU targets and national obligations related to green and digital transformation, including the EU's 2050 climate neutrality objective.

In May 2022, the Commission announced that it would phase out the Temporary Framework on 30 June 2022 with some exceptions. In particular, investment and solvency support measures may still be put in place until 31 December 2023. In addition, the Temporary Framework already provides for a flexible transition, under clear safeguards, in particular for the conversion and restructuring options of debt instruments, such as loans and guarantees, into other forms of aid, such as direct grants, until 30 June 2023.

In 2022, the Commission adopted 217 decisions, approving 123 new national measures in response to the serious disturbance in the economy related to the COVID-19 outbreak. The total budget notified to the Commission under such State aid measures was around EUR 29 billion.

### **3.3. Recovery and Resilience Facility (RRF)**

The implementation of the national Recovery and Resilience Plans (RRPs) under the Recovery and Resilience Facility (RRF) has been progressing well. State aid control continues to ensure that any competition distortions that measures included in the RRP may cause are limited to the minimum necessary. This will help European companies to become resilient, healthy and competitive following the economic and social crisis caused by Covid-19 and by Russia's invasion of Ukraine. Where measures constitute State aid, they must be notified to the Commission, unless they are implemented under a block-exemption regulation or under an existing authorised scheme. To facilitate this process, DG Competition has published a Practical guidance to Member States for a swift treatment of State aid notifications in the RRF framework<sup>91</sup> and will continue to provide guidance and templates to the Member States.

### **3.4. Aid for horizontal objectives**

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is granted under block-exempted schemes, which are not examined by the Commission before entering into force. State aid for horizontal objectives generally accounts for the overwhelming majority of all aid. Already now, the Block Exemption Regulations (GBER, ABER, FIBER)<sup>92</sup> allow Member States to implement a wide range of public support measures in areas such as research and development, environmental protection, broadband connectivity,

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<sup>91</sup> See: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/practical\\_guidance\\_to\\_MS\\_for\\_notifications\\_under\\_RRF.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/practical_guidance_to_MS_for_notifications_under_RRF.pdf)

<sup>92</sup> Commission Regulation (EU) No 651/2014 of 17.6.2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1; Commission Regulation (EU) No 702/2014 of 25.6.2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1; Commission Regulation (EU) No 1388/2014 of 16.12.2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

regional development or support to SMEs, without prior notification if certain conditions are fulfilled. As illustrated by the graphs below, much of horizontal aid falls under the GBER.

Figure 4: State aid expenditure 2011-2021

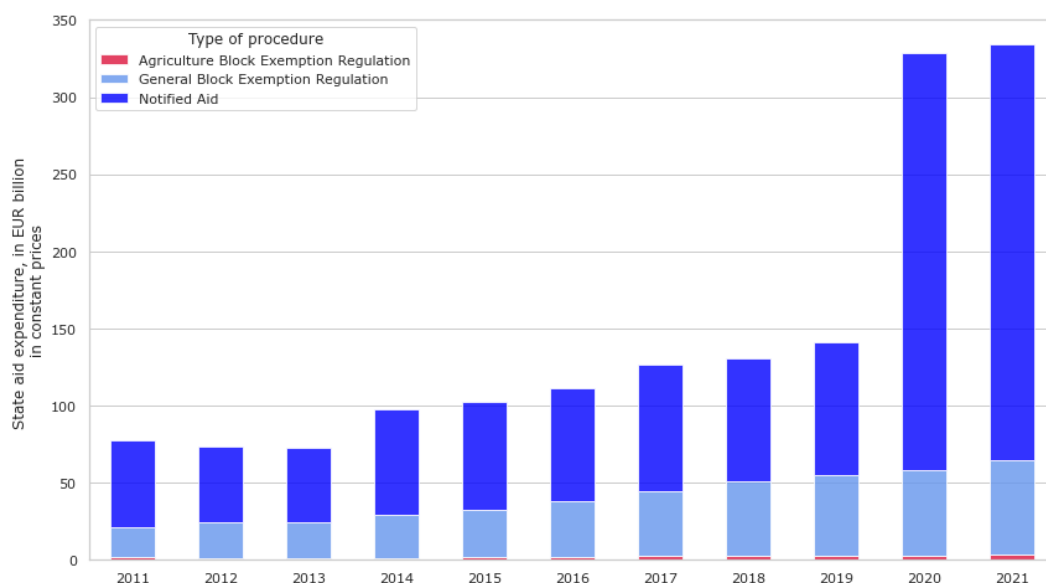
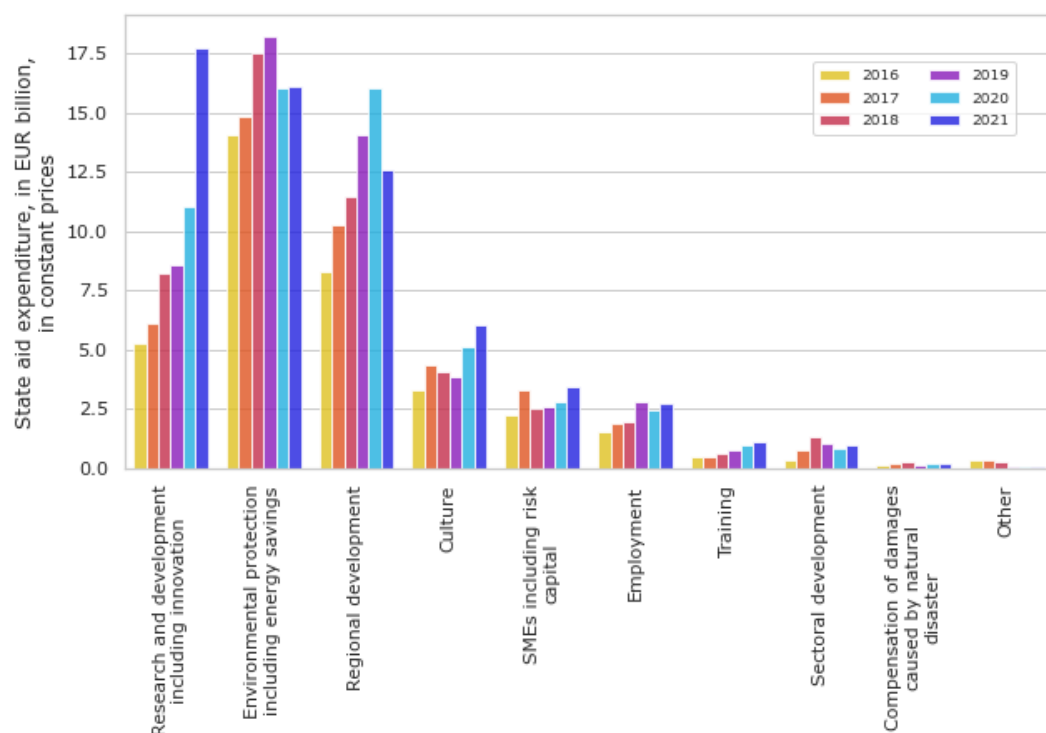


Figure 5: GBER State aid expenditure by objective in the EU, excluding aid for agriculture, fisheries and railways



### 3.4.1. Evaluation of aid schemes

Evaluation of aid schemes is another requirement introduced by State Aid Modernisation ('SAM')<sup>93</sup>. The aim is to gather the necessary evidence to better identify the impact, positive

<sup>93</sup> See: [https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation\\_en](https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation_en)

and negative, of the aid and to provide input for future policy-making by the Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain aid categories<sup>94</sup> as well as for a selection of notified schemes under the new generation of State aid guidelines.<sup>95</sup>

By the end of 2022, the Commission had approved evaluation plans covering 118 State aid schemes. Ten additional schemes were still under analysis, covering a total of 19 Member States<sup>96</sup> and the United Kingdom. Most of these decisions concerned either large regional aid projects or Research, Development and Innovation ('RDI') aid schemes under GBER or notified energy and broadband schemes. In total, these schemes account for over EUR 62 billion in annual State aid budget. By the end of 2022, the Member States had delivered to the Commission 32 interim and 36 final evaluation reports. They were assessed by the Commission services and considered to be of average to good quality<sup>97</sup>.

In 2022, the Commission has continued with the harmonisation of the evaluation requirement across legal bases. This process was started in 2021 to take into account the experience matured over the course of the previous years as well as the 2020 fitness check and fact-finding study to assess the implementation of the evaluation requirement as foreseen by the GBER and relevant guidelines. The revised version of the evaluation requirement features already in the newly approved guidelines on Regional aid, Risk Finance and ETS.

In 2022, the Commission resumed the annual dedicated workshops with Member States' representatives and evaluation experts, which had been suspended due to the COVID-19 situation. The current priority of the Commission is to comprehensively assess evaluation reports, both intermediate and final ones, in order to: (i) give appropriate feedback to Member States, (ii) make sure that results are used for better policy-making, and (iii) provide evidence to assist Member States when reflecting on future legal developments.

### *3.4.2. Aid for research, development and innovation (RDI)*

Research, development and innovation ('RDI') are key drivers of economic growth and are necessary to achieve a variety of policy objectives, including those of the European Green Deal and of the Digital Strategy. State interventions can be necessary to address market failures that may result in a level of RDI activities which is too low from the point of view of society. State aid expenditure for RDI reported by Member States reached in 2020 an unprecedented level of approx. EUR 18.8 billion<sup>98</sup>, significantly higher than the expenditure

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<sup>94</sup> Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

<sup>95</sup> Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

<sup>96</sup> Austria, Croatia, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

<sup>97</sup> All the submitted evaluation reports are reviewed by the JRC within the framework of the Administrative Arrangement established between DG Competition and the JRC on the: "Support to the quality assessment of evaluation reports in the area of State Aid, 2018-2020". The JRC has continued to support DG Competition under the new Administrative Arrangement for the "Support to the quality assessment of evaluation plans and reports in the area of State Aid, 2021-2023 (EVALSA II)".

<sup>98</sup> See the 2022 State Aid Scoreboard (forthcoming).

reported in 2014 of approx. EUR 8.1 billion (in current prices). The vast majority of aid for RDI, approx. EUR 17.7 billion, is granted under the relevant provisions of the GBER, meaning that very few measures in this area are notified by Member States. In April 2022, the Commission approved a French aid scheme to support RDI projects, which is part of the “France 2030” recovery program that aims to develop industrial competitiveness and future technologies<sup>99</sup>.

The review of the RDI Framework – launched in 2019 as part of the State aid Fitness Check – was completed in October 2022<sup>100</sup>. The new RDI Framework adopted by the Commission includes a number of targeted revisions compared to the 2014 Framework, which it replaces. In particular: 1) some definitions of research and innovation activities eligible for support have been updated, specifically with respect to digital technologies and activities related to digitalisation (e.g. super-computing, quantum technologies, block chain, artificial intelligence, cyber security, big data and cloud or edge computing); 2) a new category of aid for testing and experimentation infrastructures has been introduced to further enable the development and eventual deployment of breakthrough technologies, in particular by SMEs; 3) certain rules were simplified to facilitate the practical application of the rules including with a simplified mechanism to determine the indirect costs of research and development projects.

#### *3.4.3. Aid enabling Member States jointly to support important projects of common European interest – IPCEIs*

Under Article 107(3)(b) of the TFEU, State aid for the execution of important projects of common European interest (‘IPCEIs’) can be found compatible with the internal market. This provision had remained largely unused until the Commission adopted in 2014 a dedicated Communication laying out the assessment criteria for this kind of projects<sup>101</sup>. Following an evaluation and an extensive public consultation, a revised IPCEI Communication was adopted in November 2021<sup>102</sup> and is applied since 1 January 2022.

The revised IPCEI Communication i) enhances the European and open character of IPCEIs, by providing that IPCEIs must ordinarily involve at least four Member States and by requiring that IPCEIs are designed in a transparent and inclusive manner; ii) facilitates the participation of SMEs in IPCEIs and enhances the benefits of their involvement, for example through specific facilitations for the assessment of the compatibility of the aid to SMEs; and iii) aligns the rules with the current EU priorities, for example by requiring Member States to provide evidence of compliance with the ‘do no significant harm’ environmental principle.

The revised IPCEI Communication has been applied twice in 2022, in both cases for integrated projects in the hydrogen value chain. These two IPCEIs were approved in July<sup>103</sup>

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<sup>99</sup> Case SA.102230, *France - French notified scheme for RDI aid as part of the “France 2030” recovery program*; following an amendment approved by the Commission in July 2022, the budget of this French scheme was increased to EUR 3.7 billion.

<sup>100</sup> See the press release of 19.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6233](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6233)

<sup>101</sup> Communication from the Commission, *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*, OJ C 188, 20.6.2014, p. 4.

<sup>102</sup> C(2021) 8481 final of 25.11.2021.

<sup>103</sup> See the press release of 15.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4544](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4544)



and September 2022<sup>104</sup>. The first one, ‘Hy2Tech’, includes 41 projects in 15 Member States<sup>105</sup>. It enables breakthrough innovations for technologies related to the generation, transport and storage of hydrogen as well as fuel cells and end-use applications especially in the mobility sector. The second one, ‘Hy2Use’, includes 35 projects in 13 Member States<sup>106</sup>. This IPCEI enables the construction of large scale hydrogen-related infrastructure of great importance for the EU and supports innovations related to the use of hydrogen in some energy-intensive industrial sectors such as steel, cement and glass.

#### *3.4.4. Aid strengthening the resilience of the EU semiconductors ecosystem*

The State aid rules also provide a number of possibilities to strengthen the resilience of the EU semiconductors ecosystem, including aid for research and development and support in line with the rules on IPCEIs. In addition, and as announced in the Chips Act Communication of February 2022<sup>107</sup>, the Commission will assess State aid proposed by Member States to support new advanced production facilities that will strengthen the semiconductor value chain in Europe directly under Article 107(3)(c) TFEU.

This Communication also sets out the main elements the Commission will consider in the required balancing between positive effects of such aid and its potential negative impact on trade and competition in the internal market. In particular, the Commission will consider if such facilities are first-of-a-kind in Europe and will ensure that any such aid has an incentive effect, is necessary, appropriate, and proportionate.

In October 2022, the Commission approved a EUR 292.5 million Italian State aid measure supported by the RRF to support *STMicroelectronics* in the construction of a plant in the semiconductor value chain in Catania, Sicily<sup>108</sup>. The project concerns a production facility for specific semiconductor wafer substrates that are important for the further electrification of mobility but also industrial applications as well as for the generation of renewable energies. It will strengthen Europe's semiconductors supply chain and help deliver the green and digital transition while limiting potential distortions of the market.

#### *3.4.5. Regional aid*

The revised Guidelines on regional State aid, adopted in April 2021<sup>109</sup>, entered into force on 1 January 2022. It was for the Member States to notify their regional aid maps to apply as from that date. In 2021, regional aid maps were adopted for about half of the Member States. The remaining regional aid maps were adopted in the first half of 2022. The Commission also adopted several amendments to those regional aid maps, for instance for France and Italy to

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<sup>104</sup> See the press release of 21.9.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5676](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5676)

<sup>105</sup> Austria, Belgium, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Netherlands, Poland, Portugal, Slovakia and Spain

<sup>106</sup> Austria, Belgium, Denmark, Finland, France, Greece, Italy, Netherlands, Poland, Portugal, Slovakia, Spain and Sweden; this also includes two projects in Norway, which were assessed in parallel by the EFTA Surveillance Authority.

<sup>107</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Chips Act for Europe, COM(2022) 45 final of 8.2.2022.

<sup>108</sup> Case SA.103083, *Italy - RRF - STMicroelectronics S.R.L.*; see also the press release of 4.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5970](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5970)

<sup>109</sup> Communication from the Commission, Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.

include their so-called ‘c’ areas, or for Greece and Austria to update their regional aid map, after the approval of the respective Territorial Just Transition Plan that identified the territories eligible for support from the Just Transition Fund<sup>110</sup>.

In 2022, the Commission adopted several decisions concerning regional aid. The Commission authorised regional investment aid to *Volta Energy Solutions*<sup>111</sup> for the extension of a battery copper foil plant in Hungary and to *SK On Hungary*<sup>112</sup> for a new battery cell plant in Hungary. As to the Hungarian support to *Rubin NewCo*<sup>113</sup> for the construction of a new automotive components plant, the Commission decided to open the in-depth investigation. The Commission also approved regional investment aid to *LG Chem*<sup>114</sup> to support the expansion of a battery cell production facility for electric vehicles in Poland.

The Commission further adopted several amendments to an operating aid scheme in the French outermost region of Saint Martin<sup>115</sup> and adopted decisions to support the production of rum and certain other alcoholic products in the French<sup>116</sup> and Portuguese<sup>117</sup> outermost regions.

The Commission also approved an evaluation plan for a large Greek scheme<sup>118</sup>, implemented under the General Block Exemption Regulation.

#### 3.4.6. Aid to risk finance

Member States can support young SMEs and certain other non-large enterprises, such as start-ups or certain middle-capitalisation firms (mid-caps), typically suffering from limited access to finance through equity, guarantees, loans or fiscal incentives to grow and develop their full potential in the face of asymmetric information available to investors.

Risk finance aid for SMEs and start-ups, up to EUR 15 million per beneficiary, can be block-exempted under the General Block Exemption Regulation (GBER at section 3, Articles 21 to

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<sup>110</sup> Regulation (EU) 2021/1056 of the European Parliament and the Council, establishing the Just Transition Fund, OJ L 231, 30.6.2021, p. 1.

<sup>111</sup> Case SA.59516, *Hungary - LIP - Regional investment aid to Volta Energy Solutions Kft.*

<sup>112</sup> Case SA.63328, *Hungary - Regional investment aid to SK On Hungary Kft.*

<sup>113</sup> Case SA.63470, *Hungary - Regional investment aid to Rubin NewCo 2021 Kft.*

<sup>114</sup> Case SA.53903, *Poland - LIP - Regional investment aid to LG CHEM 2.*

<sup>115</sup> Case SA.100457, *France - Aide fiscale à l'investissement productif ou à l'investissement dans le secteur du logement (intermédiaire ou en location-accession à la propriété) à Saint-Martin*; Case SA.102248, *France - Amendement au régime SA.62675 d'aide fiscale à l'investissement outre-mer en faveur du logement social à Saint-Martin 2021-2025.*

<sup>116</sup> Case SA.63903, *France - Taux d'accise réduit sur le rhum traditionnel produit dans les départements et régions d'outre-mer (2022-2027).*

<sup>117</sup> Case SA.61045, *Portugal - Reduced rate of excise duty on certain alcoholic products produced in the Autonomous Region of the Azores, from 1.1.2021 to 31.12.2027*; Case SA.102547, *Portugal - Second prolongation of State aid scheme SA.38823 - Reduced rate of excise duty applied to rum and liqueurs produced and consumed in the Autonomous Region of the Madeira for the period 1 January until 31 July 2022*; Case SA.103398, *Portugal - Reduced rate of excise duty on certain alcoholic products produced in the Autonomous Region of Madeira from 1.8.2022 to 31.12.2027.*

<sup>118</sup> Case SA.102933, *Greece - Evaluation plan of the General Entrepreneurship and Entrepreneurship for Small and Micro Enterprises schemes of Development Law 4399/2016.*



24<sup>119</sup>); whereas aid to innovative or small mid-caps, or aid that goes beyond the GBER conditions, can be approved by the Commission under the Risk Finance Guidelines<sup>120</sup>.

The revised Risk Finance Guidelines<sup>121</sup> entered into force on 1 January 2022. Their structure has been reorganised; moreover, they now clarify in more detail the elements of the *ex ante* assessment that the Member States must carry out to demonstrate the identified obstacles for access to finance and how the notified aid would address them, and specify in which cases the evidence provided in this *ex ante* assessment can be more limited (i.e. for start-ups and SMEs before first commercial sale) or where the funding gap must be identified (i.e. for cases where the aid exceeds EUR 15 million per beneficiary). Finally, the Guidelines were aligned with the GBER conditions, for example for the expanded definition of ‘innovative’ beneficiaries.

#### *3.4.7. Infrastructure support measures*

In January 2022, the Commission approved a Spanish scheme under the Recovery and Resilience Facility to support the deployment of intelligent transportation systems on Spanish motorways and tunnels<sup>122</sup>. In March 2022, the Commission approved a Lithuanian measure for the construction of a multifunctional complex in Vilnius<sup>123</sup>.

#### *3.4.8. Increased monitoring of existing State aid to ensure competition on fair and equal terms*

Despite the exceptionally high number of Commission decisions approving aid schemes put in place due to the outbreak of COVID-19 pandemic, 83% of the new State aid measures implemented in 2021 are covered by a block-exemption regulation<sup>124</sup>. Among all the State aid measures active in the same year, approximately 81% are GBER, ABER and FIBER measures<sup>125</sup>. These figures show that it is essential for the Commission to verify that Member States apply State aid schemes correctly and that they only grant aid when all required conditions are met. Monitoring is the counterweight to ‘self-assessment’ by Member States resulting from the exemption from the notification obligation (for example the GBER) and also a necessary complement of the approval of State aid schemes by the Commission.

#### *3.4.9. Restoring competition by recovering State aid granted in breach of the rules*

To ensure the integrity of the internal market, Member States must take all necessary measures to recover unlawful and incompatible aid. The purpose of recovery is to restore the situation that existed on the internal market prior to the granting of the aid. This is necessary to ensure that competition in the Single Market can take place on fair and equal terms.

In 2022 the Commission adopted one new recovery decision, ordering the Member State

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<sup>119</sup> Commission Regulation (EU) No 651/2014 of 17.6.2014, OJ L 187, 26.6.2014, p. 1, as amended.

<sup>120</sup> The new Communication from the Commission - Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1, entered into force on 1 January 2022.

<sup>121</sup> Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

<sup>122</sup> SA.62986, RRF – Spain - Intelligent Transportation Services (ITS) for the road sector and other services related to road safety and maintenance.

<sup>123</sup> SA.62831, Lithuania - Individual aid for the development of the multifunctional health, education, culture and business support complex in Vilnius.

<sup>124</sup> See the State Aid Scoreboard 2022 (forthcoming).

<sup>125</sup> See the State Aid Scoreboard 2022 (forthcoming).

concerned to recover EUR 8.5 million<sup>126</sup>. 50 recovery cases (resulting from previously adopted negative decisions with recovery) were pending at the end of 2022.

By 31 December 2022, the sum of unlawful and incompatible aid recovered from beneficiaries amounted to EUR 29.6 billion<sup>127</sup>. At the same point in time, the outstanding amount pending recovery was EUR 7.6 billion<sup>128</sup>.

Recovery decisions adopted in 2022	1
Pending recovery cases on 31 December 2022	50

In 2022, the Commission imposed penalties on Greece and Italy based on Court judgments condemning these two Member States for having infringed EU law on State aid<sup>129</sup>.

#### 3.4.10. Cooperation with national courts to ensure the effectiveness of State aid rules

The Commission continued its cooperation with national courts under Article 29 of the Procedural Regulation<sup>130</sup> and according to its Notice on the enforcement of State aid rules by national courts<sup>131</sup>. This includes direct case-related assistance to national courts when they apply EU State aid law. National courts and tribunals can ask the Commission to provide case related information, or to provide an opinion on the application of State aid rules. The Commission may also submit *amicus curiae* observations on its own initiative.

The Commission received two requests for information in 2022. It also received three requests for legal opinions, two from courts in Latvia and one from a court in Belgium. The first request for opinion, from the Regional Administrative Court in Latvia, concerned the scope of application of the Temporary Framework adopted by the Commission to address the COVID-19 pandemic. The second request from Latvia was sent by the Constitutional Court in order to clarify the duration of aid under an approved scheme in the energy sector. Finally, the request for opinion received from the Court of Appeal in Brussels concerned the implementation of the Belgian capacity mechanism scheme approved by the Commission in the energy sector.

In 2022 the Commission continued to intervene in national proceedings as *amicus curiae*<sup>132</sup>.

<sup>126</sup> Case SA.26494, *France - Aéroport de La Rochelle*.

<sup>127</sup> The reference period is 1 January 1999 to 31 December 2022. This amount includes also the amount of aid registered in pending insolvency proceedings. In addition, the amount of EUR 4.5 billion could not be recovered from concluded insolvency proceedings because of the lack of mass from the liquidation of assets which did not allow satisfying the State aid claims.

<sup>128</sup> See also: [https://ec.europa.eu/competition-policy/state-aid/procedures/recovery-unlawful-aid\\_en](https://ec.europa.eu/competition-policy/state-aid/procedures/recovery-unlawful-aid_en)

<sup>129</sup> Case SA.15525, *Greece - Hellenic Shipyards*; Case SA.34572, *Greece - State aid to Larko General Mining & Metallurgical Company S.A.*; Case SA.9398, *Italy - Employment measures*; Case SA.14895, *Italy - Hotel industry in Sardinia*; Case SA.9440, *Italy - Social security charges reduction and exoneration in Venezia and Chioggia*.

<sup>130</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248, 24.9.2015, p. 9.

<sup>131</sup> Communication from the Commission, Commission Notice on the enforcement of State aid rules by national courts, OJ C 305, 30.7.2021, p. 1.

<sup>132</sup> The Commission submitted written observations under Article 29(2) of the Procedural Regulation before the district court of Beius, in connection with the implementation of its recovery decision in the Micula case. Even outside the scope of Article 29(2) of the Procedural Regulation, the Commission continues to intervene as *amicus curiae* in State aid-related matters before courts outside the EU and arbitration tribunals inside and outside the EU.

To make its views publicly known, the Commission publishes its opinions and *amicus curiae* observations, as well as observations to other bodies, for example, arbitration tribunals, on its website<sup>133</sup>.

### 3.5. Significant judgments by the European Union Courts in the State aid area

In 2022, the Union Courts adopted a number of important State aid judgments. The following overview is based on a selection of court judgments, in particular on the notions of advantage and selectivity, the interplay of State aid with bilateral investment treaties, the compatibility assessment under various communications, and several points of procedure.

#### 3.5.1. Advantage and selectivity

In its judgment T-150/20 *Tartu Agro v Commission*<sup>134</sup>, the General Court disagreed with the Commission's use of statistical studies in order to demonstrate the existence of an advantage and to calculate the aid amount. In its decision, the Commission had in particular relied on the average amount per year obtained from the price ranges and data contained in those studies. The General Court considered that the Commission had not sufficiently taken into account the prices corresponding to the lower end of the price ranges used, the extent of the margin of error, the context at the time the agreement at issue was concluded and the characteristics of the land in question. As a result, the Commission had not been able to sufficiently substantiate that these averages corresponded as close as possible to the market value.

In its judgment in joint cases T-363/19 and T-456/19 *UK and ITV plc v Commission*<sup>135</sup>, the General Court confirmed the Commission's assessment that the measures at issue were selective. In particular, the General Court found that the UK controlled foreign company (CFC) rules constituted the correct reference framework as they were severable from the general UK corporate income tax system. That reference framework had a specific objective to protect the UK tax base from artificial diversion of profits, in light of which all financing transactions were in a comparable legal and factual situation. The General Court also confirmed that administrative practicability and the UK's obligation to refrain from imposing disproportionate obstacles to the freedom of establishment could not justify the *prima facie* selectivity of the measure.

In its judgment in joined cases C-885/19 P and C-898/19 P *Fiat Chrysler Finance Europe v Commission and Ireland v Commission*<sup>136</sup>, the Grand Chamber of the Court annulled the decision of the Commission on a tax ruling adopted in favour of an undertaking of the Fiat group by the Luxembourgish authorities. The Court of Justice provided clarification as to the assessment of the reference system and, thereby, the establishment of a selective advantage. It held in particular that in areas where EU tax law has not been harmonised, it was for the Member State involved to determine the characteristics of the tax; therefore, only the national

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<sup>133</sup> See: [https://ec.europa.eu/competition-policy/state-aid/national-courts\\_en](https://ec.europa.eu/competition-policy/state-aid/national-courts_en)

<sup>134</sup> Judgment of the General Court of 13.7.2022, Case T-150/20, *Tartu Agro AS v European Commission*, EU:T:2022:443.

<sup>135</sup> Judgment of the General Court of 8.6.2022, Joined Cases T-363/19 and T-456/19, *United Kingdom and ITV plc v European Commission*, EU:T:2022:349.

<sup>136</sup> Judgment of the Court of Justice (Grand Chamber) of 8.11.2022, Joined Cases C-885/19 P and C-898/19 P, *Fiat Chrysler Finance Europe v Commission and Ireland v Commission*, EU:C:2022:859.

law should be considered when assessing the reference system in direct taxation. Accordingly, the reference framework used by the Commission to apply the arm's length principle to integrated companies should have taken into account the specific rules implementing this principle in the Member State involved.

### 3.5.2. State aid and bilateral investment treaties

In its judgment C-638/19 P *Commission v European Food and Others*<sup>137</sup>, the Grand Chamber of the Court of Justice confirmed that the State aid rules were applicable to an arbitral award rendered after a State's accession to the European Union, irrespective of the earlier consent to the arbitration procedure. The Court of Justice held that the arbitration clause in a bilateral investment treaty concluded between a Member State and a third State was capable of adversely affecting the autonomy of Union law after the accession of that third State to the European Union, and that as from the date of accession the system of judicial remedies provided for by the TEU and TFEU replaced the arbitration procedure. The Court's judgment thus reinstated the original Commission decision and declared the *Achmea* case-law<sup>138</sup> applicable to the dispute, rendering the arbitral award incompatible with EU law.

### 3.5.3. Rescue and Restructuring Guidelines

In its judgment rendered in May 2022, T-718/20 *Wizz Air Hungary v Commission*<sup>139</sup>, the General Court held that the Commission was entitled to conclude that the notified rescue aid granted to the airline company *TAROM* constituted compatible aid in line with the Rescue and Restructuring Guidelines<sup>140</sup>. In particular, the General Court confirmed that the requirement under points 44 and 45 of the Rescue and Restructuring Guidelines that State aid must pursue an objective of common interest was not in conflict with the ruling of the Court of Justice in the *Hinkley Point C* judgment<sup>141</sup>. The General Court noted that the Guidelines required Member States to demonstrate how the aid would 'prevent social hardship or address market failure'; this could be subsumed under the first condition laid down in Article 107(3)(c) TFEU, which allows State aid to be found compatible when it is intended to facilitate the development of certain economic activities or of certain economic areas. With regard to the plea that the Commission should have opened a formal investigation procedure into that aid measure, the General Court held that, even though the Commission may need to go beyond a mere examination of the facts and legal points, it cannot be inferred that it would have to seek on its own initiative all information which might be connected with the case, even where such information were in the public domain. The General Court also provided guidance on the interpretation of the key concepts underlying the so-called "one time, last time" principle.

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<sup>137</sup> Judgment of the Court of Justice (Grand Chamber) of 22.1.2022, Case C-638/19 P, *European Commission v European Food SA and Others*, EU:C:2022:50.

<sup>138</sup> Judgment of the Court (Grand Chamber) of 6.3.2018, Case C- 284/16, *Slovak Republic v Achmea BV*, EU:C:2018:158.

<sup>139</sup> Judgment of the General Court of 4.5.2022, Case T-718/20, *Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) v European Commission*, EU:T:2022:276.

<sup>140</sup> Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

<sup>141</sup> Judgment of the Court of Justice (Grand Chamber) of 22.9.2020, Case C-594/18 P, *Republic of Austria v European Commission*, EU:C:2020:742.

In another judgment given in May 2022, T-577/20 *Ryanair v Commission*<sup>142</sup>, concerning rescue aid to the airline *Condor*, the General Court clarified that, in order for a service to be regarded as ‘important’ under point 44(b) of the Rescue and Restructuring Guidelines, it was not necessary for the undertaking providing that service to play a systemic role, nor to be entrusted with a service of general economic interest or of national importance. It was sufficient for a Member State to demonstrate a risk of disruption to an important service that would be hard to replicate and where it would be difficult for any competitor simply to step in. In the case at hand, the General Court stated that the Commission rightfully concluded that *Condor*’s exit from the market was likely to involve a severe market failure as it endangered the immediate repatriation of a large number of passengers, which thus created a risk of disruption to an important service that was hard to replicate.

#### *3.5.4. Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*

In its judgment T-657/20 *Ryanair v Commission*<sup>143</sup> relating to aid granted to *Finnair* under the Temporary Framework<sup>144</sup>, the General Court considered that while the Commission, in the area of State aid, was bound by its guidelines, the adoption of such guidelines did not, however, relieve it of its obligation to examine the specific exceptional circumstances relied on by a Member State, in a particular case, for the purpose of requesting the direct application of Article 107(3)(b) TFEU. The General Court noted in this respect that the Temporary Framework had been adopted only a few days after the adoption of the first containment measures by the Member States, in order to enable them to act with the urgency required by the situation; it could therefore not be expected to cover all the measures that Member States were likely to adopt, and that it had also been amended several times. The General Court confirmed that in view of the exceptional circumstances caused by the COVID-19 pandemic, the Commission was entitled to directly apply Article 107(3)(b) TFEU and depart from the requirements in section 3.11 of the Temporary Framework.

#### *3.5.5. Public service obligation compensation and antitrust infringement*

The General Court’s judgment T-601/20 *Tirrenia di navigazione SpA v European Commission*<sup>145</sup> addressed, among others, the interplay of the State aid and antitrust rules. It concerned the assessment of the compatibility with the State aid rules of a public service obligation (‘PSO’) compensation received by the company *Adriatica* for a ferry connection while it was at the same time participating in a price fixing cartel<sup>146</sup>. The General Court noted

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<sup>142</sup> Judgment of the General Court of 18.5.2022, Case T-577/20, *Ryanair DAC v European Commission*, EU:T:2022:301.

<sup>143</sup> Judgment of the General Court of 22.6.2022, Case T-657/20, *Ryanair DAC v European Commission*, EU:T:2022:390.

<sup>144</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91 I, 20.3.2020, p. 1, as amended by Commission Communications C(2020) 2215, OJ C 112I, 4.4.2020, p. 1; C(2020) 3156, OJ C 164, 13.5.2020, p. 3; C(2020) 4509, OJ C 218, 2.7.2020, p. 3; C(2020) 7127, OJ C 340I, 13.10.2020, p. 1 and C(2021) 564, OJ C 34, 1.2.2021, p. 6 and C(2021) 8442, OJ C 473, 24.11.2021, p. 1.

<sup>145</sup> Judgment of the General Court of 18.5.2022, Case T-601/20, *Tirrenia di navigazione SpA v European Commission*, EU:T:2022:302.

<sup>146</sup> Commission Decision of 9.12.1998 relating to a proceeding pursuant to Article 85 of the EC Treaty - (IV/34466 - Greek Ferries), OJ L 109, 27.4.1999, p. 24.



that the aid granted was not by itself contrary to other relevant provisions of Union law (here: Article 101 TFEU). However, it agreed with the Commission that there was a clear contradiction between the objective pursued by the cartel to increase the prices charged to consumers, and the objective pursued by the PSO compensation to maintain a connection for users at affordable prices. The Commission was entitled to take this finding into account in the compatibility assessment. The General Court also rejected the argument of the applicant that in this situation, ordering recovery in addition to the cartel fine would infringe the principle of proportionality, recalling that the cartel conviction constituted a separate infringement and that recovery was the normal result of the incompatibility of State aid.

### 3.5.6. Procedural rights

As regards the concept of interested party, the Court of Justice clarified in its judgment C-99/21 *Danske Slagtermestre v European Commission*<sup>147</sup> the evidential requirements for applicants to demonstrate direct and individual concern. In particular, it noted that it was sufficient to conduct a *prima facie* assessment of the risk that the Commission's decision would lead to a competitive disadvantage for the applicant; there was no need for an in-depth analysis of the competitive relationships on the relevant market nor to establish precisely the extent of the harm to competition.

The Union Courts also clarified the requirements as regards the scope and content of decisions to initiate the formal investigation procedure:

- In its judgment in Joined Cases C-167/19 P and C-171/19 P *European Commission v Freistaat Bayern and Others*<sup>148</sup>, the Court of Justice held that a decision of the Commission to initiate the formal investigation procedure had to expressly and clearly mention the relevant issues of fact and law in order for interested parties to be able to submit their comments effectively. Omitting such an issue, in so far as it played a role in the reasoning of the decision at issue, constituted a breach of an essential procedural requirement. This could lead to the annulment of the decision, irrespective of whether that breach had caused damage to the person invoking it or whether the procedure could have led to a different result.
- In its judgment in T-508/19 *Mead Johnson Nutrition (Asia Pacific) and Others v Commission*<sup>149</sup>, the General Court, in particular, considered that the obligation to rectify or extend the formal investigation procedure, in order to give interested parties the opportunity to submit their comments, must also have the character of an essential procedural requirement where the Commission has fully changed its reasoning between the opening decision and the final decision.

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<sup>147</sup> Judgment of the Court of Justice of 30.6.2022, Case C-99/21 P, *Danske Slagtermestre v European Commission*, EU:C:2022:510.

<sup>148</sup> Judgment of the Court of Justice of 10.3.2022, Joined Cases C-167/19 P and C-171/19 P, *European Commission v Freistaat Bayern and Others*, EU:C:2022:176.

<sup>149</sup> Judgment of the General Court of 6.4.2022, T-508/19, *Mead Johnson Nutrition (Asia Pacific) Pte Ltd and Others v European Commission*, EU:T:2022:217.

#### 4. DEVELOPING THE INTERNATIONAL DIMENSION OF EU COMPETITION POLICY

As world markets continue to integrate and more companies rely on global value chains, competition agencies need to increase their collaboration and agree on common standards and procedures more than ever before. Effectively enforcing competition rules depends to a growing extent on co-operation with other enforcement authorities and having effective tools to ensure a fair business environment in the EU.

**4.1. Regulation on foreign subsidies distorting the internal market – a new tool to safeguard the level playing field in the internal market**

Following the Commission proposal presented in May 2021<sup>150</sup>, the Council of the European Union and the European Parliament reached a political agreement in June 2022 on the Regulation on foreign subsidies distorting the internal market ('FSR'). In November 2022, the European Parliament plenary voted in favour of the final text<sup>151</sup>, which was adopted by the Council on 28 November 2022<sup>152</sup>. Following its publication in the Official Journal<sup>153</sup>, the FSR entered into force in early 2023 and will start to apply from 12 July 2023. The notification obligation on companies will start to apply three months later, from 12 October 2023.

The Regulation aims at closing a regulatory gap in the Single Market, whereby subsidies granted by non-EU governments currently go largely unchecked, while subsidies granted by Member States are subject to close scrutiny under EU State aid rules.

According to the Regulation, companies will have to notify financial contributions received from non-EU public authorities before concluding a concentration (merger, acquisition or joint venture) or a public procurement procedure in the EU above given notification thresholds. The Regulation also allows the Commission to conduct ex-officio investigations into other economic activities if it has a suspicion of distortive foreign subsidies.

#### 4.2. Multilateral relations

In 2022, the Commission continued its active engagement in international competition related fora such as the OECD Competition Committee, the International Competition Network (ICN), and United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meeting in June 2022, the Commission contributed to the discussions on environmental regulations and policies supporting electric vehicles, interim measures in antitrust investigations<sup>154</sup>, purchasing power and buyers' cartels<sup>155</sup>, market power

<sup>150</sup> Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market, COM(2021) 223 final, 5.5.2021.

<sup>151</sup> See the press release of the European Parliament of 10.11.2022: <https://www.europarl.europa.eu/news/en/press-room/2022/1107IPR49609/parliament-approves-new-tool-to-ensure-fair-competition-on-the-single-market>

<sup>152</sup> See the press release of the Council of the European Union of 28.11.2022: <https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-approval-to-tackling-distortive-foreign-subsidies-on-the-internal-market/#:~:text=10%3A28-Council%20gives%20final%20approval%20to%20tackling%20distortive%20foreign%20subsidies%20on,on%20the%20EU%20single%20market>

<sup>153</sup> Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022, p. 1.

<sup>154</sup> See: <https://www.oecd.org/daf/competition/interim-measures-in-antitrust-investigations.htm>

in the digital economy and competition policy<sup>156</sup> and experiences and challenges in disentangling consummated mergers<sup>157</sup>. In December 2022, the Commission contributed to the Competition Committee's deliberations on competition in the energy market<sup>158</sup>, director disqualification and bidder exclusion in competition enforcement<sup>159</sup>, competition and inflation<sup>160</sup>, subsidies, competition and trade<sup>161</sup>, remedies and commitments in abuse cases<sup>162</sup> and interactions between competition authorities and sectoral regulators<sup>163</sup>.

In the ICN, the Commission continued the multi-annual project on the “assessment of dominance and market power in digital markets” in the Unilateral Conduct Working Group. In addition, the Commission took up a three-year co-chair role in the Merger Working Group, where the work started with a new project on digital mergers and the update to the ICN Recommended Practices for Merger Analysis with a new chapter on non-horizontal mergers. In May 2022, the Commission participated in the ICN Annual Conference<sup>164</sup>, delivering a keynote speech on competition policy, the FSR and the DMA, and speaking in a number of conference sessions.

In July 2022, the Commission participated in the 20<sup>th</sup> meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy<sup>165</sup>, where the discussions focused on competition law and sustainable development, on how competition policy can best address market difficulties in commodities and food markets, energy, small and medium sized enterprises in developing countries, and on the impact of digitalization in developing economies.

Finally, the Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules. To this effect, in 2022 the Commission was engaged in sectoral initiatives addressing subsidies in the international context, such as the G20 Global Forum on steel excess capacity.

#### **4.3. Bilateral relations**

In October 2022, the Commission and the US competition authorities held the second meeting of the Joint Technology Competition Policy Dialogue, discussing the progress made on their cooperation efforts to ensure and promote fair competition in the digital sector<sup>166</sup>.

Two ministerial meetings also took place in May and December 2022 in the framework of the EU-US Trade and Technology Council to continue fostering cooperation on global trade and

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<sup>155</sup> See: <https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

<sup>156</sup> See: <https://www.oecd.org/daf/competition/market-power-in-the-digital-economy-and-competition-policy.htm>

<sup>157</sup> See: <https://www.oecd.org/daf/competition/disentangling-consummated-mergers-experiences-and-challenges.htm>

<sup>158</sup> See: <https://www.oecd.org/competition/competition-in-energy-markets.htm>

<sup>159</sup> See: <https://www.oecd.org/competition/director-disqualification-and-bidder-exclusion-in-competition-enforcement.htm>

<sup>160</sup> See: <https://www.oecd.org/competition/competition-and-inflation.htm>

<sup>161</sup> See: <https://www.oecd.org/competition/subsidies-competition-and-trade.htm>

<sup>162</sup> See: <https://www.oecd.org/competition/remedies-and-commitments-in-abuse-cases.htm>

<sup>163</sup> See: <https://www.oecd.org/competition/interactions-between-competition-authorities-and-sector-regulators.htm>

<sup>164</sup> See: <https://www.icn2022berlin.de/>

<sup>165</sup> See: <https://unctad.org/meeting/intergovernmental-group-experts-competition-law-and-policy-twentieth-session>

<sup>166</sup> See the press release of 13.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6167](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6167)



technology issues. The latest meeting led to the conclusion of two administrative arrangements on an early warning mechanism to address and mitigate semiconductor supply chain disruptions cooperatively and, on a common mechanism for reciprocal sharing of information about public support provided by the EU and the US to the semiconductor industry to enhance transparency of public spending in this area<sup>167</sup>.

In 2022, the Commission continued its cooperation in competition policy and in case review with China's State Administration for Market Regulation, the Korean and the Japanese Fair Trade Commissions. DG Competition's multilateral technical cooperation with the Chinese, Japanese, Korean, Indian and ASEAN competition authorities also continued<sup>168</sup>.

The Commission aims to include provisions on competition and subsidy control when negotiating Free Trade Agreements ('FTAs'). In 2022, the Commission continued FTA negotiations with Australia, India, Indonesia, and concluded the negotiations with New Zealand and Uzbekistan.

As regards the draft Second Generation Cooperation Agreement between the EU and Canada, the Commission continued negotiations with Canada, with a view to ensure that the provisions on data protection line up with the standards established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement. Moreover, the Commission continued the negotiations with Japan on a Second Generation Agreement with a view to updating the existing cooperation agreement from 2003.

As regards the candidate countries<sup>169</sup> and potential candidates<sup>170</sup>, including Ukraine, Moldova and Georgia, the Commission's main policy objective is to help these countries to create legislative frameworks with well-functioning operationally independent competition authorities that build up a solid enforcement record. In 2022, the Commission continued to monitor candidate countries' and potential candidates' compliance with their commitments under the Stabilisation and Association agreements.

The Commission has also been actively engaging with several African national and regional authorities to further cooperation in the competition field<sup>171</sup>. In 2022, the Commission organised for the first time the Africa-EU Competition Week to foster dialogue with African competition authorities at the national and regional level.

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<sup>167</sup> See the press release of 5.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7433](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7433)

<sup>168</sup> See: <https://asia.competitioncooperation.eu/>

<sup>169</sup> Countries granted candidate country status by the European Council on the basis of a recommendation by the European Commission: Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

<sup>170</sup> Potential candidates for EU membership: Georgia and Kosovo.

<sup>171</sup> See: <https://africa.competitioncooperation.eu/>

## 5. SUPPORTING EU COMPETITION LAW ENFORCEMENT

### 5.1. Digital Transformation

Digital transformation is a major political priority for the Commission's current mandate ('*A Europe fit for the digital age*'), not only for driving change in markets, but also for enabling public sector modernisation. The implementation of DG Competition's IT strategy to further digitise business processes, modernise digital solutions and to transform DG Competition into a more data-driven organisation to support EU competition policy and enforcement, continued throughout 2022 in alignment with the Commission's revised Digital Strategy<sup>172</sup>. In addition, DG Competition made substantial progress in implementing its IT security action plan to further improve cybersecurity of its information systems, to draft and update the accompanying IT security plans<sup>173</sup> and, in collaboration with DG DIGIT, to increase staff's cyber skills and awareness.

#### 5.1.1 Case management modernisation

In 2022, the *CASE@EC* programme focused on supporting DG Competition's legislative priorities, notably the Digital Markets Act ('DMA')<sup>174</sup>, which entered into force on 1 November 2022 and the FSR. The first version of *CASE@EC* supporting DMA was released in October 2022. Work for the internal case management for FSR cases is ongoing with the first release scheduled for 2023.

Also, the support for, and migration of, DG Competition's horizontal projects to *CASE@EC* advanced well and is expected to be launched in February 2023. In parallel, work on replacing the ageing case management system for Antitrust and Cartels with *CASE@EC* has been proceeding, albeit at a slower pace due to above legislative priorities.

#### 5.1.2. Improving digital exchanges with Member States' administrations, companies and citizens

During 2022, DG Competition continued improving its range of digital solutions to enhance and fully digitise communication and collaboration processes with its external stakeholders, in particular Member State administrations, NCAs, citizens as well as businesses and their legal representatives.

This included the launch of a new digital solution, *eRFI*, to support DG Competition's requests for information to investigate markets. Moreover, the tool enabling collaboration and communication within the ECN, *ECN2*, was adapted to support the DMA. Furthermore, significant upgrades were made on the tools supporting the EC leniency programme

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<sup>172</sup> Communication of the Commission, European Commission digital strategy - Next generation digital Commission, C(2022) 4388 final, 30.6.2022.

<sup>173</sup> During 2022, 11 IT security plans were approved.

<sup>174</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1.

(*eLeniency*)<sup>175</sup> and the negotiation on confidentiality claims in the context of the access to file procedure (*eConfidentiality*)<sup>176</sup>.

Finally, DG Competition progressed with a project to revamp the publication of competition cases' data on the EUROPA website<sup>177</sup> and help citizens and external stakeholders to better access, search and export public data on competition cases.

### *5.1.3. Advanced data support and digital solutions for competition investigations*

As DG Competition continues facing an exponential increase in the volume of electronic communications with parties as well as in electronic evidence, projects are ongoing to improve the handling of large volumes of case related submissions and the on premise access to files by parties. Moreover, *eDiscovery*, the tool used by case teams to review large amounts of documents, was overhauled. Additionally, investigative case teams received support with advanced data and machine learning services, to assist processing and exploiting non-standard submissions of large volumes of documents. A content search tool was made available to State Aid case handlers. In 2022, a new data warehouse and data visualisation infrastructure was put in place to integrate with *CASE@EC* and enable advanced visual and interactive dashboards based on a data analytics solution.

Moreover, DG Competition keeps investing into state-of-the-art, non-standard hardware and software solutions operated by specialised staff in the context of investigative and forensic IT activities, performed to better detect and effectively prosecute anticompetitive conduct. A dedicated unit was renamed 'Data Analysis and Technology'. The unit will report to the Chief Technology Officer, a newly created post attached to the Director General. The Chief Technology officer will support increasingly data-driven enforcement and market monitoring tasks, working in close collaboration with many other departments within DG Competition.

## **5.2. Single Market Programme**

Adapting to an increasingly digital and fast-paced environment is a constant challenge for the enforcement of EU competition policy. New sophisticated digital tools and algorithms used by economic operators, combined with an exponential increase in electronic communications, the sheer quantity of data and the number of documents on case files render many competition investigations increasingly complex. DG Competition therefore identified digital transformation as a key priority for 2022 and concentrated efforts to put in place innovative and optimised digital solutions to make competition enforcement more effective by working on the implementation of its Digital Solutions Modernisation Plan.

The Multiannual Financial Framework 2021-2027 also responds to these new challenges by including for the first time a dedicated Competition programme as part of the Single Market Programme (SMP)<sup>178</sup> to provide stable financing of measures that enhance the Commission's

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<sup>175</sup> See the press release of 30.9.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5845](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5845)

<sup>176</sup> See: [https://competition-policy.ec.europa.eu/antitrust/econfidentiality\\_en](https://competition-policy.ec.europa.eu/antitrust/econfidentiality_en)

<sup>177</sup> See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3)

<sup>178</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations

enforcement capacity, policy initiatives, international cooperation, as well as competition policy advocacy. With a budget of EUR 20.4 million for 2022, the Competition programme channels investment into areas that support effective and up-to-date enforcement of EU competition policy. Programme implementation accelerated in 2022 compared to 2021 and the improvement of the sanitary situation across Europe allowed for a wider range of activities, also together with Member States, at international level or advocacy events increasingly taking place in person.

DG Competition actively pursued a comprehensive plan to implement the Competition programme. It continues investing in the development of digital business solutions dedicated to modernise case management and interactions with external stakeholders and to increase the speed and efficiency of competition enforcement through data and artificial intelligence solutions.

### **5.3. External Communication and Advocacy**

DG Competition reaches out to a variety of stakeholders, including businesses, lawyers and other advisers, policy makers, academics, students and civil society more generally. Various channels are being used for this purpose, first and foremost Executive Vice-President Vestager's own participation in events, press conferences and speeches, complemented by press releases, newsletters, conferences, specialised publications and an active social media presence. In October 2022, DG Competition organised the conference 'Making Markets Work for People'<sup>179</sup> to discuss the significance of maintaining, nourishing, and developing a European social market economy and the role of competition policy. In her keynote speech, Executive Vice-President Vestager highlighted the main aspects of an economy that truly works for people and how competition policy is playing a vital role in this respect<sup>180</sup>. This includes a fairer distribution of new opportunities, while at the same time keeping prices low, maintaining choice and fostering innovative products and services. In 2022, Executive Vice-President Vestager delivered 53 speeches to a variety of audiences, both within and outside Europe. Executive Vice-President Vestager also addressed representatives of the European Parliament and of Member States in the Council on several occasions as part of a regular dialogue with other EU institutions<sup>181</sup>. The Director-General of DG Competition also participated in more than 24 international events and, together with other senior managers, actively engaged in outreach efforts towards EU institutions and Member States on the benefits of a strong and effective competition policy and enforcement. DG Competition posted 1.050 tweets from its account, along with 190 posts on its LinkedIn account and reached close to 10.750 subscribers with its electronic newsletter, and its publications in the EU Bookshop were viewed, downloaded or ordered as paper copies some 73.000 times. DG Competition issued more than 250 press releases during 2022. Some of the cases and policy initiatives generated broad media coverage, for example the prohibition under the EU Merger

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(EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (Text with EEA relevance), OJ L 153, 3.5.2021, p. 1. The Regulation applies retroactively, from 1.1.2021.

<sup>179</sup> See: [Making Markets Work for People \(europa.eu\)](https://ec.europa.eu/competition/making-markets-work-for-people)

<sup>180</sup> EVP Vestager Keynote at the Making Markets Work for People conference. See: [Making Markets Work for People conference \(europa.eu\)](https://ec.europa.eu/competition/making-markets-work-for-people)

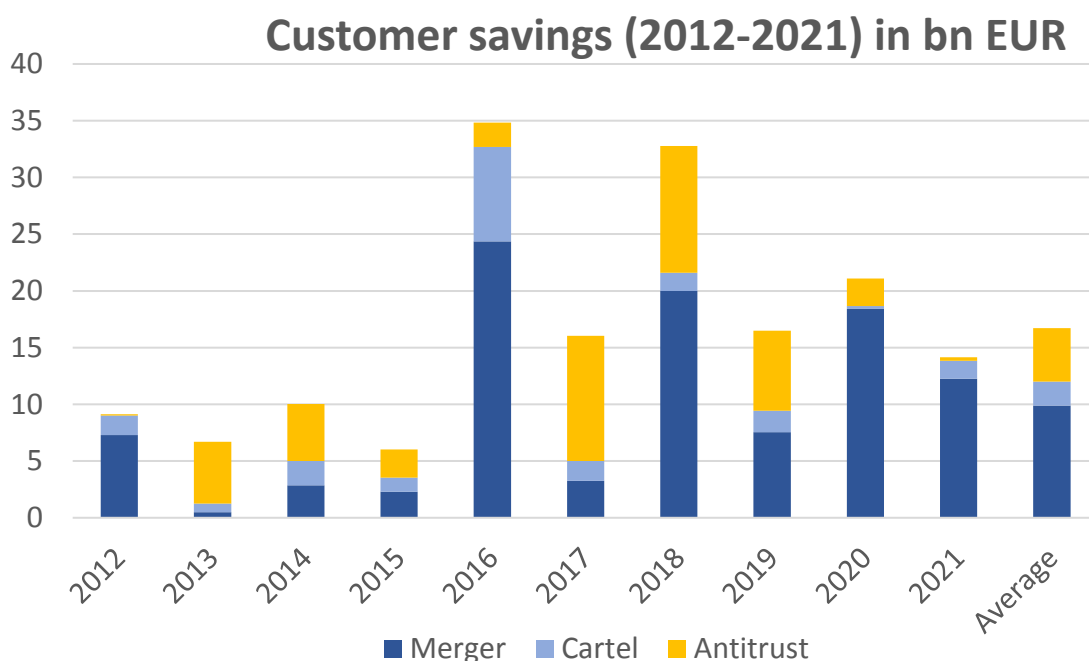
<sup>181</sup> Report on Competition Policy 2022, p. 26.

Regulation of the implemented acquisition of *GRAIL* by *Illumina* or the Statement of Objections sent to *Teva* over misuse of the patent system and disparagement of rival multiple sclerosis medicine, and the entry into force of the DMA and the Regulation to address distortions caused by foreign subsidies in the Single Market.

#### 5.4. Analysis of the benefits of EU Competition Law enforcement for citizens

The Commission's enforcement actions in the fields of antitrust and mergers generate direct benefits for citizens. DG Competition estimates<sup>182</sup> that direct customer savings generated by the Commission's antitrust and merger enforcement over the period 2012-2021 amount to between EUR 120 - 210 billion. On average, antitrust and merger enforcement generated thus around EUR 12 to 21 billion of direct customer benefits per year. In addition to these estimates, overall customer benefits of competition enforcement also include the indirect or deterrent effects of enforcement and positive effects on innovation and quality. While both effects are more difficult to estimate, economists agree that they are likely more significant than the direct customer savings. Complementary recent modelling of the macro-economic effects of competition enforcement suggests that antitrust and merger enforcement of the kind performed by the Commission during the last 10 years is likely to have a positive impact on EU GDP in the range of 0,6% - 1.1% (corresponding to EUR 90 - 160 billion per year) in the medium to long term<sup>183</sup>.

Figure 6: Customer savings 2012-2021



<sup>182</sup> See Competition Policy Brief 2022/1: *Customer savings generated by the Commission's antitrust and merger enforcement: A ten years perspective*, T. Deisenhofer, A. Dierx, F. Ilzkovitz, A. Stevenson, V. Verouden at [https://competition-policy.ec.europa.eu/publications/competition-policy-briefs\\_en](https://competition-policy.ec.europa.eu/publications/competition-policy-briefs_en)

<sup>183</sup> European Commission, Directorate-General for Competition, Directorate-General for Economic and Financial Affairs, Joint Research Centre, Archanskaia, E., Cai, M., Cardani, R., et al., *Modelling the macroeconomic impact of competition policy: 2021 update and further development*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2763/729367>

In October 2022, the Commission published the 2022 Eurobarometer surveys dedicated to EU competition policy<sup>184</sup>. The results clearly indicate that well-functioning competitive markets improve the citizens' daily life and have a positive impact on SMEs. They bring lower prices, more choice and more innovative products and services.

Figure 7: Citizens' perceptions about competition policy



<sup>184</sup> See the press release of 25.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6374](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6374)



## II. SECTORAL OVERVIEW

### 1. ENERGY & ENVIRONMENT

#### 1.1 Overview of key challenges in the sector

On 27 January 2022, the Commission adopted the new Guidelines on State aid for climate, environmental protection and energy ('CEAAG')<sup>185</sup>, which create a flexible, fit-for-purpose enabling framework for the Member States to reach the ambitious objectives of the European Green Deal and reduce the EU's dependence on fossil fuel imports.

In response to the hardship and global energy market disruption caused by Russia's unprovoked war of aggression against Ukraine, on 8 March 2022, the Commission adopted the REPowerEU Communication<sup>186</sup>, setting out ways forward for adjusting the EU's energy sector to the Russian invasion of Ukraine, tackling the high energy prices and reducing dependence on imported fossil fuels. This was followed up on 18 May 2022, when the Commission presented the REPowerEU Plan<sup>187</sup>.

In addition, on 23 March 2022, the Commission adopted a Temporary Crisis Framework (*see section I.3.1*), to allow Member States to make full use of the flexibility of the State aid toolbox to support companies and sectors severely impacted by the geopolitical developments. In 2022, the Commission adopted 25 decisions in the energy sector under the TCF. Based on the new and updated TCF of 28 October 2022, the application was extended until 31 December 2023.

In addition, the Commission has approved other crisis measures to support the solvency of certain undertakings in the energy sector, in line with the principles laid down in the TCF, aiming to remedy a serious disturbance in the economy of the Member States. Among others, the Commission approved, on 11 November 2022, a German aid measure to provide fresh capital to *SEFE Securing Energy for Europe GmbH* (former *Gazprom Germania GmbH*) ('*SEFE GmbH*')<sup>188</sup> replacing the former shareholder *Gazprom* by public ownership of Germany in order to safeguard the security of gas supply to the German economy. On 20 December 2022, the Commission approved, taking account of the commitments provided by Germany, aid measures to *Uniper*<sup>189</sup> and *SEFE GmbH*<sup>190</sup> providing capital injections, notably to cover losses occurred by purchasing gas at higher market prices replacing gas which Russian suppliers did not supply under existing long-term contracts.

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<sup>185</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, OJ C 80, 18.2.2022, p. 1.

<sup>186</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM(2022) 108 final, 8.3.2022.

<sup>187</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM(2022) 230, 18.5.2022.

<sup>188</sup> Case SA.104353, *Germany - Replacement of registered capital in SEFE GmbH*.

<sup>189</sup> Case SA.103791, *Germany - Recapitalisation of Uniper SE*; see also the press release of 20.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_7830](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7830)

<sup>190</sup> Case SA.105001, *Germany - Recapitalisation of SEFE GmbH*; see also the press release of 20.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_7828](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7828)



On 18 October 2022, the Commission proposed a new emergency regulation<sup>191</sup> to mitigate the impact of high gas prices in the EU. The regulation foresees, among other things, a joint purchasing mechanism for gas to help gas companies and gas consumers negotiate better prices, reduce the risk of Member States outbidding each other, and ensure security of supply across the entire European Union during a possible supply shortage.

Joint gas purchasing under the regulation shall be compliant with the EU competition rules. The Commission announced that it stands ready to accompany companies in the design of a possible joint gas purchasing consortium participating in the planned demand aggregation mechanism and to issue a decision, pursuant to Article 10 of Regulation 1/2003 on the inapplicability of Articles 101 and/or 102 TFEU, if relevant safeguards are incorporated and respected<sup>192</sup>. The Commission also announced that it stands ready to provide informal guidance to the extent that undertakings participating in any other joint purchasing consortia face uncertainty with regard to the assessment of one or more elements of their joint purchasing arrangement under the EU competition rules<sup>193</sup>.

The energy sector also saw intense merger and acquisition activity in 2022, with several simplified cases, notably in the renewable energy sector and some ongoing cases related to the current energy crisis resulting from Russia's invasion of Ukraine. The European Commission also opened a Phase II investigation regarding the acquisition of *OMV Slovenia* by *MOL* in order to determine whether the transaction is likely to reduce significantly effective competition on the retail fuel market in Slovenia<sup>194</sup>. The investigation is ongoing.

The European Commission also cleared in phase I the creation of a joint venture, by *SNAM* and *ENI*, to operate the Trans-Mediterranean Pipeline, used to import gas from Algeria into Italy<sup>195</sup>. The European Commission further cleared in phase I the acquisition of joint control by *ENI*, together with *Sonatrach* and *Equinor*, in *In Salah JV*, an Algerian company active in the production of natural gas<sup>196</sup>.

## 1.2 Effective competition in the green economy

In 2022, competition enforcement continued to contribute to the EU environmental objectives through the application of the State aid, antitrust and merger rules.

### 1.2.1. E-mobility

The shift to zero-emission mobility remains one of the key objectives of the European sustainable and smart mobility strategy and makes an important contribution to the European Green Deal. It can also help reducing dependency on imported fossil fuels. The large-scale

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<sup>191</sup> Proposal for a Council Regulation Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks, COM(2022) 549 final, 18.10.2022.

<sup>192</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Energy Emergency – preparing, purchasing and protecting the EU together, COM(2022) 533 final, 18.10.2022.

<sup>193</sup> See Recital 34 of Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, OJ L 335, 29.12.2022, p. 1.

<sup>194</sup> Case M.10438, *MOL / OMV Slovenija*, OJ C 245, 28.6.2022, p. 2.

<sup>195</sup> Case M.10619, *SNAM / ENI / JV*.

<sup>196</sup> Case M.10941, *ENI / Sonatrach / Equinor / In Salah JV*.

deployment of electric charging and hydrogen-refuelling stations under a competitive market is important to ensure the take-up of electric and hydrogen powered vehicles and encourage the shift away from fossil fuels.

In 2022, the Commission approved several State aid schemes for the deployment of electric charging stations and other alternative refuelling infrastructure, for the acquisition of zero- or low-emission vehicles (in particular electric or hydrogen buses for public transport) as well as for the retrofitting of vessels<sup>197</sup>. It also advised Member States on several other schemes to either bring them under the GBER or to ensure that they did not entail State aid in line with published relevant guidance<sup>198</sup>. To ensure that competition policy and enforcement contribute to the green transition, including green mobility, the Commission published an open call for tender for a study on competition in the emerging market for publicly accessible recharging infrastructure for electric vehicles. The study will be completed in Q1 2023. The goal of this study is to gain a better understanding of the competitive conditions on that market and to identify potential competition concerns as early as possible to allow competition to develop in a free and undistorted way<sup>199</sup>.

### *1.2.2. Reduction of industrial emissions*

Reduction and avoidance of industrial greenhouse gas emissions is another important leg of the European Green Deal and is equally important to reduce dependency on fossil fuels. In addition to the significant contribution to the achievement of the objectives of the European Green Deal provided by the two IPCEIs for the hydrogen value chain approved in 2022 (see section I.3.4.3.), the Commission also approved several State aid measures aiming at the decarbonisation of industrial sectors such as steel and the chemical sector through the uptake of hydrogen-based technologies or through electrification of hydrogen production<sup>200</sup>.

The Commission also approved on 10 October 2022 two Slovak State aid schemes for the decarbonisation of the industry<sup>201</sup>. These were the first decisions adopted by the Commission under the new CEEAG on broad industrial decarbonisation schemes. The schemes are open to all industrial sectors subject to the European Emission Trading System; supported projects will be selected in a competitive bidding processes based on CO<sub>2</sub> abatement costs.

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<sup>197</sup> See for instance Case SA.62131, *Luxembourg - Aid scheme for the deployment of charging infrastructures*; Case SA.64763, *Italy - State aid scheme for the modernisation of inland waterway freight transport vessels*; Case SA.101781, *Italy - Aid to Poste Italiane for the deployment of recharging stations in Italian small municipalities*; Case SA.10479, *Germany – Aid scheme for the roll out of high power charging ('HPC') infrastructure for electric vehicles*.

<sup>198</sup> See: [https://ec.europa.eu/competition-policy/system/files/2021-12/template\\_RRF\\_electric\\_and\\_hydrogen\\_charging\\_stations.pdf](https://ec.europa.eu/competition-policy/system/files/2021-12/template_RRF_electric_and_hydrogen_charging_stations.pdf); [https://ec.europa.eu/competitionpolicy/system/files/2021-12/template\\_RRF\\_premiums\\_acquisition\\_low\\_emission\\_vehicles.pdf](https://ec.europa.eu/competitionpolicy/system/files/2021-12/template_RRF_premiums_acquisition_low_emission_vehicles.pdf)

<sup>199</sup> [https://competition-policy.ec.europa.eu/single-market-programme-smp/calls-tenders-contracts/ex-ante-publicity-low-and-middle-value-contracts\\_en](https://competition-policy.ec.europa.eu/single-market-programme-smp/calls-tenders-contracts/ex-ante-publicity-low-and-middle-value-contracts_en)

<sup>200</sup> Case SA.103774, *Germany - BASF - Project Hy4Chem-El*; Case SA.104361, *Spain - RRF - Project Green Cobra*; Case SA.104276, *Germany – Aid to Salzgitter for project SALCOS stage I*.

<sup>201</sup> Case SA.102385, *Slovakia - State aid scheme for the decarbonisation of industry from the RRP*; Case SA.102388, *Slovakia - State aid scheme for the decarbonisation of industry financed from the Modernisation Fund*.

### *1.2.3. Renewable energy and other technologies for the reduction and removal of emissions*

Reduction and avoidance of greenhouse gas emissions in sectors other than in the industry, for example through the installation of new renewable energy production capacity or through the increase in energy efficiency, is fundamental to achieve the 2050 climate neutrality objective. In 2022, the Commission approved seven<sup>202</sup> State aid measures under the new CEEAG to support the development of renewable energy, covering a number of different technologies (e.g. solar photovoltaics, offshore wind, renewable hydrogen, biomethane).

On 8 August 2022, the Commission approved a first support measure under the new CEEAG for renewable hydrogen production<sup>203</sup>. On the same day, the Commission also approved an Italian scheme supported by the RRF to support the development of new or converted biomethane production plants, which will contribute to the reduction of greenhouse gas emissions and to the increase of the share of renewable energy. These two schemes will also contribute to the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and fast forward the green transition.

In addition, on 27 September 2022, the Commission approved an additional measure supplementing the German Renewable Energy Act ('EEG 2021') to support electricity production from renewable energy sources in Germany through small rooftop solar photovoltaics installations (up to 300 kW), which fully feed the electricity produced into the grid. Moreover, further fine-tuning of the EEG 2021 took place through small amendments to the innovation and solar photovoltaics tenders, increasing competitiveness in the aid procedures<sup>204</sup>. This set of amendments was followed in December 2022 by a full re-assessment of the EEG 2021, which will become the 'EEG 2023' as of 1 January 2023<sup>205</sup>. In contrast to the EEG 2021, the EEG 2023 support scheme, with a EUR 28 billion budget, will be funded by Germany's federal budget. The scheme aims at achieving a share of 80% of electricity produced from renewable energy sources by 2030, with a view to become climate neutral by 2045. To achieve its objective, Germany plans to increase the number and volume of tenders for rooftop and ground-based solar photovoltaic, onshore wind, biomethane and for innovation tenders. The most important improvements in the EEG 2023 are the introduction of safeguards in all tender procedures, which ensure the competitiveness of the tenders, the agreement to gradually phase out support at times of negative prices by 1 January 2027 and the introduction of regional measures for onshore wind, biomass and biomethane in the South, in order to help dealing with Germany's continued grid congestion issues. On 21 December 2022, the Commission further approved amendments to Germany's support scheme for

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<sup>202</sup> Case SA.100704, Italy - RRF - Support scheme for the promotion of biomethane; Case SA.101842, Poland – Individual Aid for Baltica 2 and Baltica 3 Offshore Wind Farms; Case SA.102003, Romania – RRF - Scheme to support capacity for renewable hydrogen production; Case SA.102303, Germany – EEG 2021 amendments: Easter Package 2022 – Early Bird Measures; Case SA.103086, Germany – EEG 2021 amendments: Additional round of solar PV tenders in 2022; Case SA.102084, Germany – EEG 2023; Case SA.103069, Germany – Offshore Wind Energy Act – amendments 2023.

<sup>203</sup> Case SA.102003, Romania- RRF - Scheme to support capacity for renewable hydrogen production.

<sup>204</sup> Case SA.102303, Germany – EEG 2021 amendments: Easter Package 2022 – Early Bird Measures; Case SA.103086, Germany – EEG 2021 amendments: Additional round of solar PV tenders in 2022.

<sup>205</sup> Case SA.102084, Germany – EEG 2023.

offshore wind electricity production<sup>206</sup>. The amended scheme increases expansion targets for installed capacity for offshore wind energy installations and introduces a new tender procedure for a different type of sites in the German Exclusive Economic Zone, that is sites which have not been centrally pre-investigated by the State. With this new procedure, Germany expects to increase and speed up offshore wind development. In the event where several bids with a value of zero are received, the amendments introduce a dynamic bidding procedure, which will allow Germany to differentiate and select between these zero-cent bids. The amended scheme will continue to be applicable until the end of 2026 and has a total budget of EUR 1.5 billion.

Antitrust enforcement also contributes to the objective of a low-carbon economy and the European Green Deal. In 2022, the Commission continued its investigation of ethanol producers suspected of having colluded with the aim of influencing the ethanol benchmarks published by the price-reporting agency *S&P Global Platts*. In July 2022, the Commission informed *Alcogroup S.A.* and its subsidiary *Alcodis S.A.* as well as *Lantmännen ek för* and its subsidiary *Lantmännen Agroetanol AB* of its preliminary view that, together with *Abengoa S.A.*, which settled the case in December 2021<sup>207</sup>, they have breached EU antitrust rules<sup>208</sup>. Biofuels like ethanol can contribute to promoting cleaner transport and reduce greenhouse gas emissions, supporting EU energy objectives and the European Green Deal.

#### *1.2.4. Energy infrastructure*

In December 2022, the Commission opened an in-depth investigation<sup>209</sup> to determine whether the amendment to the aid measure to support the operation of the LNG Terminal in Klaipėda by the designated supplier *Litgas* for the period 2016-2018 is in line with EU State aid rules in relation to the compensation of boil-off and balancing costs under the SGEI Framework<sup>210</sup>. This follows the EU General Court's partial annulment of a previous Commission decision approving amendments to the measure<sup>211</sup>.

As regards other energy infrastructure projects, the Commission adopted in September 2022 two decisions on measures to support the development of electricity storage facilities: a Greek State aid scheme under the Recovery and Resilience Facility<sup>212</sup> and a Croatian individual State aid measure<sup>213</sup>. Both measures were assessed and approved under Section 4.9 of the CEEAG for aid for energy infrastructure. Electricity storage facilities can contribute to a smooth integration in the electricity system of an increasing share of renewable energy, in line with the EU's strategic objectives relating to the European Green Deal.

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<sup>206</sup> Case SA.103069, *Germany – Offshore Wind Energy Act – amendments 2023*.

<sup>207</sup> See the press release of 10.12.2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6769](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6769)

<sup>208</sup> See the press release of 7.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4362](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4362)

<sup>209</sup> Case SA.44678, *Lithuania - Modification of aid for LNG Terminal in Lithuania*; see also the press release of 1.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7231](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7231)

<sup>210</sup> Commission Decision of 20.12.2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3.

<sup>211</sup> Judgment of the General Court of 8.9.2021 in Case T-193/19, *Achema and Achema Gas Trade v Commission*, EU:T:2021:558.

<sup>212</sup> Case SA.64736, *Greece - RRF - Financial support in favour of electricity storage facilities*.

<sup>213</sup> Case SA.64374, *Croatia - Individual aid to IE-Energy for grid-scale energy storage*.

### *1.2.5 District heating and cooling*

The heating and cooling sector plays a crucial role in the EU's ambition to transition into a clean and carbon-neutral economy by 2050. On 2 August 2022, the Commission approved a EUR 2.98 billion German scheme to promote green district heating based on renewable energy and waste heat. The measure supports the construction of new district heating networks and the decarbonisation of existing ones as well as the installation of new heat generation facilities<sup>214</sup>. In addition, on 30 September 2022, the Commission approved a EUR 390 million scheme, partly financed by the RRF, to support the production of electricity and heat from high-efficient cogeneration installations connected to district heating networks in Romania<sup>215</sup>.

### *1.2.6. Coal phase-out*

In 2022, the Commission continued examining measures taken by Member States to support the phase-out from coal-fired power generation. Among other measures, the Commission continued its in-depth investigation into the German plans to compensate lignite-fired power plants for phasing out earlier than foreseen<sup>216</sup>.

Following a temporary rescue aid granted by Romania to Romanian power company *Complexul Energetic Oltenia SA* ('*CE Oltenia*') after being approved by the Commission under EU State aid rules, Romania notified to the Commission a plan for the restructuring of *CE Oltenia*. On 26 January 2022, following a formal investigation procedure, the Commission adopted a conditional decision under the 2014 Rescue and Restructuring aid Guidelines approving aid of EUR 2.65 billion. The approved restructuring plan entails phasing-out lignite through the closure of the lignite power units and of lignite mines based on the decarbonisation plan of Romania that aims to replace lignite-based electricity production with electricity produced from natural gas and renewables (solar and hydropower)<sup>217</sup>.

### *1.2.7. ETS Guidelines revision*

On 21 September 2020, the Commission adopted the revised EU Emission Trading System State aid Guidelines in the context of the system for greenhouse gas emission allowance trading post-2021 ('ETS Guidelines')<sup>218</sup>, which entered into force on 1 January 2021 and were supplemented with Commission's Communication of 30 December 2021<sup>219</sup>. In 2022, the Commission adopted 13 decisions under the ETS Guidelines in different Member States approving schemes for indirect cost compensation of electro-intensive users that also cover the compensation for costs incurred in 2021.

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<sup>214</sup> Case SA.63177, *Germany – Federal support for efficient heat networks*.

<sup>215</sup> Case SA.101723, *Romania – Investment aid on High-efficient Cogeneration plant using natural gas in district heating network*.

<sup>216</sup> Case SA.53625, *Germany – Lignite phase-out*.

<sup>217</sup> Case SA. 59974, *Romania - Restructuring aid to Complexul Energetic Oltenia SA*.

<sup>218</sup> Communication from the Commission, Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021, OJ C 317, 25.9.2020, p. 5.

<sup>219</sup> Communication from the Commission supplementing the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021, OJ C 528, 30.12.2021, p. 1.



### 1.3 Secure Energy Supply

In 2022, the Commission continued examining measures taken by Member States to ensure security of electricity supply. The Commission approved on 11 October 2022 a capacity mechanism to safeguard security of electricity supply in Finland, while contributing to the reduction of emissions in the electricity sector. This was the first decision adopted by the Commission under the new CEEAG on security of supply. The measure supports electricity generation, demand-response and storage units to ensure their availability when the balance between supply and demand may be at risk of shortages. Supported projects will be selected in a competitive bidding processes based on the level of aid per unit of capacity requested<sup>220</sup>.

### 1.4 Effective competition in energy markets

In 2022, the Commission continued its antitrust investigations in the energy sector.

The Commission continued its investigation against the Greek electricity incumbent *Public Power Corporation* ('PPC') for potential predatory behaviour in the wholesale electricity market in the Greek interconnected system (mostly mainland Greece). The investigation focuses on PPC's alleged strategic bidding behaviour that may have resulted in its thermal units being selected for electricity generation even when they did not cover their average variable costs<sup>221</sup>.

Electricity trading plays an important and growing role in the effective and safe management of electricity grids and helps to ensure that electricity flows from where it is produced to where it is needed. In this context, the Commission continued its investigation whether the power exchange *EPEX Spot SE* has been hindering the activities of competitors on the market for electricity intraday trading facilitation services in at least six Member States in Central and Western Europe<sup>222</sup>.

The Commission is also looking into whether Europe's main gas suppliers may have engaged in anti-competitive conduct contributing to the disruptions of the energy markets and prices in the EEA observed since the second half of 2021. In this context, the Commission carried out unannounced inspections at the premises of several companies in Germany active in the supply, transmission and storage of natural gas<sup>223</sup>.

On 31 March 2022, the Commission closed its antitrust investigation into agreements for the supply of liquefied natural gas ('LNG') between *Qatar Energy* and several European gas importers<sup>224</sup>. The Commission investigated whether these agreements could constitute territorial restrictions for the trade of LNG within the EEA, notably through destination clauses. The decision to close the case was based on a thorough analysis of all relevant evidence, including information received from *Qatar Energy* and the European gas importers as the Commission concluded that the evidence collected did not confirm its initial concerns.

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<sup>220</sup> SA.55604, *Finland – Finnish strategic reserve*.

<sup>221</sup> Case AT.40278, *Greek wholesale electricity market*.

<sup>222</sup> Case AT.40700, *Intraday trading of wholesale electricity*.

<sup>223</sup> See the press release of 31.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2202](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2202)

<sup>224</sup> Case AT.40416, *LNG supply to Europe*.

## **2. INFORMATION AND COMMUNICATION TECHNOLOGIES AND MEDIA**

### **2.1 Overview of key challenges in the sector**

Markets in the information, communication, technologies and media sectors ('ICT') are key drivers for smart, sustainable and inclusive growth. They continue to evolve at rapid pace with new devices and new intangible advances appearing, such as services, applications, and digital ecosystems. Business models and sources of revenue tend to change faster in digital markets than elsewhere. Digital services have brought important benefits to users and opened new business opportunities. They can increase consumer choice, and improve efficiency and competitiveness. Large platforms in the provision of digital services represent key structural elements of today's economy.

The Commission is committed to protecting innovation and consumers' choice as well as to ensuring equal opportunities for market players. Given the dynamic nature of the ICT markets, the Commission focuses on keeping the markets open for new entrants and on encouraging technological innovation.

The often observed network effects in ICT markets render them particularly apt to consumer lock-in and entrenched positions of dominant suppliers. Market players frequently hold a dual role, by operating a platform or marketplace for third parties and at the same time offering their own products or services on that platform or marketplace in competition with those third parties. This can give rise to "self-preferencing" and discriminatory practices including vertical foreclosure of digital "dual role" platforms. In ICT markets, access to, and control over, various types of data will often be decisive for commercial success. At the same time, anti-competitive practices leveraging on data may raise barriers to entry and cause small and innovative competitors to exit early from the market, as well as an unjustified restriction of consumers' choice.

Also the media sector has significantly evolved due to technological convergence as content is delivered to users via an increasing array of devices and networks (for example films, music and editorial content offered by different platforms are available on TV screens, phones, tablets and laptops running through different telecommunications networks, including fixed or mobile). In media markets, anti-competitive practices may jeopardise technological innovation and prevent consumers from benefiting from wide access to high quality content at competitive prices.

To contribute to the digital transition, effective antitrust scrutiny of the behaviour of market players, including platforms, as well as timely intervention need to be ensured in ICT markets. To make and keep markets open and competitive in line with the goals of the EU's digital agenda, enforcement must focus on safeguarding interoperability and competition between technological platforms.

### **2.2 Contribution of EU competition policy to tackling the challenges**

#### *2.2.1. Data and platforms*

Data has become a crucial input for digital services. The competitiveness of undertakings increasingly depends on timely access to relevant data. Data is also a key input in the



development of artificial intelligence. Against this background, the Commission's antitrust enforcement aims to ensure that digital platforms do not access or use data in an anticompetitive manner.

In 2022, the Commission continued its investigation, opened on 4 June 2021, regarding *Meta*. In this investigation, the Commission assesses whether *Meta* violated Article 102 TFEU by using advertising data gathered in particular from advertisers in order to compete with them in markets where *Meta* is active such as classified advertising<sup>225</sup>. The investigation also assesses whether *Meta* ties its online classified advertising service "Facebook Marketplace" to its social network. On 19 December 2022, the Commission informed *Meta* of its preliminary view that the company breached EU antitrust rules by distorting competition in the markets for online classified ads. The Commission is concerned that *Meta* may be tying its online classified ads service, Facebook Marketplace, to its personal social network, Facebook. The Commission is also concerned that *Meta* may be imposing unfair trading conditions on Facebook Marketplace's competitors.<sup>226</sup>

The Commission also continued its investigation, opened on 22 June 2021, into a broad range of *Google's* advertising technology (ad tech) and data-related practices<sup>227</sup>. The Commission is investigating whether *Google's* conduct and use of data in online advertising and the provision of ad tech services, that is to say online intermediation services between advertisers and publishers for serving ads, infringe Articles 101 and/or 102 TFEU. The investigation covers notably: (1) potential restrictions on competing ad tech services' ability to serve online display advertisements on *YouTube* and a potential obligation to use *Google's* services to programmatically purchase online display advertisements on *YouTube*, since at least 2015; (2) potential favouring between distinct *Google* ad tech services along the value chain, since at least 2010; (3) potential restrictions by *Google* on the ability of advertisers, publishers and competing online display advertising intermediaries to access data about user identity or user behaviour available to *Google's* own ad tech services, since at least 2012; (4) *Google's* announced plans to prohibit the placement of third party cookies on its Chrome browser and to introduce as a replacement the "Privacy Sandbox" set of tools, at least since the plans were announced in January 2020; and (5) *Google's* announced plans to stop making the advertising identifier available to third parties on Android devices when a user opts out of interest-based advertising or advertisement personalisation, at least since the announcement was made in June 2021.

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<sup>225</sup> Case AT.40684, *Facebook leveraging*; see also the press release of 4.6.2021: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_2848](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848)

<sup>226</sup> Case AT.40684, *Facebook leveraging*; see also the press release of 19.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7728](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728).

<sup>227</sup> Case AT.40670, *Google-Adtech and Data-related practices*; see also the press release of 22.6.2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3143](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143)

In December 2022, the Commission also closed an investigation<sup>228</sup> opened under Articles 101 and/or 102 TFEU in March 2022 concerning an agreement known as the ‘Jedi Blue’ agreement between *Google* and *Meta* for online display advertising services.

On 14 July 2022, the Commission sought feedback on commitments offered by *Amazon* concerning two investigations<sup>229</sup>. The first investigation related to *Amazon*’s systematic reliance on non-public business data of independent sellers who offer their goods and services on its marketplace, to the benefit of *Amazon*’s own retail business, which is in direct competition with those third party sellers<sup>230</sup>. In the second investigation, the Commission expressed preliminary concerns that the criteria that *Amazon* sets to select the winner of the “Buy Box” and to enable sellers to offer products to Prime users, under *Amazon*’s Prime loyalty programme, lead to preferential treatment of *Amazon*’s retail business or of third-party sellers that use *Amazon*’s logistics and delivery services<sup>231</sup>. In July 2022, the Commission invited comments<sup>232</sup> on commitments offered by *Amazon* to address competition concerns over its use of non-public marketplace seller data and over a possible bias in granting sellers’ access to its Buy Box and its Prime programme. On 20 December 2022, following the outcome of the market test and amended commitments offered by *Amazon*, the Commission found that the final commitments addressed the Commission’s competition concerns and made them legally binding under EU antitrust rules<sup>233</sup>. The Commission found that *Amazon*’s final commitments will ensure that *Amazon* does not use marketplace seller data for its own retail operations and that it grants non-discriminatory access to Buy Box and Prime.

**Commission accepted amended commitments by Amazon barring it from using marketplace seller data, and ensuring equal access to Buy Box and Prime**

To address the Commission’s competition concerns in relation to both investigations, Amazon initially offered the following commitments:

- To address the data use concern, Amazon proposed to commit:
  - not to use non-public data relating to, or derived from, the independent sellers’ activities on its marketplace, for its retail business.
  - not to use such data for the purposes of selling branded goods as well as its private label products.
- To address the Buy Box concern, Amazon proposed to commit to:
  - treat all sellers equally when ranking the offers for the purposes of the selection of the Buy Box winner;
  - display a second competing offer to the Buy Box winner if there is a second offer from a different seller that is sufficiently differentiated from the first one on price and/or delivery. Both offers will display the same descriptive information and provide the same purchasing experience.
- To address the Prime concerns Amazon proposed to commit to:

<sup>228</sup> Case AT.40774, *Google-Facebook (Open Bidding) agreement*; see also the press release of 19.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_22\\_7832](https://ec.europa.eu/commission/presscorner/detail/en/mex_22_7832)

<sup>229</sup> Cases AT.40462, *Amazon Marketplace* and AT.40703, *Amazon - Buy Box*; see also the press release of 14.07.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4522](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4522)

<sup>230</sup> Case AT.40462, *Amazon Marketplace*; see also the press release of 10.11.2020: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077)

<sup>231</sup> Case AT.40703, *Amazon - Buy Box*; see also the press release of 10.11.2020: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077)

<sup>232</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commitment proposal, see: [https://ec.europa.eu/competition/antitrust/cases1/202229/AT\\_40462\\_8414012\\_7971\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases1/202229/AT_40462_8414012_7971_3.pdf)

<sup>233</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commission Decision of 20.12.2022; see also the press release of 20.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7777](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777)

- set non-discriminatory conditions and criteria for the qualification of marketplace sellers and offers to Prime;
- allow Prime sellers to freely choose any carrier for their logistics and delivery services and negotiate terms directly with the carrier of their choice;
- not use any information obtained through Prime about the terms and performance of third-party carriers, for its own logistics services.

Between July and September 2022, the Commission market tested Amazon's commitments and consulted all interested third parties to verify whether they would remove its competition concerns. In light of the outcome of this market test, Amazon amended the initial proposal and further committed to:

- display a second competing offer to the Buy Box winner and to improve the presentation by making it more prominent and to include a review mechanism in case the presentation is not attracting adequate consumer attention;
- ensure the transparency and early information flows to sellers and carriers about the commitments and their newly acquired rights, enabling, amongst others, early switching of sellers to independent carriers;
- lay out the means for independent carriers to directly contact their Amazon customers, in line with data-protection rules, enabling them to provide equivalent delivery services to those offered by Amazon;
- ensure the protection of carrier data from use by Amazon's competing logistics services, in particular concerning cargo profile information;
- introduce a centralised complaint mechanism, open to all sellers and carriers in case of suspected non-compliance with the commitments.
- grant significant powers to the monitoring trustee by introducing further notification obligations;

The accepted commitments cover all of Amazon's current and future marketplaces in the European Economic Area. They exclude Italy for the commitments relating to the Buy Box and Prime in view of the decision of 30 November 2021 of the Italian competition authority imposing remedies on Amazon with regard to the Italian market. The final commitments will remain in force for seven years in relation to Prime and the display of the second competing Buy Box offer, and for five years for the remaining parts of the commitments. Under the supervision of the Commission, an independent trustee will be in charge of monitoring the implementation and compliance with the commitments. If Amazon were to breach the commitments, the Commission could impose a fine of up to 10% of Amazon's total annual turnover, without having to find an infringement of EU antitrust rules or a periodic penalty payment of 5% of Amazon's daily turnover for every day of non-compliance.

The Commission is also investigating *Apple's* rules on the distribution of apps that compete with *Apple's* own apps and services on *Apple's* App Store in the European Economic Area<sup>234</sup>. In the App Store Practices (music streaming) case in particular, the Commission preliminarily found that the requirements imposed by *Apple* distort competition on the music streaming market and constitute an abuse of *Apple's* dominant position in the market for distribution of music streaming apps to iPhone and iPad users<sup>235</sup>.

On 27 January 2022, the Commission cleared the acquisition of *Kustomer*, a provider of Customer Relationship Management ('CRM') software, by *Meta*<sup>236</sup>. The Commission carried out an in-depth investigation over concerns that the transaction would have harmed

<sup>234</sup> Case AT.40437, *Apple - App Store Practices (music streaming)*; Case AT.40652, *Apple App Store Practices (e-books/audiobooks)*; Case AT.40716, *Apple - App Store Practices*.

<sup>235</sup> Case AT.40437, *Apple - App Store Practices (music streaming)*; see also the press release of 30.4.2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2061](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061)

<sup>236</sup> Case M.10262, *Meta (formerly Facebook)/Kustomer*, Commission Decision of 27.1.2020, available at: [https://ec.europa.eu/competition/mergers/cases1/202242/M\\_10262\\_8559915\\_3054\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202242/M_10262_8559915_3054_3.pdf)

competition in the markets for the supply of CRM software, as *Meta* could have foreclosed *Kustomer's* rivals and new entrants by denying access to application programming interfaces ('APIs') for its messaging channels (Messenger, Instagram, WhatsApp). To address the competition concerns, *Meta* offered access remedies with a 10-year duration. These remedies consist of: (i) granting non-discriminatory access to *Meta's* publicly available APIs for its messaging channels to *Kustomer's* rivals; (ii) an API parity commitment whereby all improvements and updates made available to *Kustomer* will be made available also to *Kustomer's* rivals. The Commission concluded that the transaction, as modified by the remedies, would no longer raise competition concerns.

On 20 January 2022, the Commission published the final report<sup>237</sup> and its accompanying Staff Working Document<sup>238</sup> in its sector inquiry on the consumer Internet of Things ("IoT") launched in July 2020, based on Article 17 of Regulation 1/2003<sup>239</sup>. The report presents the findings, including a number of potential competition concerns, raised by stakeholders, in particular in relation to voice assistants and smart device operating systems, the access to and accumulation of large amounts of data and a lack of interoperability.

#### **The Digital Markets Act**

The Digital Markets Act (DMA) addresses systemic practices arising in digital markets, such as the gatekeeper power of large digital platforms. The DMA establishes the relevant criteria to identify "gatekeepers" which fall within the Regulation. Where a platform meets the quantitative thresholds regarding (1) its size, (2) its active business users and end users, and (3) its entrenched and durable position, it will be presumed to be a gatekeeper. The Commission will also be able to designate gatekeepers individually upon qualitative assessment. Designated gatekeepers will be obliged to comply with a set of harmonized rules, which aim at keeping core platform services contestable and restrict unfair conduct vis-à-vis their business users, within six months upon designation as a gatekeeper. To address potential non-compliance with the obligations, fines of up to 10% of the undertaking's worldwide turnover may be imposed. Moreover, in case of systematic non-compliance, proportionate behavioural or structural remedies may be imposed on such firms.

A political agreement on the DMA was reached on 24 March 2022. The final text was signed on 14 September 2022 by the Council and the Parliament and was published in the Official Journal of the European Union on 12 October 2022. The DMA entered into force on 1 November 2022 and will be applicable as of 2 May 2023. Within the following two months, companies providing core platform services and meeting the quantitative thresholds will have to notify the Commission and provide all relevant information. The Commission will then have two months to adopt a decision designating a specific gatekeeper. The designated gatekeepers will have a maximum of six months after the Commission decision to ensure compliance with the obligations foreseen in the DMA.

In addition, the Commission must prepare a number of implementing acts, templates for decisions, and set up internal procedures, including registry and IT systems.

<sup>237</sup> Report from the Commission to the Council and the European Parliament - Final report - sector inquiry into consumer Internet of Things COM (2022) 19 final, 20.1.2022, available at: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf)

<sup>238</sup> Commission Staff Working Document – Report from the Commission to the Council and the European Parliament: Final report - Sector inquiry into consumer Internet of Things, SWD (2022) 10 final, 20.1.2022, available at: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_staff\\_working\\_document\\_0.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_staff_working_document_0.pdf)

<sup>239</sup> Commission decision of 16.7.2020 initiating an inquiry into the sector for consumer Internet of Things related products and services pursuant to Article 17 of Council Regulation (EC) No 1/2003, available at: [https://ec.europa.eu/competition/antitrust/IoT\\_decision\\_initiating\\_inquiry\\_en.pdf](https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf)

### 2.2.2. Technology Markets

The Commission's actions in technology markets aim at keeping markets competitive and maximising incentives to innovate. In this context, the Commission has continued monitoring compliance with its decisions in the *Google Search (Shopping)*<sup>240</sup> and *Google Android*<sup>241</sup> cases.

In February 2022, *NVIDIA*, a global supplier of semiconductors, withdrew its notification of the proposed acquisition of *Arm*, a supplier of core architecture and intellectual property ('IP') to chipmakers for the design of processing units, and abandoned the transaction. The Commission had opened an in-depth investigation to assess *NVIDIA*'s proposed acquisition of *Arm*, as the Commission found that *Arm* has significant market power on the upstream market for the licensing of IP for the design of processor products<sup>242</sup>. During the in-depth review, the Commission investigated concerns that the merged entity would have had the ability and incentive to restrict or degrade access to *Arm*'s IP by providers of processor products competing with *NVIDIA* downstream. This could have led to higher prices, less choice and reduced innovation in the semiconductor industry.

In December 2022, the Commission opened an in-depth investigation to assess the proposed acquisition of *VMware* by *Broadcom*<sup>243</sup>. *Broadcom* is a supplier of hardware, primarily network interface cards and adapters, whereas *VMware* offers virtualization software. The Commission is primarily concerned that the transaction may allow *Broadcom* to reduce the ability of rival hardware suppliers to compete, primarily by degrading interoperability of *VMware*'s virtualization software with competitors' hardware products.

#### The Google Android case

On 14 September 2022, the General Court largely upheld the Commission's decision of 2018 in the Google Android case, concluding that Google had imposed illegal restrictions on Android device manufacturers and mobile network operators to preserve its dominant position in general internet search. The Court decreased the fine from EUR 4.34 billion to EUR 4.125 billion. Specifically, the Court upheld the Commission's finding that Android and iOS belonged in separate relevant product markets. It also upheld the Commission's findings that Google had restricted competition from competing general search services and browsers via the pre-installation conditions Google imposed on manufacturers of mobile devices and from alternative versions of Android and competing general search services via its anti-fragmentation agreements.

In parallel, the Commission keeps monitoring the remedies that Google implemented in the EEA. Google untied Google Play Store, Google Search and Google Chrome on Google Android smart mobile devices. Google allowed device manufacturers to sell a forked version of Android on devices of their choice whilst continuing to sell other devices based on Google Android and with Google Play. Google rolled out a choice screen to allow users to select their preferred search engine at the setup of new devices.

<sup>240</sup> Case AT.39740, *Google Search (Shopping)*, Commission Decision of 27.6.2017, available at: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf)

<sup>241</sup> Case AT.39740, *Google Android*, Commission Decision of 18.7.2018, available at: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40099/40099\\_9993\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40099/40099_9993_3.pdf)

<sup>242</sup> Case M.9987, *Nvidia/Arm*; see also the press release of 27.10.2021: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_5624](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5624)

<sup>243</sup> Case M.10806, *Broadcom / VMware*; see also the press release of 20.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7835](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7835)



### 2.2.3. Telecommunication sector

European consumers must be able to benefit from increased choice in the telecommunication sector thanks to low prices, high quality and innovative services. Mobile infrastructure sharing agreements can be a source of efficiencies, such as cost reductions and quality improvements. However, these agreements can give rise to restrictive effects on competition, as they may limit infrastructure competition that would take place absent the agreement. A section providing guidance on the competition law assessment of mobile infrastructure sharing agreements was introduced in the draft revised guidelines on horizontal cooperation agreements, which were open for public consultation in 2022<sup>244</sup>. The guidelines emphasise the need to conduct a case by case assessment under Article 101 TFEU, provide the variety of factors which are relevant for the competitive assessment, give broad principles for the self-assessment of different types of mobile infrastructure sharing agreements and set out minimum requirements to be complied with in order for a mobile infrastructure sharing agreement not to be considered, *prima facie*, as likely to have restrictive effects under Article 101 TFEU.

In 2022, the Commission continued its investigation into mobile infrastructure sharing agreements between the two largest operators in Czechia, *O2/CETIN* and *T-Mobile*. Following on from the issuance of a Statement of Objections in 2019, on 27 August 2021, the Commission adopted a preliminary assessment which set out the concerns that the Commission continued to have as regards the negative effects on competition of the sharing agreements. The key concerns set out related to the reduction in the ability and incentives of *T-Mobile* and *O2* to unilaterally invest in network infrastructure, in particular through technological hold-back, financial disincentives and information exchange, which in turn could lead to reduced flexibility in competitiveness, innovation and technology/product differentiation and therefore negatively affect competition on the retail and wholesale markets for mobile telecommunications services in the Czech Republic, leading to less choice, lower quality of services, as well as delays in innovation. The parties offered commitments to meet the Commission's competition concerns. The commitments relate to certain hardware upgrades, certain financial conditions for unilateral deployments, further restrictions on information exchange and no extension of the sharing agreements to Prague and Brno for a period between 7 and 10 years. On 11 July 2022 the Commission adopted a Commitments Decision making legally binding under EU antitrust rules the commitments offered by the sharing parties, as well as their parent companies, *Deutsche Telekom* and *PPF Group*<sup>245</sup>. On 30 September 2022 the Commission adopted a Rejection decision<sup>246</sup> addressed to the complainant, *Vodafone*, explaining why the Commission considers that, in view of the Commitments Decision, there are no longer grounds for action with regard to the allegations dealt with by the Commitments Decision. As regards the remaining concerns raised by the complainant, the decision explains why the Commission considers that the likelihood of

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<sup>244</sup> See the press release of 1.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1371](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1371)

<sup>245</sup> Case AT.40305, *Network sharing - Czech Republic*; see also the press release of 11.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4463](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4463)

<sup>246</sup> See the Commission decision at:

[https://ec.europa.eu/competition/antitrust/cases1/202250/AT\\_40305\\_8659567\\_4194\\_4.pdf](https://ec.europa.eu/competition/antitrust/cases1/202250/AT_40305_8659567_4194_4.pdf)



finding of an infringement of Article 101(1) TFEU is limited, and therefore the Commission does not consider appropriate to investigate further the case.

In January 2022, the Commission re-adopted a decision in which it imposed a fine of EUR 66 894 000 on *Telefónica* and of EUR 12 146 000 on *Pharol* (ex-Portugal Telecom)<sup>247</sup>. On 23 January 2013, the Commission had adopted a decision fining *Telefónica* and *Portugal Telecom* for entering into a non-compete agreement with the object of restricting competition in the internal market and thus infringing Article 101 TFEU. The General Court, in its judgments of 28 June 2016 (later confirmed by the judgment of the Court of Justice of 13 December 2017)<sup>248</sup>, upheld the Commission's reasoning as regards the infringement in its decision, but annulled the fines imposed by the Commission. In accordance with the Court judgments, the Commission should have determined the services for which *Telefónica* and *Portugal Telecom* were not in potential competition during the period of application of the non-compete clause and should have excluded these services for the purposes of the fines calculation. The 2022 re-adoption decision took full account of the General Court's judgments and excluded those services from the value of sales for which insurmountable barriers to entry existed and for which the parties were thus not in potential competition with each other during the period of application of the non-compete clause.

On 28 July 2022, the Commission opened an in-depth investigation into the proposed acquisition of *VOO* and *Brutélé* by *Orange*<sup>249</sup>. *Orange*, based in France, is a provider of retail mobile and fixed telecommunication services in Belgium. *VOO* and *Brutélé*, based in Belgium, are leading providers of retail fixed and mobile telecommunication services in Belgium. The Commission is concerned that the proposed transaction may reduce competition in the retail markets for the supply of fixed internet services, audio-visual services and multiple-play bundles in parts of Belgium.

Furthermore, on 27 July 2022, the Commission decided to accept a referral request by Spain, joined by a number of Member States, to assess the proposed acquisition of *Inmarsat* by *Viasat*<sup>250</sup>. While the proposed acquisition does not meet the thresholds of the EU Merger Regulation, the Commission concluded that the transaction meets the criteria for referral under Article 22 EU Merger Regulation. *Viasat*, based in the US, and *Inmarsat*, based in the UK, operate own satellite networks and provide two-way satellite communication services. The Commission considers that the transaction might affect competition in the supply of satellite in-flight connectivity services for commercial aviation in the EEA.

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<sup>247</sup> Case AT. 39839, *Telefónica/Portugal Telecom*; Commission decision of 25.1.2022, available at [https://ec.europa.eu/competition/antitrust/cases1/202232/AT\\_39839\\_8432000\\_2174\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases1/202232/AT_39839_8432000_2174_3.pdf)

<sup>248</sup> Judgment of the General Court of 28.6.2016, Case T-216/13, *Telefónica v Commission*, EU:T:2016:369, as confirmed by Case C-487/16 P, *Telefónica v Commission*, EU:C:2017:961 and Judgment of the General Court of 28.6.2016, Case T-208/13, *Portugal Telecom v Commission*, EU:T:2016:368.

<sup>249</sup> Case M.10663, *Orange/VOO/Brutélé*; see also the press release of 28.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4762](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4762)

<sup>250</sup> See the press release of 27.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_22\\_4743](https://ec.europa.eu/commission/presscorner/detail/en/mex_22_4743)

#### 2.2.4. Media

The Commission's activity in this sector aims at ensuring that consumers can benefit both from a wider choice of and unrestricted access to high quality content at competitive prices, and from increased technological innovation.

On 15 March 2022, the Commission approved unconditionally the acquisition of *Metro Goldwyn Mayer* ('MGM') by *Amazon*<sup>251</sup>. *MGM* produces and distributes audio-visual ('AV') content, including the popular film franchise *James Bond*. *Amazon* is active, among other things, in the distribution of AV content via Prime Video, as well as in the provision of marketplace services. During its investigation, the Commission examined customer and input foreclosure concerns, in particular whether *Amazon* could have harmed (i) rival distributors of AV content and (ii) cinemas by foreclosing access to *MGM's* films and series. Furthermore, the Commission investigated conglomerate links regarding (i) *MGM's* content and (ii) *Amazon's* existing bundle of AV retail and marketplace service products, to examine the possible impact on *Amazon's* position as provider of marketplace services. The Commission concluded that the transaction would raise no competition concerns primarily due to the presence of strong rivals both in the production and in the distribution of AV content.

Furthermore, on 8 November 2022, the Commission opened an in-depth investigation over the proposed acquisition of *Activision Blizzard* by *Microsoft*, both of the US<sup>252</sup>. *Activision Blizzard* is a publisher and distributor of video games, including the popular *Call of Duty*. *Microsoft* is a global technology company, which amongst others also publishes and distributes video games. The Commission is concerned that *Microsoft* could foreclose (i) rival digital distributors of console games and (ii) rival providers of multi-game subscription services and cloud gaming services by withholding or degrading access to *Activision Blizzard's* games. The Commission is also concerned that the transaction could strengthen *Microsoft's* position in the market for PC operating systems, due to conglomerate links between *Microsoft's* Windows and several interrelated markets, in particular *Microsoft's* distribution of PC games, including *Activision Blizzard* games, and the provision of cloud game streaming services.

In November 2022, the European Commission opened an in-depth investigation to assess the proposed acquisition of *Lagardère* by *Vivendi*<sup>253</sup>. Both parties are French multi-media groups active in book and magazine publishing. The parties are the first and second largest companies on most markets in the books value chain. The Commission is concerned that the transaction may reduce competition on the markets for (i) the purchasing of authors' rights for French-language books, (ii) the distribution and marketing of French-language books, (iii) the sale of French-language books to retailers, and (iv) the sale of celebrity magazines.

In 2022, the Commission also dealt with a large number of State aid cases in the news media

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<sup>251</sup> Case M.10349, *Amazon/MGM*; see also the press release of 15.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_1762](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1762)

<sup>252</sup> Case M.10646, *Microsoft/Activision Blizzard*; see also the press release of 8.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6578](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6578)

<sup>253</sup> Case M.10433, *Vivendi/Lagardere*; see also the press release of 30.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7243](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7243)

sector, with a view to help the sector recover from the crisis and maintain a healthy competitive environment. Particular attention was paid to the fact that media play a key role for democracy, where support is provided in a way that respects and promotes quality independent journalism, media freedom and pluralism<sup>254</sup>. In this context, the Commission approved schemes aimed at fostering the digital transformation and technological innovation of the media industry<sup>255</sup>. In addition, the Commission approved aid to film production<sup>256</sup> and videogames production<sup>257</sup> where appropriate to sustain the cultural diversity of the EU in the audio-visual sector.

### 2.2.5. Facilitating the Digital Transition

Performant, reliable and secure electronic communications networks are essential enablers for the digital transformation of the EU. They are a crucial factor for bridging the digital divide as well as for ensuring social cohesion and a competitive and sustainable economy. State aid control in this sector plays an important role in developing a coordinated investment strategy across EU and in reaching the digital transition goals set out in the relevant Communications from the Commission<sup>258</sup>.

Following an evaluation of the 2013 Guidelines for State aid to Broadband<sup>259</sup> and a public consultation on the draft for revised Broadband Guidelines<sup>260</sup>, which ended in February 2022, the Commission adopted the new EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks on 12 December 2022<sup>261</sup>. The revision ensures that the guidelines are aligned to the latest market and technological developments. The key changes concern: (i) a threshold for market failure concerning fixed networks set at 1 Gbps download and 150 Mbps upload speeds under peak time conditions, (ii) conditions for (exceptional) public investments in black areas; (iii) step change requirements; (iv) mapping and public consultation; and (iv) wholesale access obligations revised to ensure the promotion of an effective competition at the wholesale level, while maintaining the balance between costs and benefits of such obligations. Moreover, the

<sup>254</sup> See, *inter alia*, Case SA.101274, *Italy - Tax credit for the expenses incurred in 2020 by publishers for the distribution of newspapers and periodicals*; Case SA.102752, *France - Amended tax reduction on news media subscriptions*.

<sup>255</sup> Case SA.101182, *Belgium - Digital transformation of media*.

<sup>256</sup> See, *inter alia*, Case SA.100474, *Germany/German Motion Picture Fund*; Case SA.102040, *Spain - Tax deduction for audiovisual productions and live shows of performance and music arts in Biscay – modification*.

<sup>257</sup> See, *inter alia*, Case SA.103066, *France - Crédit d'impôt en faveur de la création de jeux vidéo*.

<sup>258</sup> See in particular the following Communications from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: (i) Communication of 14.9.2016, 'Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society' (COM(2016)587 final); (ii) Communication of 19.2.2020, 'Shaping Europe's digital future' (COM(2020)67 final); (iii) Communication of 9.3.2021, '2030 Digital Compass: the European way for the Digital Decade' (COM(2021)118 final). See also the Proposal for a Decision of the European Parliament and of the Council establishing the 2030 Policy Programme 'Path to the Digital Decade', COM(2021) 574 final.

<sup>259</sup> Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p. 1.

<sup>260</sup> The public consultation took place in November 2021 - February 2022. See [https://competition-policy.ec.europa.eu/public-consultations/2021-broadband\\_en](https://competition-policy.ec.europa.eu/public-consultations/2021-broadband_en)

<sup>261</sup> Communication from the Commission: Guidelines on State aid for broadband networks, C(2022) 9343 final of 12.12.2022.

guidelines introduced a new assessment framework for deployment of backhaul and mobile networks, as well as for demand-side measures.

State aid control also played a fundamental role with regard to measures within the RRF<sup>262</sup>. In 2022, among other State aid decisions relevant for the telecommunications sector, the Commission approved, under State aid rules, five schemes to support the deployment of high-performing – fixed<sup>263</sup> or mobile<sup>264</sup> – networks, as well two voucher schemes<sup>265</sup>, supported by the RRF. In particular, in 2022, the Commission approved two Italian schemes entirely supported by the RRF<sup>266</sup>. By decision of 27 January 2022, the Commission approved a EUR 3.8 billion scheme to deploy fixed networks offering 1 Gbps download and 200 Mbps upload speeds in Italian areas where there is no current or planned network able to provide 300 Mbps download speed. By decision of 25 April 2022, the Commission approved a EUR 2 billion scheme to roll out high-performing 5G mobile networks, and in particular: (i) performant backhaul networks to connect the mobile base stations that by 2026 will not have a performant one; and (ii) the necessary base stations to provide 5G mobile services offering speeds of at least 150 Mbps download and 30 Mbps upload in those areas of Italy which, by 2026, will not be served by networks offering download speed above 30 Mbps. The Commission found that both schemes met the applicable State aid requirements. The decisions, while preceding the adoption of the new Broadband Guidelines, are in line with their principles and apply them to large scale publicly-funded schemes aimed to facilitate the digital transition.

### 3. FINANCIAL SERVICES

#### 3.1 Overview of key challenges in the sector

Throughout 2022, financial services markets continued to be characterised by a rapid pace of technological and regulatory development. The Commission's interventions in the sector aim at ensuring that consumers and merchants are able to benefit fully from these developments. EU competition policy contributes to maintaining and promoting competition in markets for financial services and protecting customers and innovation while preventing systemic risks to the economy.

EU legislation, and in particular the implementation of the Interchange Fee Regulation<sup>267</sup> and

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<sup>262</sup> To facilitate the Member States' State aid assessment, the Commission provided guidance in the form of a template on measures to support the deployment and take-up of fixed and mobile networks, available at: [https://competition-policy.ec.europa.eu/system/files/2021-04/template\\_RRF\\_broadband\\_roll\\_out\\_and\\_demand\\_side\\_measures\\_0.pdf](https://competition-policy.ec.europa.eu/system/files/2021-04/template_RRF_broadband_roll_out_and_demand_side_measures_0.pdf)

<sup>263</sup> Case SA.63170, *Italy – RRF - Plan 1 Gbps*; Case SA. 63172, *Austria – RRF - Broadband Austria 2030*; Case SA.102847, *Spain – RRF - Support for connectivity in rural areas*.

<sup>264</sup> Case SA.100557, *Italy - RRF – Italian 5G Plan*; Case SA.103451, *Spain – RRF - Deployment of backhaul networks for mobile connectivity*.

<sup>265</sup> Case SA.100138, *Spain – RRF - Social connectivity vouchers for economically vulnerable categories of end-users*; Case SA.102977, *Cyprus – RRF - Broadband connectivity vouchers for households*.

<sup>266</sup> Cases SA.100704, *Italy - RRF – Support Scheme for the promotion of biomethane*; SA.102460, *Italy - RRF - Realizzazione di impianti fotovoltaici da installare su edifici a uso produttivo nei settori agricolo, zootecnico e agroindustriale, da finanziare nell'ambito del PNRR, Missione 2, componente 1, investimento 2.2 'Parco Agrisolare'*.

<sup>267</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p. 1.

the revised Payment Services Directive<sup>268</sup> stimulate competition and innovation in the payments sector, to the benefit of consumers and merchants. Many payment services markets are characterised by network effects. As a result, distortions of competition by companies or Member States can have particularly severe effects, for example preventing innovative competitors from entering markets or pushing them to market exit.

New players regularly enter or continue their development in multiple financial markets. Firms entering financial markets include large technology companies such as *Apple* or *Alphabet (Google)* but also smaller or more innovative providers, in particular so called FinTech companies. They enhance the provision of financial services by technological innovation. This trend covers most financial services markets, including banking, payments and insurance. Digital technology and FinTech companies also facilitate access to EU capital markets for investors. In 2022, the Commission continued its efforts to create a well-functioning Capital Markets Union. Cryptocurrencies raise a number of regulatory challenges, and possible competition issues. Most of the regulatory issues as well as a number of competition concerns are addressed in the Regulation on Markets in Crypto-Assets (MiCa)<sup>269</sup>, which regulates and supervises crypto-assets. In 2022, the Commission monitored market developments for crypto-assets as well as “digital wallets” for cryptocurrency-related payment and money transfers, for example *Facebook’s* pilot project for creating a digital wallet called Novi<sup>270</sup>.

Incumbent operators in the financial industry, including card schemes, banks and traditional insurers or brokers remain key players in the financial value chains. In 2022, the Commission investigated consolidation, cooperation and possible anti-competitive coordination between incumbent firms. The Commission also reviewed aid schemes to banks and other traditional financial institutions.

Access to reliable financial data at low cost is another key challenge for the financial industry. Such data ensures the fairness of market prices and systemic stability. Major policy initiatives and commercial strategies aimed at encouraging a stronger shift towards sustainable investment through clearer indications of firms’ environmental, social and corporate governance (‘ESG’) records have further emphasised the need for fair and non-discriminatory access to financial market data such as ESG indices. These developments demonstrate the importance of qualitative proprietary market data for the functioning of the Capital Market Union. This has reinforced the need to ensure that EU data markets are free of anti-competitive behaviours and that mergers in this field are carefully scrutinised.

The EU banking sector has largely overcome the financial crisis that started in 2008 and so far has managed to withstand the negative economic effects of the COVID-19 pandemic and the market disruptions that followed the Russian aggression against Ukraine. The aid schemes set

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<sup>268</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25.11.2015 on payment services in the internal market, OJ L 337, 23.12.2015, p. 35, currently up for review by the Commission.

<sup>269</sup> See the proposal for a Regulation of the European Parliament and the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM(2020) 593 final, 24.9.2020.

<sup>270</sup> Although *Facebook* ended the pilot for Novi on 1 September 2022, it is considering plans to repurpose the wallet for future products, including those related to the development of the metaverse.

up by the Member States to support the real economy and approved by the Commission under the Temporary Framework and Temporary Crisis Framework for State aid measures contributed to shielding banks from the negative effects of the sudden economic downturn.

### 3.2 Contribution of EU competition policy to tackling the challenges

#### 3.2.1. Contribution of EU competition policy to innovation and fairness in payments

In 2022, the Commission continued its monitoring of the application of the Interchange Fee Regulation ('IFR')<sup>271</sup>.

In addition, a study on new developments in card-based payment markets mostly, but not only, related to the application of the IFR has been launched in October 2022. This study will examine market trends, including the ones related to digital solutions such as mobile wallets that rely on cards for payment transactions. The study will also provide a detailed assessment of trends in Merchant Service Charges and their components including scheme fees, their transparency and negotiability as well as choice of card-based payment applications.

#### 3.2.2. Antitrust investigations in the financial services sector

In the field of motor insurance, the Commission in 2022 finalised its investigation into the conditions of access to the insurance link data pooling system operated by the industry association *Insurance Ireland*. In June 2021, the Commission had sent a Statement of Objections<sup>272</sup> to *Insurance Ireland*, presenting its preliminary concerns that *Insurance Ireland* arbitrarily delayed or *de facto* denied access to the system to companies that had a legitimate interest in joining it, which may have the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database. *Insurance Ireland* offered commitments to address the preliminary concerns identified. The Commission was satisfied with the final commitments offered, and on 30 June 2022 adopted a decision<sup>273</sup> accepting the final commitments. The Commission also approved the monitoring trustee whose task will be to monitor the correct implementation of the commitments for the next 10 years.

On the wholesale financial services side, given the cessation of LIBORs and other IBORS, the Commission continued its monitoring of the design and implementation of fall-backs. Such fall-backs exist to facilitate the transition of financial contracts from IBORs to Risk Free Rates (RFRs) by various public organisations as well as private organisations and associations.

The Commission also continued its yearly monitoring of parallel 10-year commitments, which the *International Swaps and Derivatives Association* and the provider of commodity and financial data, *IHS Markit* (now part of S&P Global) have entered into<sup>274</sup>. These commitments cover both organisational changes to reduce the influence of CDS dealers (the

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<sup>271</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p. 1.

<sup>272</sup> See the press release of 18.6.2021: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3081](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3081)

<sup>273</sup> Case AT.40511, *Insurance Ireland*; see also the press release of 25.2.2022:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1389](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1389)

<sup>274</sup> Case M.10108, *S&P Global / IHS Markit*.



member banks of advisory committees) over licensing decisions and licensing changes such as the granting of licenses on fair reasonable and non-discriminatory terms.

The Commission moreover continued its investigations into access to market data, which is regarded as a key element for the ability of customers to participate in equity trading. For example, market data is accessed through data vendors that purchase their data from the respective incumbent exchanges ('market data providers') and other platforms or directly from the incumbent exchanges.

Following the acceptance by the Commission of commitments offered by *Visa* and *MasterCard* in 2019<sup>275</sup> to significantly reduce their multilateral interchange fees for payments in the EEA with consumer cards issued elsewhere, the Commission has continued its monitoring in 2022 of *Visa*'s and *MasterCard*'s compliance with the terms of these commitments.

On 2 May 2022, the Commission sent a Statement of Objections<sup>276</sup> to *Apple*, provisionally finding that *Apple* restricted competition by abusing its dominant position in the mobile wallet market on iOS devices. *Apple* limiting access to the Near Field Communication (NFC) functionality on iPhones for payments in stores, and reserving access to Apple Pay, may have an exclusionary effect on competitors and may result in less innovation and less choice for consumers as regards mobile wallets on iPhones.

### 3.2.3. Merger investigations in the financial sector

The Commission continued to ensure that concentrations in the financial sector do not lead to higher prices, lower quality products or services, or less innovation for consumers. While it did not intervene in any of the cases in 2022, it reviewed transactions across a variety of markets, including in the insurance sector, payment services, banking and other specialised financial services. In addition, the Commission conducted an investigation pursuant to Article 21 of the EU Merger Regulation, which confers upon the Commission exclusive competence for concentrations having Union dimension<sup>277</sup>.

Following the authorisation of the acquisition of *IHS Markit* by *S&P Global* on 22 October 2021, subject to the parties' commitments to divest certain businesses, in 2022 the Commission approved the purchasers of the divested businesses<sup>278</sup>. In particular, on 24 February 2022, the Commission approved *NewsCorp* as a suitable purchaser of the divested business activities in commodity price assessments, and *FactSet* as a suitable purchaser of the divested business activities in identifiers. Finally, on 24 May 2022, the Commission approved *Morningstar* as a suitable purchaser of the divested business activities in leveraged loan market intelligence.

On 6 April 2021, Hungary vetoed the acquisition of the two Hungarian subsidiaries of *AEGON* by *VIG*, both active in the insurance sector, despite the Commission reviewing and

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<sup>275</sup> Decisions C(2019) 3033 final and C(2019) 3034 final of 29.4.2019.

<sup>276</sup> Case AT.40452, *Mobile Payments*; see also the press release of 2.5.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2764](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2764)

<sup>277</sup> Case M.10494, *VIG / Aegon CEE* (Art. 21 procedure).

<sup>278</sup> Case M.10108, *S&P Global / IHS Markit*.

ultimately unconditionally approving the transaction on 12 August 2021<sup>279</sup>. On 21 February 2022, the Commission concluded that Hungary had breached Article 21 of the EU Merger Regulation by blocking the transaction under its national rules on foreign direct investments<sup>280</sup>. Following its investigation, the Commission had reasonable doubts as to whether the veto genuinely aimed to protect Hungary's legitimate interests, and also found that the Hungarian authorities failed to show that the measure was justified, suitable and proportionate. The Commission decision ordered Hungary to withdraw its veto.

On 24 February 2022, the Commission unconditionally approved the acquisition of *Ethniki* by *CVC Capital Partners*<sup>281</sup>. *Ethniki* offers life and non-life insurance services in Cyprus, Greece and Romania. *CVC*, through its portfolio company *HHG*, controls private hospitals in Greece and Cyprus. The Commission investigated whether the transaction could impede competition in private health insurance services and general private hospital services in Greece. However, it concluded that *Ethniki* would not have enough market power to foreclose *HHG's* rival hospitals and that *HHG* would not have the incentives to foreclose *Ethniki's* rival insurers.

On 26 April 2022, the Commission unconditionally approved the creation of a joint venture by five commercial Slovakian banks, which was going to be active in the area of cash services in Slovakia<sup>282</sup>. The Commission concluded that the transaction would raise no competition concerns due to a sufficient number of alternative providers of cash services active in Slovakia.

On 21 October 2022, the Commission unconditionally approved the merger of *Vipps* and *MobilePay* and the acquisition of joint control over the new entity by a group of banks active in the Nordic countries<sup>283</sup>. *Vipps* and *MobilePay* both provide mobile wallets, but the Commission did not identify competition concerns as *Vipps* operates in Norway and *MobilePay* in Denmark and Finland. The Commission also found that the parties would have neither the ability nor the incentive to engage in foreclosure practices. This approval followed a review earlier in 2022 of a related transaction, which in addition included a mobile wallet (*Pivo*) and a bank (*OP*) active in Finland, but was withdrawn during the Phase I investigation<sup>284</sup>.

#### 3.2.4. State aid investigations in the financial sector

On 1 October 2022, the Commission approved aid to support the resolution of *Getin Noble Bank*<sup>285</sup>, one of the ten largest Polish banks. According to the resolution plan, the main assets and liabilities of the bank were transferred to a newly created bridge bank. Poland has committed to start an open, transparent and non-discriminatory sales process for the bridge bank to find a suitable purchaser that would ensure its long term viability. Poland has provided the bridge bank with direct support measures in the form of cash injections worth

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<sup>279</sup> Case M.10102, *VIG / Aegon CEE*.

<sup>280</sup> Case M.10494, *VIG / Aegon CEE (Art. 21 procedure)*.

<sup>281</sup> Case M.10301, *CVC / Ethniki*.

<sup>282</sup> Case M.10378, *VUB / Slovenska Sporitelna / Tatra Banka / 365.Bank / CSOB / JV*.

<sup>283</sup> Case M.10935, *DNB / Danske Bank / SB1 / EIKA / Balder / Vipps / MobilePay*.

<sup>284</sup> Case M.10398, *DNB / Danske Bank / OP / SB1 / EIKA / Balder / Vipps / MobilePay / PIVO*.

<sup>285</sup> Case SA.100687, *Poland - Liquidation aid to Getin Noble Bank S.A. in resolution*.

around EUR 1.4 billion (PLN 6.9 billion). These measures have been financed through (i) the national resolution fund; and (ii) the national deposit guarantee fund. The Commission assessed the aid measures under its rules on State aid to banks in the context of the financial crisis<sup>286</sup>. It found that the measures are in line with the objective of preserving financial stability. Existing shareholders and subordinated debt holders contributed to the costs, reducing the need for intervention by the Polish Resolution Fund, in line with burden-sharing principles. In order to limit distortions of competition, Poland has committed, amongst other things, that the existence of the bridge bank will be limited in time and a prudent management will be implemented.

On 2 August 2022<sup>287</sup>, the Commission approved a set of revised commitments submitted by Italy, replacing the original commitments on the basis of which the Commission had approved a precautionary recapitalisation in 2017 of *Banca Monte dei Paschi di Siena* ('MPS'), the fifth largest Italian bank. Italy requested additional time to complete the restructuring of the bank and to sell the stake of the Italian State in the bank. The Commission concluded that the additional measures offered by Italy, including additional disposal of businesses and branches and certain limitations on the way the bank conducts its business, were sufficient to mitigate the competition distortion. The Commission concluded that the aid which Italy granted to MPS in July 2017 remains compatible with EU State aid rules, as the overall balance of the original decision was maintained with the revised set of commitments.

The Commission also authorised the prolongation of already existing schemes under which Member States can provide aid to foster the restructuring or orderly market exit of entities in distress in case of need. For Poland, the Commission authorised the extension of both the scheme for the liquidation of credit unions (in place since February 2014)<sup>288</sup> and the scheme for the resolution of cooperative and small commercial banks (in place since December 2016)<sup>289</sup>. For Ireland, the Commission authorised two prolongations of the restructuring scheme for credit unions (in place since October 2014)<sup>290</sup> and the extension of the orderly winding-up scheme for credit unions (in place since December 2011)<sup>291</sup>. For Denmark, the Commission approved the second re-introduction of the winding-up scheme for small banks<sup>292</sup>.

The Commission also authorised indirect aid to financial institutions in schemes primarily geared at providing social support to vulnerable households at risk of losing their home due to difficulties in mortgage repayments. In Greece, the Commission authorized an Interim

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<sup>286</sup> Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("2013 Banking Communication"), OJ C 216, 30.7.2013, p. 1.

<sup>287</sup> Case SA.103450, *Italy – Banca Monte dei Paschi di Siena – Second amendment to the list of commitments related to the aid granted to Banca Monte dei Paschi di Siena in 2017*.

<sup>288</sup> Case SA.103473, *Poland – Twelfth prolongation of the Credit Unions Orderly Liquidation Scheme*.

<sup>289</sup> Case SA.103943, *Poland – Seventh prolongation of the resolution scheme for cooperative banks and small commercial banks*.

<sup>290</sup> Case SA.102499, *Ireland - 15th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*; Case SA.104441, *Ireland - 16th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*.

<sup>291</sup> Case SA.102819, *Ireland - 19th prolongation of the Credit Union Resolution Scheme 2020-2021*.

<sup>292</sup> Case SA.102434, *Denmark - Second re-introduction of the winding-up scheme for small banks*.

support scheme until the establishment of a Sale and Lease Back Scheme (“SLB”)<sup>293</sup>, which is expected for November 2023. The Interim scheme will provide an interim period to vulnerable borrowers facing collateral enforcement or liquidation procedures on their primary residences. During this subsidised period, all enforcement will be put on hold and the borrowers will commit to predetermined monthly contributions, partially subsidised by the State. Once established, the SLB scheme will take ownership of the borrowers’ primary residences and lease them back under a long-term rental contract (i.e. “mortgage-to-rent”). Beneficiaries of the interim scheme may choose to opt out of the SLB scheme. The scheme sets strict eligibility criteria to ensure support is targeted at those individuals most in need.

The Commission also approved an amendment of the “OIKIA” scheme in Cyprus<sup>294</sup>. The amendment broadens the group of socially vulnerable persons that can benefit from a debt relief on mortgage loans, which these persons are unable to repay.

In addition, the Commission approved the prolongation of a market-consistent guarantee scheme for the securitisation of non-performing loans (NPLs) in Italy (*Fondo di Garanzia sulla Cartolarizzazione delle Sofferenze* (“GACS”)), in place since February 2016<sup>295</sup>. Through this type of scheme, Member States are allowed to help banks clean up their balance sheets without granting aid or distorting competition.

The Commission found in 2021 that Sweden’s legislative proposal to introduce a risk tax on large credit institutions did not constitute State aid. The decision was challenged and is now pending in front of the General Court<sup>296</sup>.

The revised Risk Finance Guidelines<sup>297</sup> entered into force on 1 January 2022 and introduced simplified requirements for the assessment of schemes targeting SMEs and certain other non-large enterprises (i.e. start-ups or certain middle-capitalisation firms (mid-caps), namely small or innovative mid-caps). The 2021 Guidelines were applied twice in 2022: for Cyprus, on a tax reduction for investments made by natural and legal persons in innovative SME<sup>298</sup>; and for France on the second amendment of the IR-PME scheme of income tax reduction for subscription to the capital of SMEs<sup>299</sup>.

Regarding Short-term export credit insurance (STEC), on 31 March 2022, the special provisions of the “Temporary Framework”<sup>300</sup>, which exceptionally qualified all commercial

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<sup>293</sup> Case SA.100529, Greece – Interim support scheme until the establishment of a Sale and Lease Back Scheme.

<sup>294</sup> Case SA.101516, Cyprus - Amendment to the scheme for the management of loans granted under Government Housing Plans (OIKIA scheme).

<sup>295</sup> Case SA.62880, Italy - Fourth prolongation of the Italian guarantee scheme for the securitisation of non-performing loans.

<sup>296</sup> Case SA.56348, Sweden - Swedish tax on credit institutions; The decision was challenged in front of the General Court and is currently pending as Case T-112/22.

<sup>297</sup> Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

<sup>298</sup> Case SA.63127, Cyprus - Risk Finance: tax reduction for investments made by natural and legal persons in innovative small and medium-sized enterprises.

<sup>299</sup> Case SA.100943, France - 2e modification du dispositif IR-PME pour les investissements dans les FCPI et FIP.

<sup>300</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3),

and political risks associated with exports to the countries listed in the Annex to the 2012 STEC as temporarily “non-marketable”, expired. The Commission therefore approved a number of STEC schemes<sup>301</sup>, which expired during the exemption period and/or which the Member State wanted to align with the revised STEC Communication<sup>302</sup>.

On 17 March 2022, the Commission launched the public consultation on the Evaluation of State aid rules for banks in difficulty in the broader context of the review of the crisis management and deposit insurance framework launched by the Commission in 2021<sup>303</sup>. The public Consultation was concluded on 15 July 2022 and the summary published on 11 October 2022.

Finally, the Commission launched the evaluation of the Guarantee Notice<sup>304</sup> on 29 August by publishing a public and a targeted consultation.

#### **4. TAXATION AND STATE AID**

##### **4.1 Overview of key challenges on tax evasion and avoidance and fiscal aid**

The Commission enforces State aid rules in fiscal matters, notably in view of aggressive tax planning practices that distort or threaten to distort competition, as well as fiscal policy decisions that lead to discriminatory treatment of companies.

Outside the spheres in which EU tax law has been harmonised, Member States can decide on their own how to tax economic activities, which ones to tax, which rates to use, and which tax base to take into account. In other words, direct taxation is a competence of the Member States. But Member States’ fiscal sovereignty is not absolute - this competence must be exercised in accordance with Union law, including the State aid rules. The recent judgments of both the Court of Justice and the General Court have confirmed the Commission’s power to assess the existence of selective advantages in direct tax matters.

In the context of fiscal measures, the finding of State aid depends to a large extent on the existence of a selective advantage, with a particular focus on the selective nature of the measure. It is for the Commission to assess whether fiscal measures selectively favour certain undertakings or certain sectors of activity<sup>305</sup>.

Aggressive tax planning strategies can take a variety of forms. Companies may strike individual “sweetheart deals” with tax authorities, by which they achieve a lower level of taxation than what would apply to other taxpayers. They may also benefit from broader

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C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

<sup>301</sup> Case SA.102373, *Latvia, Amendment of short-term export credit insurance scheme*; Case SA.102071, *Denmark – Reimplementation of the export-credit insurance scheme for short-term single risk cover*; Case SA.101648, *Finland-Prolongation and amendment of the short-term export-credit insurance scheme for SME and single-risk cover*; Case SA.102108, *Romania - Short-term export credit scheme 2022-2026*.

<sup>302</sup> Communication from the Commission on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, p. 5.

<sup>303</sup> See Annex of COM(2021) 713 final of 18.11.2021

<sup>304</sup> Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

<sup>305</sup> See the Judgments of the Court of 4.6.2015 in Case C-15/14 P, *Commission v MOL*, EU:C:2015:362, par. 60 and of 30.6. 2016 in Case C-270/15 P, *Belgium v Commission*, EU:C:2016:489, par. 48.

schemes that offer fiscal advantages and are available by legislation or administrative practice. Either way, such practices have distortive effects on the internal market, as they unduly reinforce the competitive position of certain companies, as opposed to others. They also reduce public funding that would otherwise be available for investments, which are particularly needed in the current context of Europe's economic recovery.

Whereas legislative initiatives have been launched and elaborated at global level and recently adopted at EU level to address aggressive tax planning<sup>306</sup>, the Commission's State aid enforcement activities may also contribute to tackling tax base erosion and profit shifting, in particular where a favourable tax treatment is granted to internationally mobile activities.

A relevant development in the jurisprudence relating to aggressive tax planning practices is the judgment of the Court of Justice in the Fiat case<sup>307</sup>. While it confirmed the principle that the Commission is competent to assess direct tax measures under State aid rules, the Court in this case set aside the General Court judgment and annulled the contested Commission decision. It considered that the Commission had erred in the identification of the reference framework by not basing that definition fully on national law. The erroneous definition of the reference framework was sufficient to vitiate the entire analysis (three-step test) with respect to the existence of a selective advantage.

## **4.2 The Contribution of EU competition policy to tackling the challenges**

In 2022, the Commission continued to enforce State aid rules in both direct and indirect tax matters, by assessing measures that can potentially involve State aid.

### *4.2.1. State aid investigations and decisions concerning aggressive tax planning*

The Commission continued the investigation of its pending cases on alleged aid granted by the Netherlands to *Inter Ikea*, to *Starbucks* and to *Nike*, as well as on alleged State aid granted by Luxembourg to *Huhtamäki*.

In addition, following the judgment of the General Court of 6 April 2022 (see below for more details), the Commission extended the scope of its ongoing in-depth inquiry into Gibraltar's corporate tax regime to reassess the compatibility with State aid rules of a 2012 tax ruling granted to Mead Johnson Nutrition Gibraltar subsidiary.

At the same time, the Commission continues its investigation into the Member States' tax rulings legislation and practice. To recall, the Commission had started to collect relevant information from all Member States in 2014 (for the period 2010 – 2013), aiming at acquiring knowledge into the practice of granting tax rulings. In 2019, the Commission re-launched a similar exercise for the period 2014-2018. So far, the Commission has looked into more than a thousand rulings and continues to thoroughly examine the information put forward by the Member States.

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<sup>306</sup> See for example Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, p. 1.

<sup>307</sup> Judgment of the Court (Grand Chamber) of 8.11.2022, Joined Cases C-885/19 P and C-898/19 P, *Fiat Chrysler Finance Europe and Ireland v European Commission*, EU:C:2022:859.



#### 4.2.2. Important cases

In 2022, the Commission received an important judgment from the Court of Justice, namely in the Fiat case<sup>308</sup>.

On 8 November 2022, the Court of Justice delivered its judgment on the appeals of *Fiat Chrysler Finance Europe (Fiat)* and Ireland against the General Court's judgment, which had confirmed the Commission decision<sup>309</sup>.

The Court of Justice set aside the General Court's judgment and annulled the Commission decision. It considered that the Commission (and the General Court, in accepting the Commission's reasoning) erred in law in the definition of the reference framework. According to settled case law, this error vitiates the entire three-step analysis for the determination of the existence of a selective advantage.

According to the Court of Justice, the Commission and the General Court erred in failing to take into account the way in which Luxembourg defined and applied the arm's length principle in its domestic law. Instead, the Commission relied on an "abstract expression" of the arm's length principle, thus departing from national law. This was considered an error in the application of article 107(1) TFEU.

However, the Court of Justice clarified that this judgment does not affect the competence of the Commission to examine direct tax measures in the context of State aid rules and to confirm the existence of a selective advantage, in case all conditions for the presence of State aid pursuant to article 107(1) TFEU are fulfilled.

#### 4.2.3. Important cases in relation to tax schemes

The recent case law confirms the method usually applied to assess selectivity in relation to tax measures, that is the so-called three-step test: (i) Determination of the reference system; (ii) Identification of a derogation and (iii) Justification by the logic of the tax system, and continues stressing the importance of appropriate motivation and correct definition of the reference framework as the existence of a selective advantage may be established only when compared with 'normal' taxation<sup>310</sup>. This has been confirmed by the following two judgments of the General Court in relation to the UK Controlled Foreign Company rules and the Gibraltar corporate income tax regime.

##### **UK – General Court judgment on the CFC rules**

On 8 June 2022, in joined cases T-363/19 and T-456/19, the General Court upheld the Commission decision regarding the UK Controlled Foreign Company ('CFC') rules. With that decision, the Commission had concluded that a particular chapter within the CFC rules, the Group Financing Exemption (GFE), provided a selective advantage to UK-based multinational companies holding subsidiaries abroad (CFCs), which earn income from financing activities. The advantage consisted of a partial (75%) or full (up to 100%) exemption from UK tax for financing profits that would otherwise be taxed by virtue of the CFC rules, as they would be deemed artificially diverted from the UK to the CFC's jurisdiction. Profits would be deemed artificially diverted if (at least) one of the two criteria was met: (i) UK connected capital (i.e. the profits derived from loans funded by UK resources of the parent company); (ii) UK Special People Functions (SPF, i.e. the profits derived from loans for which crucial decision-making activities took place in the UK).

<sup>308</sup> Judgment of the Court (Grand Chamber) of 8.11.2022 in Joined Cases C-885/19 P and C-898/19 P, *Fiat Chrysler Finance Europe v Commission*, EU:C:2022:859.

<sup>309</sup> Judgment of the General Court of 24.9.2019 in Cases T-755/15 and T-759/15, *Luxembourg and Fiat Chrysler Finance Europe v Commission*, EU:T:2019:670.

<sup>310</sup> See Judgments of the Court of 16.3.2021 in Cases C-562/19 P, *Commission v Poland*, EU:C:2021:201 and C-596/19 P, *Commission v Hungary*, EU:C:2021:202; see also Judgments of the Court of 6.10.2021 in Case C-50/19 P, *Sigma Alimentos Exterior SL*, EU:C:2021:792; Joined cases C-51/19 and C-64/19 P, *World Duty Free Group SA and others v Commission*, EU:C:2021:793; Case C-52/19 P, *Banco Santander SA v Commission*, EU:C:2021:794; Joined cases C-53/19 P and C-65/19 P, *Banco Santander and Santusa v Commission*, EU:C:2021:795.

The GC upheld the Commission's definition of the reference framework, which consisted of the UK CFC rules, as opposed to the general corporate income tax system. In so doing, the GC referred to the *World Duty Free II*<sup>311</sup> judgment interpreting and applying the criterion of severability and examining whether the CFC rules had their "own legal logic" and whether they constituted a complete, distinct body of rules.

Second, the GC analysed the objective of the reference framework. The GC accepted that the objective of the CFC rules was more specific than merely protecting the UK tax base, in that this protection specifically aimed to address artificial diversion of profits from the UK to a CFC.

Further, the GC confirmed the Commission's comparability analysis and concluded that all types of financing income, i.e. those covered by the GFE and those not covered, were in a comparable legal and factual situation in the light of the specific objective of the CFC rules.

Finally, the GC also agreed with the Commission that the GFE in cases where SPF were in the UK was not justified on the basis of either administrative practicability or the UK's obligation to comply with the freedom of establishment. On the former, the GC found that the UK did not adduce evidence to prove that the SPF test would be extremely burdensome and hence a simplification measure was necessary or proportionate. On the latter, the GC noted that the identification of SPF and the imposition of a proportionate tax burden on profits attributable to a UK entity were in line with the *Cadbury Schweppes*<sup>312</sup> case law and therefore would not constitute an obstacle to the freedom of establishment.

#### **Gibraltar (UK) – the corporate income tax regime - General Court judgment and new opening decision**

The judgment of the General Court of 6 April 2022 in Case T-508/19 (the '*Gibraltar*' case)<sup>313</sup> relates to the Commission decision of 19 December 2018 (SA.34914) regarding two aspects of the Gibraltar corporate tax system: (i) a tax exemption scheme for passive interest and royalty income (from 2011 to 2013), and (ii) individual aid to five Gibraltar resident companies (including MJN Holdings (Gibraltar) Limited; or 'MJN GibCo') through the granting of tax rulings (aid granted between 2014 and 2016) by the Gibraltar tax authorities<sup>314</sup>.

With its judgment<sup>315</sup>, the General Court entirely dismissed all grounds of appeal regarding the royalty exemption scheme. In particular, although it did not explicitly define the reference tax system, it referred to the objective of the tax and found that the Commission was correct to consider that Gibraltar companies receiving royalties should normally have been subject to tax and that they were in a similar legal and factual situation as other companies in receipt of income accruing in or derived from Gibraltar. The Court also recalled that the regulatory technique used by the national legislator cannot be a decisive factor<sup>316</sup> and that defining tax liability positively, so that only the categories of income expressly listed in the Income Tax Act are subject to tax, has the same effects as an express exemption from taxation and therefore that 'non-taxability' and 'exemption' produce the same effects. Accordingly, the Court found that the existence of a 'schedular system' (consisting in taxing categories of income expressly listed) is, in reality, only the choice of a regulatory technique and not a decisive

<sup>311</sup> Judgments of the Court of 6.10.2021 in Case C-50/19 P, *Sigma Alimentos Exterior SL*, EU:C:2021:792; Joined cases C-51/19 and C-64/19 P, *World Duty Free Group SA and others v Commission*, EU:C:2021:793; Case C-52/19 P, *Banco Santander SA v Commission*, EU:C:2021:794; Joined cases C-53/19 P and C-65/19 P, *Banco Santander and Santusa v Commission*, EU:C:2021:795.

<sup>312</sup> Judgment of the Court of Justice (Grand Chamber) of 12.9.2006 in Case C-196/04, *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue*, EU:C:2006:544.

<sup>313</sup> Judgment of the General Court of 6.4.2022 in Case T-508/19, *Mead Johnson Nutrition (Asia Pacific) Pte Ltd and Others v Commission*, EU:T:2022:217.

<sup>314</sup> The tax rulings at issue involve a similar tax planning scheme, i.e. the setting up of a Dutch limited partnership in receipt of interest and royalty income and the granting of a tax exemption in Gibraltar despite the legislative amendments that brought interest and royalty income with the charge of income taxation (and the fiscally transparent nature of Dutch limited partnership).

<sup>315</sup> Judgment of the General Court of the European Union of 6 April 2022 in Case T-508/19, *Mead Johnson Nutrition (Asia Pacific) and Others v Commission*, EU:T:2022:217.

<sup>316</sup> See Judgment of the Court of Justice of 28.6.2018 in Case C-203/16 P, *Dirk Endres v Commission*, para. 90-92, EU:C:2018:505 and Judgment of the Court of Justice (Grand Chamber) of 15.11.2011 in Joined Cases, C-106/09 P and C-107/09 P, *Commission and Spain v Government of Gibraltar and United Kingdom*, para. 91-93, EU:C:2011:732.

tax rule for the purposes of analysing the Gibraltar tax regime.

By contrast, the General Court partially annulled (on procedural grounds) the tax rulings part of the decision in so far as it refers to the ruling granted to MJN GibCo.

Following that judgment, the Commission re-examined the information supplied by the UK authorities in relation to the tax ruling granted to MJN GibCo and decided to extend the formal investigation procedure<sup>317</sup> in order to cover the income tax treatment (tax exemption) of MJN GibCo from 1 January 2014. Such tax treatment relates to the exemption granted to royalty income received by a Dutch limited partnership, of which MJN GibCo was the main shareholder. That exemption resulted from the continued application of a tax ruling granted (in 2012) to that company, after, and in spite of, a legislative amendment enacted in 2013 that brought royalty income within the charge of taxation (as from 1 January 2014).

## **5. BASIC INDUSTRIES AND MANUFACTURING**

### **5.1 Overview of key challenges in the sector**

Making up more than one-fifth of the EU's economy, manufacturing is a driver of growth and innovation and employs around 35 million people, that is to say, more than 20% of the EU workforce. European businesses active in the sector face substantial challenges in the form of energy price increases, trade tensions, the introduction of advanced technologies and the need to adapt their practices to make them climate-friendly. This has been exacerbated by the COVID-19 pandemic and the brutal Russian invasion of Ukraine. Both have negatively impacted supply chains, and led to price increases for energy, raw materials and components.

The RRF and the REPowerEU Plan aim to address these challenges by boosting investment during the recovery from the pandemic and the transition to a digitalised and clean economy independent of Russian fossil fuels. Enforcing antitrust and merger rules in the manufacturing and basic industries sectors facilitates these transformations in the spirit of the single market goals, in particular by ensuring that innovation is not hampered and that firms can compete on fair and equal terms. Meanwhile, the application of State aid rules ensures that purely national interests do not distort competition.

### **5.2 Contribution of EU competition policy to tackling the challenges**

#### *5.2.1. Antitrust investigations in basic industries and manufacturing*

Manufacturing and consumer goods industries continue to represent a focal point of the Commission's enforcement practice. In 2022, the Commission continued its lines of action (including individual casework, market surveillance and advocacy) in these sectors. On 31 January 2022, the Commission launched a formal investigation to assess whether fashion house *Pierre Cardin* and its licensee *Ahlers* had violated EU competition rules by restricting parallel trade and sales of *Pierre Cardin*-licensed products to specific customers in the EEA<sup>318</sup>.

<sup>317</sup> Decision not yet published. See European Commission's Daily News on 31 October 2022: [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_22\\_6484](https://ec.europa.eu/commission/presscorner/detail/en/mex_22_6484)

<sup>318</sup> See the press release of 31.1.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_682](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_682)

### 5.2.2. Merger investigations in basic industries and manufacturing

In January 2022, the Commission prohibited the acquisition of *Daewoo Shipbuilding & Marine Engineering CO., Ltd* by *Hyundai Heavy Industries Holdings*<sup>319</sup>. Both companies are global leaders in the construction of large liquefied gas carriers ('LLNGCs'), and two of the three largest players in this very concentrated market. Following an in-depth investigation, the Commission found that the merger would have created a dominant position, reduced choice in suppliers and led to higher prices for EEA customers in the global market for the construction of LLNGCs, which are very sophisticated, difficult to build and expensive vessels. The Commission preserved effective competition in the LLNGC market to the benefit of EEA customers, which account for almost 50% of all orders in the past five years, and ultimately of EU energy consumers.

In February 2022, the Commission conditionally approved the proposed merger of *Cargotec* and *Konecranes*<sup>320</sup>. The decision was conditional upon the divestiture of certain businesses. *Cargotec* and *Konecranes* are two global leaders of container and cargo handling equipment. Port terminal operators, logistics companies and a wide range of industrial players in Europe depend on this equipment to lift and carry containers and heavy loads. In the current container shipping industry landscape, the Commission needed to make sure that this merger would not harm the supply chains by further price increases. The Commission considered that the divestitures offered by the two companies would have left customers in Europe with sufficient choice of port equipment and customers would have continued to benefit from competitive prices and a great choice of technology. Ultimately, the companies decided to abandon the proposed transaction.

In April 2022, *Kingspan Group* abandoned its plan to acquire *Trimo*, which marked the end of the Commission's in-depth investigation into this transaction. Both companies are leaders in the market for mineral fibre sandwich panels, which are used for the construction, renovation and insulation of a variety of industrial and commercial buildings. The Commission's preliminary findings had indicated that the merger was likely to lead to price increases for mineral fibre sandwich panels in several European countries. Preserving competition for the supply of such energy-saving products is key to achieve the objectives of the European Green Deal.

In April 2022, the acquisition of *Meggitt* by *Parker*, two companies active in aerospace components, was cleared subject to the divestment of *Parker's* aircraft wheels and brakes division<sup>321</sup>. The Commission subsequently approved in July 2022, the aerospace company *Kaman* as the buyer of the divestment business. This divestment will preserve competition in the markets for aircraft wheels and brakes, and ensure that aerospace and defence customers have access to sufficient choice of suppliers and will continue benefitting from competitive prices.

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<sup>319</sup> Case M.9343, *Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering*.

<sup>320</sup> Case M.10078, *Cargotec / Konecranes*.

See: [https://ec.europa.eu/competition/mergers/cases1/202231/M\\_10078\\_8433511\\_6645\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202231/M_10078_8433511_6645_3.pdf)

<sup>321</sup> Case M.10506, *Parker / Meggitt*,

see: [https://ec.europa.eu/competition/mergers/cases1/202229/M\\_10506\\_8413340\\_1616\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202229/M_10506_8413340_1616_3.pdf)

In April 2022, the Commission opened an in-depth investigation into the proposed acquisition of *Pfleiderer Polska* by *Kronospan*<sup>322</sup>. *Kronospan* and *Pfleiderer Polska* are among the most important suppliers of wood-based panels in Europe, which are important inputs for the manufacture of furniture. The Commission had concerns that the merger would reduce competition for the supply of various types of woodboard panels in Poland and neighbouring regions. In November 2022, *Kronospan* and *Pfleiderer* decided to terminate their agreement. The abandonment follows the findings of the Commission's in-depth investigation and the failure of *Kronospan* to submit suitable remedies<sup>323</sup>.

In June 2022, the Commission conditionally approved the proposed acquisition of *Welbilt* by *Ali Group*, two producers of foodservice equipment<sup>324</sup>. The decision is conditional upon *Ali Group's* commitments to divest *Welbilt's* entire global ice-making machine business. Two weeks after the clearance decision, the Commission approved *Pentair* – a provider of commercial water solutions – as the buyer of the divestment business<sup>325</sup>.

In October 2022, the Commission conditionally approved the proposed acquisition of *DuPont's* Mobility and Materials Business by *Celanese*<sup>326</sup>. Both companies are active in the segment of high-performance plastic materials. The decision is conditional upon *Celanese's* divestment of its global thermoplastic copolyester market. Two weeks after the clearance decision, the Commission approved *Taro Plast* as the buyer of the divestment business.

In October 2022, the Commission opened an in-depth investigation into the proposed acquisition of *Alumetal* by *Norsk Hydro*<sup>327</sup>. The Commission preliminary concluded that the transaction would reduce competition in the production and supply of aluminium foundry alloys and master alloys in Europe, which are essential to achieve Europe's objectives in fighting climate change.

In October 2022, the Commission conditionally approved the proposed acquisition of *Real Alloy Europe* by *KPS*<sup>328</sup>. *KPS's* subsidiary *Speira* produces recycled aluminium while *Real Alloy Europe* provides recycling services for by-products from the aluminium recycling process, such as dross and salt slag. This transaction could have reduced access to recycling services for competing producers of recycled aluminium, which is however critical to achieve the objectives of the circular economy and green transition. To preserve competition, the Commission's decision is conditional upon *KPS's* divestment of *Real Alloy's* recycled aluminium production and dross recycling facility in Swansea (UK) as well as its salt slag recycling plant in Sainte-Menehould (France).

In October 2022, the Commission conditionally approved the proposed acquisition of *Swedish Match* by *Philip Morris International*, two suppliers of tobacco and nicotine products<sup>329</sup>. To preserve market access, the decision is conditional upon the divestment of *Swedish Match's*

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<sup>322</sup> See the press release of 5.4.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2284](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2284)

<sup>323</sup> See the press release of 30.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_7321](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7321)

<sup>324</sup> See the press release of 17.6.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3837](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3837)

<sup>325</sup> Case M.10432, *Ali Group / Welbilt*.

<sup>326</sup> See the press release of 11.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6114](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6114)

<sup>327</sup> See the press release of 6.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6013](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6013)

<sup>328</sup> See the press release of 19.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6274](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6274)

<sup>329</sup> See the press release of 25.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6372](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6372)



logistics arm, *SMD Logistics*, which distributes combustible tobacco, smoke-free, and related products for *Swedish Match* and other suppliers in Sweden.

Finally, also in October 2022, the Commission conditionally approved the acquisition of *NTS* by *SalMar*<sup>330</sup>. Both companies are leading producers of salmon, supplying European countries out of their farming operations in Norway and Iceland. The Commission's decision is conditional upon *SalMar*'s commitments to divest *Arctic Fish*, which constitutes all of *NTS*'s operations in Iceland. This divestment will preserve choice and competitive prices for Icelandic salmon in Europe.

## 6. AGRI-FOOD SECTOR

### 6.1. Overview of key challenges in the sector

Even prior to Russia's invasion of Ukraine in March 2022, the economic recovery of the EU agri-food sector from the COVID-19 pandemic was facing challenges as imbalances in supply and demand of agricultural inputs and commodities had led to significant price increases. While the EU is largely self-sufficient for food, with a significant agri-food trade surplus, there were mounting concerns about food affordability, especially for low-income households due to high market prices and inflation<sup>331</sup>.

In 2022, the Russian aggression against Ukraine caused disturbances in global agricultural markets, in particular uncertainty about the global availability of grains and oilseeds. It exposed the EU's dependency on feed and fertiliser imports, in particular from Ukraine, Russia and Belarus<sup>332</sup>. Russia and Belarus provide 60% of the EU's fertilisers<sup>333</sup>.

The rise in energy prices, resulted in a significant increase of production costs for the EU agri-food sector. Energy-intensive sectors such as the sugar, starch and the confectionary industry, faced major increases of production costs. Transport costs increased dramatically. In March 2022, global food prices were at their highest levels since the introduction of the FAO Food Price Index in 1990<sup>334</sup>.

#### 6.1.1. Commission actions mitigating the effects of the crisis in the agri-food sector

In March 2022, the European Commission published a Communication outlining measures enhancing food security and supporting EU farmers and consumers, in the light of rising food prices and input costs, such as energy and fertilisers<sup>335</sup>. The Communication also included measures to help EU farmers experiencing a liquidity crisis caused by rising fuel and fertiliser costs. State aid for farmers was also available under the Temporary Crisis Framework for State aid measures.

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<sup>330</sup> See the press release of 31.10.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6425](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6425)

<sup>331</sup> See: [https://agriculture.ec.europa.eu/system/files/2022-04/short-term-outlook-spring-2022\\_en\\_0.pdf](https://agriculture.ec.europa.eu/system/files/2022-04/short-term-outlook-spring-2022_en_0.pdf)

<sup>332</sup> See: [https://agriculture.ec.europa.eu/system/files/2022-04/short-term-outlook-spring-2022\\_en\\_0.pdf](https://agriculture.ec.europa.eu/system/files/2022-04/short-term-outlook-spring-2022_en_0.pdf)

<sup>333</sup> See: <https://www.fertilizerseurope.com/fertilizers-in-europe/facts-figures/>; Russia and Belarus are respectively the first and sixth biggest global exporters of fertilisers, representing a total of 20% of global supply.

<sup>334</sup> Food Price Index of the Food and Agriculture Organization of the United Nations is the barometer that tracks monthly changes in the international prices of five food commodities: cereals, vegetable oils, dairy products, meat, and sugar; see: <https://www.fao.org/worldfoodsituation/foodpricesindex/en>

<sup>335</sup> See: [https://agriculture.ec.europa.eu/system/files/2022-03/safeguarding-food-security-reinforcing-resilience-food-systems\\_0.pdf](https://agriculture.ec.europa.eu/system/files/2022-03/safeguarding-food-security-reinforcing-resilience-food-systems_0.pdf)



The EU fishery, aquaculture and processing sectors were also directly affected by market disruptions. The EU is not self-sufficient for seafood and raw materials for fish processing. The sharp rise of fuel prices made most fishing fleets unprofitable. The fisheries sector benefits from some of the crisis measures and State aid under the Temporary Crisis Framework for State aid measures.

In November 2022, the European Commission published another Communication on ensuring availability and affordability of fertilisers<sup>336</sup>. The Communication outlines actions to maintain a sustainable EU fertilisers' production and reduce dependencies while securing yields. In this respect, the Temporary Crisis Framework was amended for State aid rules that enable Member States to provide specific support to fertiliser producers. The Commission encourages also a transition to greener fertilisers and support investments in renewable hydrogen and biomethane for ammonia production. Finally, the Commission reports that it has reached out to alternative suppliers of fertilisers to compensate for previous supplies from Belarus and Russia.

## **6.2. EU competition policy's contribution to tackling the challenges**

As stressed by the Commission and NCAs in the *Joint statement by the European Competition Network on the application of competition law in the context of the war in Ukraine of March, 2022*<sup>337</sup>, it is of utmost importance to ensure that essential products such as food and raw materials remain available at competitive prices and that the current crisis is not used to undermine competition between companies.

### *6.2.1. Investigations into protectionist agreements*

In 2022, the Commission, in coordination with NCAs, continued investigating a number of possibly anti-competitive protectionist agreements concluded between supermarket chains or between operators along the supply chain. Such agreements give preference to domestic products and are thus likely to infringe Article 101 TFEU. This preference is sometimes linked to the promotion of “local food”, and to alleged environmental goals linked to the consumption of local products. If the applicable notion of “local food” is not based on objective characteristics or real environmental benefits, it may in practice correspond to national products. This would introduce discrimination based on nationality, infringing the fundamental principles of the Single Market. As a result of these investigations, the companies concerned terminated these agreements or modified them to address the competition concerns.

### *6.2.2. Investigations of international retail alliances*

Retail alliances are groups of independent retailers, retail chains or retailer groups that form alliances to jointly negotiate better purchase terms with their suppliers increasing their collective bargaining power. Retail alliances are a form of joint purchasing agreements assessed in line with Chapter 5 of the Horizontal Guidelines (currently under revision)<sup>338</sup>.

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<sup>336</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6564](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6564)

<sup>337</sup> See: [https://competition-policy.ec.europa.eu/system/files/2022-03/202203\\_joint-statement\\_ecn\\_ukraine-war.pdf](https://competition-policy.ec.europa.eu/system/files/2022-03/202203_joint-statement_ecn_ukraine-war.pdf)

<sup>338</sup> Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, (2011/C 11/01), paras 194 et seq.

Retail alliances can be pro-competitive if they counterbalance the market power of large suppliers and if the alliance members transfer the benefits of the better conditions to end consumers. However, retail alliances may be anticompetitive, if they lead to increased prices or if they reduce output, product quality, product variety or innovation. They may also lead to market sharing or anti-competitive foreclosure of other purchasers<sup>339</sup>. In general, joint purchasing arrangements are less likely to give rise to competition concerns when the parties do not have market power on the selling markets<sup>340</sup>.

In 2022, the Commission investigated three international alliances in the retail sector. These are alliances of retailers that do not operate in the same national markets, but jointly negotiate better purchasing conditions from their suppliers. The Commission investigated whether the collective negotiation of purchasing conditions and coordinated temporary stopping of orders to suppliers infringe Article 101 TFEU.

#### *6.2.3. Investigation into possible restrictions of parallel trade in markets for chocolate, biscuits and coffee products*

In 2022, the Commission continued its own-initiative investigation into possible restrictions by *Mondelez* of parallel trade in the markets for chocolate, biscuits and coffee products<sup>341</sup>.

#### *6.2.4. Investigation into possible market sharing agreement in the markets for online ordering and delivery of food and groceries*

In 2022, the Commission carried out inspections in the market for online ordering and delivery of food, groceries and other consumer goods. The Commission is investigating a possible agreement or concerted practice sharing geographical markets in the EU<sup>342</sup>.

#### *6.2.5. Investigation into practices possibly foreclosing markets in the drinks sector*

The Commission investigated potentially anti-competitive practices by *The Coca-Cola Company* and its bottlers, *Coca-Cola Europacific Partners* and *Coca-Cola Hellenic*. The Commission had concerns that *Coca-Cola* and its bottlers had granted loyalty-inducing rebates to grocery retailers in a number of Member States (in particular, France, Germany, Italy and Spain) where the *Coca-Cola Company* and its bottlers may have a dominant market position.

#### *6.2.6. Antitrust derogation for sustainability agreements in the agricultural sector*

As a result of the recent reform of the Common Agricultural Policy ('CAP') for the period 2023-2027, the Commission will publish guidelines at the latest in December 2023 on the application of Article 210a of Regulation (EU) No 1308/2013 (CMO Regulation). Article 210a allows agricultural producers and other operators in the agri-food supply chain to implement sustainability standards that go beyond what is currently required by existing EU and national legislation provided that the higher standards pursue certain sustainability objectives (environmental, reduced use of pesticides and antimicrobials, animal health, or animal welfare).

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<sup>339</sup> Horizontal Guidelines, para 200.

<sup>340</sup> Horizontal Guidelines, para 204.

<sup>341</sup> See the press release of 28.1.2021: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_281](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_281)

<sup>342</sup> See the press release of 6.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4345](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4345)

Article 210a provides an exclusion from the scope of application of Article 101(1) TFEU for sustainability agreements, provided that any restrictions of competition in those agreements are indispensable for attaining the sustainability standard in question.

In 2022, the Commission carried out a public consultation to collect the experience and suggestions of stakeholders<sup>343</sup>. The new sustainability derogation allows operators in the agricultural and food value chain to contribute to sustainability objectives set out for example in the EU Farm to Fork Strategy and the EU Biodiversity Strategy.

#### *6.2.7. The application of the EU State aid rules in the agricultural and fisheries sectors*

In 2022, the Commission continued to revise the State Aid rules for agriculture, forestry, fisheries and aquaculture, taking into account the evaluation carried out in 2021 which showed that the rules meet their objectives and remain broadly fit for purpose. However, they needed certain targeted revisions, such as clarifying certain concepts, further streamlining and simplification, as well as adjustments to reflect the main priorities of the EU, for example the European Green Deal and Farm to Fork Strategy. Moreover, the rules needed to be adapted to the new CAP and the European Maritime, Fisheries and Aquaculture Fund ('EMFAF'<sup>344</sup>) created in 2021.

In the agricultural sector, the revision covered the Block Exemption Regulation in the Agricultural and Forestry Sector and Rural Areas ('ABER')<sup>345</sup> and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 - 2020<sup>346</sup>, replaced by the revised Agricultural Block Exemption Regulation<sup>347</sup> and the new Guidelines for State aid to the agricultural and forestry sectors and in rural areas<sup>348</sup>.

Concerning the existing agricultural *de minimis* Regulation No. 1408/2013<sup>349</sup>, which applies only to the primary production of agricultural products, the Commission adopted in 2022 a modification as a consequence of the United Kingdom leaving the EU<sup>350</sup>. The revision

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<sup>343</sup> See the press release of 28.2.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1352](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1352)

<sup>344</sup> Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, OJ L 247, 13.7.2021, p. 1.

<sup>345</sup> Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

<sup>346</sup> European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 – 2020, OJ C 204, 1.7.2014, p. 1.

<sup>347</sup> Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p. 1.

<sup>348</sup> Communication from the Commission, Guidelines for State aid in the agricultural and forestry sectors and in rural areas (2022/C 485/01), OJ C 485, 21.12.2022, p. 1.

<sup>349</sup> Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9.

<sup>350</sup> Commission Regulation (EU) 2022/2046 of 24 October 2022 amending the Annexes to Regulation (EU) No 1408/2013 as regards their adaptation to reflect the provisions of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and its Protocol on Ireland/Northern Ireland, OJ L 275, 25.10.2022, p. 55.

concerned the annexes to the Regulation containing national caps to the amounts Member States are allowed to spend as *de minimis* aid in the agricultural sector.

In the fisheries sector, the revision covered three legal instruments. First, the existing Block exemption regulation in the fishery and aquaculture sectors ('FIBER')<sup>351</sup>, was replaced by a new block exemption regulation<sup>352</sup>. Second, the Commission endorsed the English version of the new State aid Guidelines<sup>353</sup> which will replace the Guidelines for the examination of State aid to the fishery and aquaculture sector<sup>354</sup>. Third, the *de minimis* Regulation No. 717/2014<sup>355</sup>, which applies to the production, processing and marketing of fishery and aquaculture products, was prolonged by one year<sup>356</sup>.

In 2022, Member States adopted 544 measures under the ABER and 137 under the FIBER. During the same period, Member States notified to the Commission 102 measures under the Agriculture Guidelines and 32 under the Fisheries Guidelines.

#### *6.2.8. Mitigating the negative effects in the agriculture and fisheries sectors of the coronavirus pandemic and Russia's invasion of Ukraine*

As regards the coronavirus pandemic, in 2022, most of the State aid to farmers and fishers was granted as limited aid amounts below the maximum amounts allowed in the Temporary Framework for State aid measures. For the agricultural sector, the aid ceiling was initially set at EUR 100.000 and subsequently raised to EUR 290.000 and for the fishery sector it was for first set at EUR 120.000 then raised to EUR 345.000.

Under the Temporary Crisis Framework, Member States mainly granted State aid to farmers and fishers as limited amounts of aid. Undertakings in the agricultural sector were able to receive a maximum amount of EUR 35.000, increased to EUR 62.000 and then to EUR 250.000. For fishers the maximum amount was first set at EUR 35.000, increased to EUR 75.000 and then to EUR 300.000.

In March 2022 the Commission adopted a Communication on food security and resilience of food systems<sup>357</sup>. Among the measures supporting farmers most affected by the crisis, the Commission allocated a EUR 500 million crisis reserve. Member States could use these funds

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<sup>351</sup> Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

<sup>352</sup> Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p. 82.

<sup>353</sup> Communication to the Commission, Approval of the content of a draft for a Communication from the Commission on the Guidelines for State aid in the fishery and aquaculture sector, C(2022) 8995 final of 14.12.2022.

<sup>354</sup> Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

<sup>355</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

<sup>356</sup> See the press release of 14.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7670](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7670)

<sup>357</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Safeguarding food security and reinforcing the resilience of food systems, COM(2022) 133 final, 23.3.2022.

to compensate farmers for increased input costs and additional trade restrictions in order to contribute to global food security.

## **7. PHARMACEUTICAL AND HEALTH SERVICES SECTORS**

### **7.1 Overview**

The access of patients to safe, effective and affordable medicines forms one of the pillars of the Commission's Pharmaceutical Strategy for Europe<sup>358</sup>. Contributing to these objectives, the Commission and the NCAs have continued to vigorously enforce EU competition rules in the pharmaceutical and healthcare sectors in 2022. Such enforcement complements the regulatory frameworks in these sectors<sup>359</sup>, and fosters both dynamic competition, which leads to more innovative medicines, and effective price competition, which in turn contributes to more affordable and accessible medicines and treatments.

### **7.2 Contribution of EU competition policy**

#### *7.2.1. Antitrust enforcement in the pharmaceutical sector*

On 10 October 2022, the Commission sent a Statement of Objections to *Teva* presenting its preliminary view that the company has breached EU antitrust rules by engaging in practices intended to delay competition to its blockbuster multiple sclerosis medicine, Copaxone. In particular, the Commission preliminarily found that since February 2015 until today *Teva* misused patent procedures and engaged in exclusionary disparagement of competitors to foreclose price competition following the expiry of the primary patent for Copaxone. First, the Commission preliminarily concluded that, after the original, basic patent expired, *Teva* created multiple divisional patents with overlapping content, intentionally staggered their filing and repeatedly and strategically withdrew them to avoid a reasoned decision on their validity. *Teva* thus may have obstructed effective legal review and prolonged legal uncertainty concerning its remaining patents (a conduct called in the industry the 'divisionals game'), all while aggressively enforcing these patents against a competitor. Second, the Commission also preliminarily found that *Teva* implemented a systematic disparagement campaign, targeting healthcare professionals and casting doubts about the safety and efficacy of a competing glatiramer acetate medicine and its therapeutic equivalence with Copaxone<sup>360</sup>.

In addition, on 20 June, the Commission opened a formal antitrust investigation to assess whether *Vifor Pharma* has restricted competition by illegally disparaging its closest – and potentially only – competitor in Europe, Pharmacosmos, and thus hindered competition against *Vifor Pharma's* blockbuster high-dose intravenous iron treatment medicine, Ferinject<sup>361</sup>.

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<sup>358</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Pharmaceutical Strategy for Europe COM (2020) 761 final 25.11.2020.

<sup>359</sup> The Commission is currently in the process of revising the EU's general legislation on medicines for human use (see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4882](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4882)) as well as the EU's legislation on orphan and paediatric medicines (medicines for people with rare diseases and for children; see [https://health.ec.europa.eu/medicinal-products/medicines-children/evaluation-medicines-rare-diseases-and-children-legislation\\_en](https://health.ec.europa.eu/medicinal-products/medicines-children/evaluation-medicines-rare-diseases-and-children-legislation_en)).

<sup>360</sup> Case AT.40577, *Teva Copaxone*. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6062](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6062)

<sup>361</sup> Case AT.40577, *Vifor (IV iron products)*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3882](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3882)

The Commission is also examining allegations that *Novartis* is using patent-litigation tactics to stifle competition in the market for innovative biologic medicines for a skin condition, and has addressed a formal information request to *Novartis*. The Commission is cooperating with the Swiss Competition Commission, which conducted unannounced inspections at the *Novartis*' premises on 13 September 2022. This cooperation is based on the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws<sup>362</sup>.

Finally, after completing an inspection in the animal health sector<sup>363</sup>, the Commission continues its preliminary investigation into the case.

### 7.2.2. Merger review in the pharmaceutical sector

The Commission continued to ensure that concentrations in the pharmaceutical sector do not lead to consumers paying higher prices, having less choice or reduced innovation.

On 6 September 2022, the Commission prohibited, under the EU Merger Regulation, the implemented acquisition of *GRAIL* by *Illumina*<sup>364</sup>. It found that the merger would stifle innovation, and reduce choice in the emerging market for blood-based early cancer detection tests. The remedies offered by *Illumina* were not found to be sufficient to address these concerns.

This decision constitutes the culmination of the Commission's in-depth investigation of the merger, opened on 22 July 2021, which led to the vertical integration of *Illumina*, a significant supplier of next generation sequencing systems ("NGS") for genetic and genomic analysis, with *GRAIL*, a customer of *Illumina* using NGS systems to develop cancer detection tests. These tests use a simple blood sample to detect different cancers in asymptomatic patients at an early stage and have the potential to be a game changer in the fight against cancer. The acquisition would enable and incentivise *Illumina* to foreclose *GRAIL*'s rivals, who are dependent on *Illumina*'s technology, from access to an essential input they need to develop and market their own tests. As a result, *GRAIL*'s competitors would be placed in a disadvantaged position compared to *GRAIL*.

Pending the Commission's review, in August 2021, *Illumina* completed its acquisition of *GRAIL*. In response to this premature closing of the transaction while the Commission's in-depth investigation was pending, the Commission opened an investigation to assess whether *Illumina* breached the standstill obligation, in violation of Article 7 of the EU Merger Regulation. Moreover, on 29 October 2021 the Commission put in place interim measures to restore and maintain the conditions of effective competition for a duration of 12 months,

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<sup>362</sup> OJ L 347, 3.12.2014, p. 3.

<sup>363</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5543](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5543)

<sup>364</sup> Case M.10188 – *Illumina/GRAIL*; see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10188](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10188); on 17.11.2022, an action for the annulment of the Commission decision prohibiting the acquisition was brought by *Illumina* before the General Court, Case T-709/22.



namely ordering to hold *GRAIL* separate from *Illumina*<sup>365</sup>. On 28 October 2022, the Commission issued a new decision, renewing and reinforcing the existing interim measures<sup>366</sup>. These measures are legally binding on both *Illumina* and *GRAIL* and will remain applicable until the Commission notifies any possible decision under Article 8(4) of the EU Merger Regulation, ordering the dissolution of the concentration or other appropriate measures.

In December 2022, the European Commission sent a Statement of Objections to *Illumina* and *GRAIL* informing them of the restorative measures it intends to adopt under the EU Merger Regulation, following the Commission's decision to prohibit the implemented acquisition of *GRAIL* by *Illumina*<sup>367</sup>. Given that *Illumina* had already completed its acquisition of *GRAIL*, the envisaged restorative measures foresee that *Illumina* has to unwind the acquisition to give the Commission's prohibition decision its full effect.

On 13 July 2022, the General Court dismissed *Illumina*'s action against the Commission's referral decisions of 19 April 2021, by which *Illumina* called into question the Commission's jurisdiction to examine the impact of the transaction due to the lack of notifiability of the transaction in any EU Member State<sup>368</sup>.

The impact of this judgment is very significant, as the General Court confirmed, *inter alia*, that transactions subject to Article 22 of the EU Merger Regulation do not need to fall within the scope of the merger control rules of the Member State requesting the referral. The judgment of the General Court is currently under appeal before the Court of Justice<sup>369</sup>.

The Commission reviewed several other transactions in the pharmaceutical sector, certain of which were cleared under the simplified procedure, whereas three transactions were cleared unconditionally following a Phase I market investigation<sup>370</sup>.

### 7.2.3. State aid action in the health services sector

The Commission concluded the evaluation of the State aid rules for health and social Services of General Economic Interest (SGEI) and the SGEI *de minimis* Regulation that was launched in 2019<sup>371</sup>. On 1 December 2022, the Commission published a Staff Working Document<sup>372</sup>

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<sup>365</sup> On 7 January and 11 January 2022, *Illumina* and *GRAIL* appealed the Commission decision to adopt interim measures before the General Court, in cases T-755/21, *Illumina v Commission* and T-22/23, *GRAIL v Commission*, respectively.

<sup>366</sup> Case M.10938, *Illumina/GRail*; Commission Decision of 28.10.2022. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10938](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10938)

<sup>367</sup> See the press release of 5.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7403](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7403)

<sup>368</sup> Judgment of the General Court of 13.7.2022, T-227/21, *Illumina inc. v European Commission*, EU:T:2022:447.

<sup>369</sup> Appeal brought by *Illumina* on 22.09.2022 in case C-611/22 P, *Illumina v Commission* and by *GRAIL* on 30.09.2022, in case C-625/22 P, *Grail v Commission and Illumina*.

<sup>370</sup> Case M. 10749 – *PAI Partners / The Carlyle Group / Theramex*, Commission Decision of 12.07.2022. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10749](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10749); Case M.10680 – *Permira / Sestant / Kedrion / BPL*, Commission Decision of 5.08.2022. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10680](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10680); and M.10629 – *CSL / Vifor Pharma*, Commission Decision of 27.09.2022.

See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_10629](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10629)

<sup>371</sup> See: [https://ec.europa.eu/competition-policy/system/files/2021-09/kd0621047enn\\_SGEI\\_evaluation.pdf](https://ec.europa.eu/competition-policy/system/files/2021-09/kd0621047enn_SGEI_evaluation.pdf)

<sup>372</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11835-State-subsidy-rules-for-health-and-social-services-of-general-economic-interest-evaluation-en>

with the outcome of the evaluation, detailing and analysing the results, taking into consideration the latest market developments, the jurisprudence of the EU Courts and the Commission's case practice. The Commission will further reflect on the basis of the evaluation's results on the need and opportunity to update the relevant State aid rules.

On 31 March 2022, the Commission approved the prolongation and modification of an existing Irish risk equalisation scheme to compensate insurers for the provision of private medical insurances<sup>373</sup>. Under the scheme, private health insurers whose customers have a higher risk profile than the market average, obtain payments from a Risk Equalisation Fund, financed via a duty imposed on all private health insurers. The existing scheme, first approved in 2003 and prolonged four times, was set to expire on 31 March 2022. The scheme was prolonged until 31 March 2027 with a number of modifications, including in particular the introduction of a 'high cost claims pool' to reimburse certain claims. The Commission assessed the proposed modifications under the EU State aid rules, in particular the EU framework for State aid in the form of public service compensation<sup>374</sup>.

On 11 May 2022, the Commission approved a EUR 5 million grant scheme to support Helicopter Emergency Medical Service charity operators in Ireland affected by the COVID-19 pandemic<sup>375</sup>. The scheme aimed at ensuring the operation of a vital emergency medical service in Ireland, by mitigating the liquidity shortages faced by the beneficiaries. The scheme was approved under the Temporary Framework for State aid measures.

## **8. TRANSPORT, TOURISM, AND POSTAL SERVICES**

### **8.1 Overview**

The transport, tourism, and postal services sectors play a key role in the EU economy. In particular, transport is the key to both an integrated internal market and to an open economy integrated into the world economy. The tourism industry accounts for approximately 10% of the EU's GDP and is therefore a vital part of its economy. Postal services continue to have a significant economic and social value, not least because they are also active on other markets, in particular parcel delivery.

### **8.2 Contribution of EU competition policy**

#### *8.2.1. State aid to the aviation sector*

The aviation sector has been hit hard by the COVID-19 pandemic and a full recovery is not expected before 2024. In that context, the Commission continued to enable Member States to use the full flexibility provided under State aid rules to support companies active in the aviation sector.

In 2022, the Commission approved 17 aid measures allowing State aid in favour of undertakings active in the aviation sector, to help address their liquidity and capital needs brought about by the COVID-19 pandemic. These aid measures were generally approved

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<sup>373</sup> Case SA.64337, *Ireland - Risk Equalisation Scheme 2022*.

<sup>374</sup> Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

<sup>375</sup> Case SA.102557, *Ireland - COVID-19: Support to Helicopter Emergency Medical Services (HEMS)*.

under the Temporary Framework for State aid measures or Article 107(2)(b) TFEU. A few notable examples are presented below:

On 10 February 2022, the Commission approved a EUR 48.62 million contribution from Finland in the form of a hybrid loan to *Finnair*<sup>376</sup>. The Commission noted that *Finnair* had suffered substantial operating losses because of the COVID-19 pandemic, in particular because of the travel restrictions that Finland and other countries imposed to limit the spread of the COVID-19 pandemic.

In May 2022, the Commission approved two Latvian aid measures in the form of capital injections in favour of *airBaltic*. The first decision approved an aid measure of EUR 11.6 million to compensate the damage *airBaltic* suffered due to the COVID-19 pandemic as a direct result of the travel restrictions<sup>377</sup>. The measure was approved under Article 107(2)(b) TFEU. The second decision approved a capital injection of EUR 33.4 million<sup>378</sup>, since it was in line with the conditions set out in the Temporary Framework for State aid measures.

On 27 June 2022, the Commission approved a EUR 12 million aid to compensate *Malta International Airport plc.* for the damage suffered due to the COVID-19 pandemic and the travel restrictions that Malta and other countries imposed to limit the spread of the virus<sup>379</sup>. The aid took the form of a tax credit and was approved under Article 107(2)(b) TFEU.

In addition, the Commission continued to apply the 2014 Guidelines on State aid to airports and airlines ('2014 Aviation Guidelines')<sup>380</sup>. In 2022, several final decisions were adopted on long-standing investigations into aid to airports and airlines. On 26 July 2022, the Commission approved several French measures in favour of Beauvais and La Rochelle airports and ordered the recovery of EUR 8.5 million in incompatible aid from two airlines in relation to their activities at La Rochelle airport<sup>381</sup>.

Furthermore, the Commission adopted several decisions in cases involving start-up aid to airlines. The Commission approved a EUR 2.7 million start-up aid to support the reopening of a route from Pierrefonds airport on the Reunion Island, an ultra-peripheral region in France, to Mauritius<sup>382</sup>. The route was closed in March 2020 in the context of the COVID-19 pandemic and had not been operated since then. The Commission also approved the prolongation of a start-up aid scheme for routes from the Italian airport of Ancona<sup>383</sup> and the reintroduction of a start-up aid scheme for routes from the Canary Islands<sup>384</sup>.

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<sup>376</sup> Case SA.63668, *Finland – COVID-19 Hybrid loan to Finnair II*.

<sup>377</sup> Case SA.101755, *Latvia – COVID-19: Damage compensation to airBaltic*.

<sup>378</sup> Case SA.63604, *Latvia – COVID-19: Second Recapitalisation of airBaltic*.

<sup>379</sup> Case SA.102240, *Malta – COVID-19 Damage compensation to Malta International Airport plc.*

<sup>380</sup> Communication from the Commission, Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3.

<sup>381</sup> Case SA.26494, *France – Aéroport de La Rochelle* and Case SA.33960, *France – Aéroport de Beauvais*.

<sup>382</sup> Case SA.102756, *France – Aide au démarrage à une compagnie aérienne pour une liaison au départ de l'aéroport Pierrefonds*.

<sup>383</sup> Case SA.101586, *Italy – Prolongation and increase of budget of start-up aid scheme to new routes from Ancona airport (SA.57002)*.

<sup>384</sup> Case SA.100802, *Spain – Reintroduction of a start-up aid scheme to airlines operating from the Canary Islands*.

On 18 January 2022, the Commission also approved the grant of a EUR 20 million rescue loan in favour of the *Air Austral*<sup>385</sup>. This decision finds that the rescue loan fulfils all conditions of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>386</sup>.

#### *8.2.2. Possible prolongation of the transitional period for operating aid to regional airports under the 2014 Aviation Guidelines*

The 2014 Aviation Guidelines include a transitional period (expiring in April 2024), during which operating aid to airports with less than 3 million passengers a year can be allowed. The COVID-19 pandemic, particularly the resulting travel restrictions and other containment measures, heavily affected the aviation sector and resulted in a sharp decrease in traffic at EU airports. As a result, by the end of the transitional period, regional airports that would otherwise have been at least breaking even may not find themselves in such a position. Therefore, if the transitional period remains unchanged, more regional airports than expected could close under normal market conditions. This could have negative consequences for connectivity in the EU. To address this situation, in June 2022 the Commission launched a public call for evidence to consult stakeholders on a possible prolongation of the transitional period<sup>387</sup>.

#### *8.2.3. Selected Court Judgments in aviation aid cases*

On 22 June 2022, the General Court upheld the Commission's decision approving a recapitalisation measure (EUR 286 million) granted by Finland in favour of *Finnair*<sup>388</sup>. As the majority shareholder, Finland planned to subscribe, on a *pro rata* basis in proportion to its existing shareholding, to the new shares that were being offered to all of *Finnair's* shareholders.

The General Court found that the Commission did not infringe the principles of equal treatment, legal certainty and the protection of legitimate expectations by waiving the application of certain requirements provided under the Temporary Framework for State aid measures<sup>389</sup> and confirmed the Commission decision in its entirety.

On 17 November 2022, the Court of Justice set aside the two earlier judgments of the General Court which had dismissed the actions of *Volotea* and *easyJet* against the decision of the Commission concerning State aid granted by Italy to Sardinian airports<sup>390</sup>. It also annulled the decision to the extent that it concerns *Volotea* and *easyJet*, since the Commission did not establish the existence of an advantage conferred on those two airlines by applying the market economy operator principle and that the General Court incorrectly found that the market

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<sup>385</sup> Case SA.100758, *France – Aide au sauvetage d'Air Austral*.

<sup>386</sup> Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

<sup>387</sup> See: [Aviation guidelines – prolongation of operating aid to regional airports \(COVID-19 response\) \(europa.eu\)](#)

<sup>388</sup> Judgment of the General Court of 22.6.2022 in Case T-657/20, *Ryanair v Commission*, EU:T:2022:390. The judgment is under appeal.

<sup>389</sup> Judgment of the General Court of 22.6.2022, T-657/20, *Ryanair v Commission*, EU:T:2022:390, paragraph 102.

<sup>390</sup> Judgment of the Court of Justice of 17.11.2022, Joined Cases C-331/20 P and C-343/20 P, *Volotea v Commission*, EU:C:2022:886.

economy operator principle was not applicable because the region had pursued public policy objectives and acted through the intermediary of airport operators which were private undertakings. Furthermore, the General Court erred in law by holding that *Volotea* and *easyJet* had to be regarded as having benefited from an advantage on the ground that the remuneration paid to them under the contracts that they had concluded with the operators of Cagliari-Elmas and Olbia airports did not constitute consideration for services that met genuine needs for the region and because those contracts had in addition been concluded without the implementation of a tender procedure.

#### 8.2.4. Monitoring and evaluation of the antitrust rules applicable to the maritime sector

In 2022, the Commission continued its close monitoring of the liner shipping sector, which set the groundwork for the evaluation of the EU legal framework exempting certain cooperation agreements between shipping lines from EU antitrust rules (Consortia Block Exemption Regulation or CBER<sup>391</sup>).

The CBER is due to expire on 25 April 2024. The Commission needs to carry out an evaluation of the CBER before its expiry date. On 9 August 2022, the Commission published a call for evidence inviting feedback on the performance of the CBER since 2020<sup>392</sup>. The Commission also sent targeted questionnaires to interested parties in the maritime liner shipping supply chain, i.e. carriers, shippers and freight forwarders, port and terminal operators, on the impact of consortia as well as of the CBER on their operations since 2020.

The Commission uses the feedback collected through the call for evidence and targeted questionnaires to complement the evidence collected as part of its sectoral monitoring activities, notably the responses of carriers to the fact-finding questionnaires sent in December 2021 on the effects of the coronavirus pandemic on their operations and on the maritime supply chain.

The Commission will summarise the results of the evaluation in a Staff Working Document to be published in the first quarter of 2023. The evaluation will inform the Commission's decision whether to further extend the CBER or not.

#### 8.2.5. State aid enforcement in the maritime transport sector

The competitiveness of the maritime transport sector is important for a well-functioning Single Market in light of the beneficial spill-over effects for other sectors in a European maritime economy that is more and more integrated in the global markets.

In 2022, the Commission approved a number of State aid schemes on the basis of Article 107(3)(c) TFEU, as interpreted by the Maritime Guidelines<sup>393</sup>. On 23 January 2022, the Commission adopted a positive decision concerning certain amendments to a Danish

<sup>391</sup> Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256, 29.9.2009, p. 31.

<sup>392</sup> See: [EU competition law – evaluation of the Consortia Block Exemption Regulation \(europa.eu\)](#)

<sup>393</sup> Commission Communication C(2004)43 - Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 3.

reimbursement scheme for dredgers with a view to extending the scope of the scheme and the eligible beneficiaries<sup>394</sup>. In September 2022, the Commission also approved prolongations with amendments of a French seafarers scheme as well as an Irish seafarers scheme for the reduction of social security contributions<sup>395</sup>. Furthermore, on 28 October 2022 the Commission approved a ten-year prolongation with amendments of a Belgian scheme to exempt seafarers from the payment of social security contributions<sup>396</sup>. The schemes seek to encourage ship registration within the EU and to contribute to the global competitiveness of the sector without unduly distorting competition.

In addition, the Commission adopted a number of decisions, in the context of the COVID-19 pandemic, both under Article 107(2)(b) TFEU as well as the Temporary Framework for State aid measures, to allow for the compensation of damages suffered by shipping companies and the support of companies operating in the maritime sector. Those decisions concerned damage compensation for large shipping companies in Italy<sup>397</sup>, compensation for fixed costs for undertakings operating in the maritime sector in Croatia<sup>398</sup>, and direct grants for companies operating in the cabotage and relating sectors in Italy<sup>399</sup>.

#### *8.2.6. Merger enforcement in the car leasing sector*

On 5 October 2022, the Commission received a notification of the acquisition of the Dutch *LeasePlan* group by its French rival *ALD*<sup>400</sup>. Both parties offer vehicle leasing and related management services. *ALD* is solely controlled by *Société Générale*, a French banking and financial services group. On 25 November 2022, the Commission issued a conditional clearance decision in phase I. The clearance is conditional on *ALD* divesting its operational leasing business in Ireland, Norway and Portugal, as well as *LeasePlan's* businesses in Czechia, Finland and Luxembourg, with their assets, contracts and employees.

#### *8.2.7. Rail and intermodal State aid enforcement*

As in other transport modes hit by the COVID-19 pandemic, public intervention in the rail sector was necessary to preserve connectivity and to address companies' liquidity needs. The Commission approved several measures under Article 107(2)(b) TFEU allowing for compensation of the damage undertakings had suffered due to the restrictions that Member States had put in place to limit the spread of the coronavirus.

For instance, the Commission approved a EUR 374 million Italian support scheme to compensate rail freight operators<sup>401</sup> and a EUR 687 million Italian support scheme to compensate providers of commercial long-distance rail passenger services<sup>402</sup> for the damages

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<sup>394</sup> Case SA.64772, *Denmark - Amendments to the Danish reimbursement scheme for dredgers*.

<sup>395</sup> Case SA.101240, *France - Prolongation avec modification du régime SA.59537 concernant le remboursement des cotisations sociales des marins*, and Case SA.103729, *Ireland - Prolongation of aid scheme for the Refund of Employers' Social Security Contributions in respect of Seafarers on certain vessels*.

<sup>396</sup> Case SA.103643, *Belgium - Prolongation of the Belgian seafarers' scheme for the exemption of social security*.

<sup>397</sup> Case SA.100553, *Italy - COVID-19 - Compensation for large shipping companies*.

<sup>398</sup> Case SA.101061, *Croatia - COVID-19 - Scheme to support Maritime sector*.

<sup>399</sup> Case SA.101428, *Italy - COVID-19 - support for cabotage and other maritime services*.

<sup>400</sup> Case M.10638, *ALD/LeasePlan*.

<sup>401</sup> Case SA. 63174, *Italy - COVID-19 Damage compensation to rail freight operators*.

<sup>402</sup> Case SA. 62394, *Italy - COVID-19 Damage compensation to commercial rail passenger operators – II*.



suffered. The Commission also approved more than EUR 750 million of support granted by Germany to compensate *Deutsche Bahn AG* for damages suffered by its subsidiaries *DB Fernverkehr*<sup>403</sup> and *DB Netz*, *DB Energie* and *DB Station&Service*<sup>404</sup>. The Commission furthermore approved several schemes for the reduction of track access charges as a means to address the difficulties encountered by railway undertakings as a consequence of the COVID-19 pandemic<sup>405</sup>.

Besides the handling of COVID-19 related cases, the Commission continued to enforce State aid rules applicable to the rail and intermodal transport sector. The Commission approved on the basis of the 2008 State aid Guidelines and Article 93 TFEU, 36 aid measures for the coordination of transport, encompassing aid for infrastructure use, aid for the reduction of external costs or aid for interoperability, in particular to support the deployment of the European Rail Traffic Management System (ERTMS). All these measures support the modal shift from road to rail, inland waterways or sea transport as the safer and more environmentally-friendly transport modes, which constitutes a priority to implement the European Green Deal.

Finally, on 31 January 2022, the Commission opened a formal investigation against *DB Cargo*, a 100% subsidiary of the State-owned German rail operator *Deutsche Bahn AG*. The investigation focusses on potential aid stemming from a profit and loss transfer agreement concluded between *DB Cargo* and *Deutsche Bahn AG*, potentially advantageous group financing conditions for loans as well as on potentially favourable pricing terms for intra-group services provided to *DB Cargo*<sup>406</sup>.

#### 8.2.8. Revision of the State aid Railway Guidelines

Rail transport plays a key role for the achievement of the ambitious goals set out by the European Green Deal agenda, including the reduction of greenhouse gases by 2030 by at least 55% and to reach climate neutrality by 2050. Transport generates 25% of all greenhouse gases ('GHG') in the EU and should reduce GHG emissions by at least 90% by 2050. Transport is the only sector which has increased its share of GHG emissions since 1990 (from 15% to 25%) in relation to other sectors and industries. The rail share of GHG emissions is very low (0.4%). The major contributor is road transport (passengers and freight) with a share over 70% of transport GHG emissions. At the same time, rail transport faces competitive disadvantages, in particular as road transport only partially internalises the external costs created, whilst at the same time facing higher costs for infrastructure use than road transport.

The 2008 Guidelines for State aid to railway undertakings ('Railway Guidelines')<sup>407</sup> offer a useful toolbox to support the rail sector and hence the modal shift from road to rail as a more

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<sup>403</sup> Case SA. 100323, *Germany - COVID 19 – Damage compensation for Deutsche Bahn AG for damages suffered by DB Fernverkehr II*.

<sup>404</sup> Case SA. 100322, *Germany – COVID 19 - Damage compensation for DB AG to cover damages incurred by DB Netz AG, DB Energie GmbH and DB Station&Service AG*.

<sup>405</sup> Case SA.102132, *Austria*; Case SA.103381, *Germany*; Cases SA.102270 and SA. 104518, *Italy*.

<sup>406</sup> Case SA.50952, *Germany – Alleged State aid to DB Cargo*.

<sup>407</sup> Communication from the Commission Community guidelines on State aid for railway undertakings (2008/C 184/07), OJ C 184, 22.7.2008, p. 13.

sustainable transport mode. In 2020, the Fitness Check of the Railway Guidelines<sup>408</sup> showed that the current Guidelines have made an important contribution to encouraging a modal shift to rail, but that adjustments of the existing rules are necessary to reflect the latest market and regulatory developments and enable the rail sector to embrace the green and digital transition in line with the Commission's priorities, in particular those of the European Green Deal.

Against this background, the Commission in 2021 launched the revision of the Railway Guidelines<sup>409</sup>. The revision aims to support the shift to more sustainable transport modes, while introducing block exemptions for specific aid measures in the area of land and intermodal transport, thus simplifying the procedures for the granting of aid. A 12-week public consultation was conducted in the first quarter of 2022<sup>410</sup>, together with bilateral meetings with EU stakeholders' associations. At the same time, a support study was commissioned to investigate certain specific areas of the rail sector. The feedback received and the findings of the study will feed the impact assessment report and help designing the new rules. The Commission plans to have the updated guidelines adopted in 2025.

In addition, as regards specifically the objective of procedural simplification, the Commission adopted on 6 July 2022<sup>411</sup> a proposal for a Council Regulation that will enable the Commission to adopt block exemption regulations in the field of the coordination of transport and public service obligations not covered by Regulation 1370/2007/EC, in line with Article 93 TFEU. Adoption by the Council took place on 19 December 2022<sup>412</sup>.

#### *8.2.9. State aid enforcement in the road transport sector*

In January 2022, the Commission adopted, under the Temporary Framework for State aid measures, a decision concerning aid for approximately EUR 9 million for support to bus operators in Slovakia<sup>413</sup>. Moreover, the Commission adopted two decisions reintroducing expired State aid schemes supporting road passenger transport in Italy<sup>414</sup>. The Commission also approved aid to undertakings active in road passenger transport in Portugal<sup>415</sup> for an amount of EUR 800 000.

In April 2022, the Commission approved, under the Temporary Crisis Framework, an aid measure for an amount of EUR 18 million to support road haulage operators in Ireland<sup>416</sup>.

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<sup>408</sup> Commission Staff Working Document - Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance, SWD(2020) 257 final.

<sup>409</sup> See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13154-Rail-transport-revision-of-State-aid-guidelines\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13154-Rail-transport-revision-of-State-aid-guidelines_en)

<sup>410</sup> See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13154-Rail-transport-revision-of-State-aid-guidelines/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13154-Rail-transport-revision-of-State-aid-guidelines/public-consultation_en)

<sup>411</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4311](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4311)

<sup>412</sup> Council Regulation (EU) 2022/2586 of 19 December 2022 on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of State aid in the rail, inland waterway and multimodal transport sector, OJ L 338, 30.12.2022, p. 35.

<sup>413</sup> Case SA.101088, Slovakia – COVID-19: Aid to bus companies.

<sup>414</sup> Case SA.101935 – Italy – COVID-19: Re-introduction SA.100126 – Support to road passenger transport; Case SA.101992, Italy – COVID-19: Re-introduction of aid scheme SA.64342 – Aid to undertakings engaged in road passenger transport by bus.

<sup>415</sup> Case SA.102334, Portugal – COVID-19: Aid to passengers transport sector in Azores for 2022.

<sup>416</sup> Case SA.102559, Ireland – TCF: Licensed Road Haulage Operators Emergency Support Scheme.

Similar measures were also approved for Spain<sup>417</sup> and Portugal<sup>418</sup>, with budgets of approximately EUR 450 million and EUR 46 million. In addition, the Commission also approved an aid measure to support undertakings involved in road transport of goods and persons in Romania<sup>419</sup> with an approximate budget of EUR 61 million and a EUR 526 million aid measure supporting road haulage operators in Italy<sup>420</sup>, and a EUR 35 million aid measure supporting bus transport operators in Italy<sup>421</sup>.

Following the adoption of the updated Temporary Crisis Framework<sup>422</sup>, the Commission approved the prolongation with amendments of the aid measure supporting road haulage operators in Italy until 31 December 2023<sup>423</sup>.

#### *8.2.10. State aid enforcement in the postal services sector*

Through State aid control in the postal services sector, the Commission ensures that competition between incumbent service providers and new entrants is not being distorted, that recipients of State aid are not shielded from competitive pressure and market developments, and that efficiency, innovation and productivity remain incentivised.

On 11 January 2022, the Commission concluded that an internal capital injection of DKK 2.34 billion (approximately EUR 314.6 million) from *PostNord* to *Post Danmark* did not constitute State aid<sup>424</sup>. At the same time, the Commission found that two capital injections from Denmark and Sweden to *PostNord*, for a total of SEK 667 million (approximately EUR 66 million) constituted incompatible State aid that Denmark and Sweden have to recover from *PostNord*.

On 10 March 2022, the Commission opened an in-depth investigation to assess whether certain Greek support measures in favour of postal operator *ELTA* are in line with State aid rules<sup>425</sup>. These measures include the payment by Greece of EUR 149 million to *ELTA* in December 2020 as additional compensation for the universal service obligation for 2013-2018, a capital injection of EUR 100 million and the granting of an exemption from value added tax to all postal services of *ELTA* since 2000.

On 19 July 2022, the Commission concluded<sup>426</sup> that Belgium's plans to compensate postal operator *bpost* for providing several services of general economic interest between 2022 and

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<sup>417</sup> Case SA.102615, *Spain – TCF: Direct aid to self-employed workers and private road transport companies affected by the increase in fuel prices*.

<sup>418</sup> Case SA.103207, *Portugal – TCF: Extraordinary and exceptional support for the undertakings of road freight transport for hire or reward*.

<sup>419</sup> Case SA.103249, *Romania – TCF: Aid to undertakings involved in road transport of goods and persons*.

<sup>420</sup> Case SA.103480, *Italy – TCF: Emergency Support Scheme for Haulage Operators*. The aid measure was subsequently amended in Case SA.103966, following the first amendment of the Temporary Crisis Framework (Commission Communication C(2022) 5342, OJ C 280, 21.7.2022, p. 1).

<sup>421</sup> Case SA.104566, *Italy – TCF: Emergency Support for Bus transport Operators*.

<sup>422</sup> Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022, p. 1).

<sup>423</sup> Case SA.105007, *Italy – TCF: Emergency Support Scheme for Haulage Operators (amendment to SA.103480)*.

<sup>424</sup> Cases SA.49668, *Denmark - Capital injections for PostNord and Post Danmark*; SA.53403, *Sweden - Capital injections for PostNord and Post Danmark*.

<sup>425</sup> Case SA.57538, *Greece - Alleged illegal state aid to ELTA*.

<sup>426</sup> Case SA.100860, *Belgium - bpost 7th management contract*.

2026 was compatible with the internal market under Article 106(2) TFEU as it met all the conditions of the SGEI Framework. The SGEIs concerned include among others the maintenance a post office network throughout Belgium, delivering pension payments, providing 'cash at counter' services, as well as delivering printed material related to elections in Belgium.

On 25 July 2022, the Commission concluded<sup>427</sup> that Czechia's plans to compensate Czech Post for its universal postal service obligation over the period 2018-2022 was compatible with the internal market under Article 106(2) TFEU as it met all the conditions of the SGEI Framework. Similarly, on 10 August 2022, the Commission concluded<sup>428</sup> that Denmark's compensation to Post Danmark for its universal postal service obligation in 2020 constituted compatible State aid as it met all the conditions of the SGEI Framework.

On 10 August 2022, the Commission concluded<sup>429</sup> that France's plans to proceed to four modifications to *La Poste's* SGEI relating to territorial planning, approved by Commission decision in case SA.49469 in December 2018, do not alter the compatibility assessment of the SGEI with the internal market under Article 106(2) TFEU. The modifications relate to additional sources of financing for the SGEI compensation of *La Poste* and to an update in the methodology used to allocate contact points to the territorial planning mission.

On 5 December 2022, the Commission concluded<sup>430</sup> that France's plans to compensate *La Poste* for providing the SGEI of press transport and distribution in the French territory between 2022 and 2026 was compatible with the internal market under Article 106(2) TFEU as it met all the conditions of the SGEI Framework.

#### *8.2.11. Antitrust enforcement in the hotel sector*

The distribution of hotel accommodation has been the subject of several antitrust and legislative interventions in recent years. Since 2010, several NCAs have investigated the use of retail parity clauses by online travel agencies in their contracts with hotels. Wide retail parity clauses prevent hotels from offering better room prices or increased availability on any other sales channel. Narrow retail parity clauses allow hotels to offer better room prices on other online travel agencies and for offline sales, but prevent hotels from publishing better prices on their own website.

On 26 August 2022, the Commission published the results of an external market study on the distribution practices of hotels in the EU, covering the period between 2017 and 2021<sup>431</sup>. The study focused on a representative sample of six Member States (Austria, Belgium, Cyprus, Poland, Spain and Sweden) and notably aimed at identifying any changes in hotels' distribution practices, as compared to the results of the monitoring exercise carried out by the European Competition Network in 2016, and to find out whether laws banning the use of

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<sup>427</sup> Case SA.55208, *Czechia - State aid implemented by Czechia for Czech Post*.

<sup>428</sup> Case SA.57991, *Denmark - USO compensation to Post Danmark A/S for 2020*.

<sup>429</sup> Case SA.100960, *France - Modifications au régime de compensation de la mission d'aménagement du territoire en faveur de La Poste (SA.49469)*.

<sup>430</sup> Case SA.102817, *France - La Poste : Mission de transport et de distribution de la presse pour la période 2023-2026*.

<sup>431</sup> See: [https://competition-policy.ec.europa.eu/document/download/1551a94d-e3c0-4175-bdff-d54aef2f6606\\_en](https://competition-policy.ec.europa.eu/document/download/1551a94d-e3c0-4175-bdff-d54aef2f6606_en)

wide and narrow parity clauses by online travel agents in Austria and Belgium have led to changes in hotels' distribution practices in those Member States.

The results of the study will be taken into account by the Commission and NCAs in their ongoing monitoring and enforcement work in the hotel accommodation distribution sector, notwithstanding the possible impact of the DMA on competition in this sector.

#### *8.2.12. Merger enforcement online travel agency sector*

On 10 October 2022, the Commission received a notification of the acquisition of the Swedish online travel agency *eTraveli*, which focuses on the sale of flights, by the US company *Booking*<sup>432</sup>. *Booking* supplies online travel agency and metasearch services primarily for accommodations, whilst also providing services for flights, car rental and activities. On 16 November 2022, the Commission opened an in-depth investigation into the acquisition as the Commission is concerned that the proposed acquisition would allow *Booking* to strengthen its position on the market for accommodation online travel agencies<sup>433</sup>.

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<sup>432</sup> Case M.10615, *Booking Holdings/eTraveli Group*.

<sup>433</sup> See the press release of 16.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6883](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6883)

## ANNEX 1.

### State aid decisions adopted under the Temporary Framework for State aid measures in 2022<sup>434</sup> by country

Nr.	Member State	Case number	Title	Decision date
1	Austria	SA.100831	COVID-19: Amendments to and prolongations of SA.56840 "Austrian liquidity assistance scheme" and SA.58661 "Fixed costs compensation scheme"	11/01/2022
2	Austria	SA.100853	Spezielle Richtlinien des NÖ Wirtschafts- und Tourismusfonds - Förderprogramm COVID-19	11/01/2022
3	Austria	SA.101013	COVID-19; Support Scheme for Events I	11/01/2022
4	Austria	SA.101086	COVID-19 - AT - Wage subsidy for seasonal workers (AMS-Saisonstarthilfe)	14/01/2022
5	Austria	SA.101232	COVID-19: Compensation scheme: Directive for fixed cost subsidies for economic activities of Non Profit Organisations	14/01/2022
6	Austria	SA.101115	COVID-19: Sixth amendment of the aid scheme SA.56981	17/01/2022
7	Belgium	SA.101027	Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures	10/01/2022
8	Belgium	SA.101133	Bridge loans in the Flemish region	11/01/2022
9	Belgium	SA.100961	SA.100961 (2021/N) – Belgium. COVID-19: Re-introduction of the schemes SA.56919, SA.57083, SA.57132, SA.57246, SA.58081, SA.60198, SA.60524, SA.61748, SA.62032, SA.62407, SA.62430, SA.62882, SA.62883, SA.62884, SA.63932, SA.64030, SA.64031, SA.64071 and SA.64072, as already amended	20/01/2022
10	Belgium	SA.101656	Amendments to the scheme SA.101027: “COVID-19 - Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2020	07/02/2022
11	Belgium	SA.101794	COVID-19: Repayable advances for the event and cultural sectors in the context of the COVID-19 health crisis in the Brussels-Capital Region and amendment to scheme SA.100716	17/02/2022
12	Belgium	SA.101410	COVID-19 - BE - Grant to employers active in the events sector, discotheques, nightclubs, indoor playgrounds and recreational indoor venues	18/02/2022
13	Belgium	SA.101957	Walloon aid scheme for self-employed and undertakings mandatorily closed or affected by COVID-19 restrictive measures in the first quarter of 2022	03/03/2022
14	Belgium	SA.101958	Walloon aid scheme for self-employed and undertakings mandatorily closed or affected by	03/03/2022

<sup>434</sup> A number of these decisions have subsequently been amended.



			COVID-19 restrictive measures in the last quarter of 2021	
15	Belgium	SA.101863	COVID-19: Decision of the Flemish Government regarding a Flemish Protection Mechanism for undertakings that suffer a turnover decline due to the Covid-19 measures of 28 October 2021	04/03/2022
16	Belgium	SA.102420	COVID-19: amendment to scheme SA.101133: "COVID-19 - bridge loans in the Flemish Region"	04/04/2022
17	Belgium	SA.102414	COVID-19: Tourist accommodation sector in Brussels Capital-Region II	12/04/2022
18	Belgium	SA.102417	COVID-19: Projet Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif à une aide de relance aux entreprises encore fortement impactées des secteurs des discothèques, des restaurants et cafés et de certains de leurs fournisseurs, de l'événementiel, de la culture, du tourisme, et du sport et du transport des voyageurs.	26/04/2022
19	Belgium	SA.102421	Besluit van de Vlaamse Regering betreffende het corona globalisatiemechanisme voor ondernemingen met een grote omzetsdaling in 2021 ten gevolge van de coronamaatregelen (Decision of the Flemish Government regarding a Covid-19 Globalisation Mechanism for undertakings that suffer a turnover decline in 2021 due to the Covid-19 measures)	12/05/2022
20	Belgium	SA.102504	Aid by Flanders to undertakings and public entities that suffer a negative economic impact due to the Covid-19 measures and the Brexit	01/06/2022
21	Bulgaria	SA.101012	COVID-19: Prolongation and amendment of the schemes SA.56905, SA.56933, SA.57052, SA.57283, SA.57795, SA.58095, SA.59704, SA.60454, SA.100320 and SA.100331, as already amended	07/01/2022
22	Bulgaria	SA.100885	COVID-19: State aid for the tourism sector	17/01/2022
23	Bulgaria	SA.101306	State aid to tour operators	19/01/2022
24	Bulgaria	SA.100321	COVID-19 - Aid scheme to air carriers	17/03/2022
25	Bulgaria	SA.102193	COVID-19: State aid for tour operators (re-introduction of SA.58050 as amended by SA.60082 and SA.63497)	22/03/2022
26	Bulgaria	SA.102392	COVID-19: Liquidity aid to farmers 2022	07/04/2022
27	Bulgaria	SA.103269	COVID-19, Bulgaria, Amendment to Aid scheme to air carriers (SA.100321)	27/06/2022
28	Croatia	SA.102126	COVID-19: Re-introduction and amendment of the scheme SA.56998 as already amended	25/03/2022
29	Croatia	SA.101061	COVID-19 - HR - Scheme to support Maritime sector (section 3.12)	28/03/2022
30	Croatia	SA.102436	COVID-19: Support to undertakings active in the civil aviation sector in the form of subsidised interest rates on loans under Temporary Framework 3.3	01/06/2022
31	Croatia	SA.103028	COVID-19: Support to undertakings active in the	17/06/2022

			civil aviation sector for recapitalisation measures under Temporary Framework 3.11	
32	Croatia	SA.103135	COVID-19: Amendments to State Aid SA.57711 (2020/N), as amended by SA.58128 (2020/N), SA.58136 (2020/N), SA.59924 (2020/N), SA.59942 (2020/N), SA.64375 (2021/N), SA.100913 (2021/N)	17/06/2022
33	Croatia	SA.103801	COVID-19 - HR - Job Preservation Aid Scheme	09/12/2022
34	Cyprus	SA.101278	COVID-19: Incentive Scheme for Tour Operators	20/01/2022
35	Cyprus	SA.101311	Re-introduction of the scheme SA.57691 [as amended in SA.60661 and SA.63695]	18/02/2022
36	Cyprus	SA.101098	State aid plan based on the Temporary Framework for State aid measures to support the economy during the current outbreak of the COVID-19 disease to a) pig farmers, b) poultry farmers, c) cow farmers, d) rabbit farmers.	28/02/2022
37	Cyprus	SA.102081	Subsidy Scheme for Certain Enterprises and Self-employed persons	04/04/2022
38	Cyprus	SA.102885	COVID-19: Support for cheesemakers due to the impact of the restrictive measures implemented and applied in the catering sector	20/05/2022
39	Cyprus	SA.102435	COVID-19 - CY - Suspension of payment of VAT for certain categories of taxpayers taken during the COVID-19 pandemic in 2021	21/06/2022
40	Cyprus	SA.103624	COVID-19: Special scheme for lump-sum payments to firms and self-employed persons	28/11/2022
41	Czechia	SA.101455	COVID-19 - CZ - Guarantees for travel agencies (amend SA.61837)	27/01/2022
42	Czechia	SA.101034	COVID-19 - CZ – Compensation bonus for 2022	10/02/2022
43	Czechia	SA.101719	COVID-19 - CZ - Fourth Amendment to the wage subsidy scheme approved as State aid under SA.57102, SA.59334, SA.62441 & SA.100663	10/03/2022
44	Czechia	SA.102180	State Aid SA.102180 (2022/N) – Czech Republic COVID-19: Prolongation of the schemes SA.62471 and SA.62477, as already amended	30/03/2022
45	Denmark	SA.101132	COVID-19 - DK - Modifications to SA.59960, SA.64159, SA.59764, SA.58515, SA.56708 and SA.56808	14/01/2022
46	Denmark	SA.101789	COVID-19 - DK - Adjustment of scheme for cancelled, deferred or substantially modified large events (SA.59960 as amended by SA.61947 and SA.101132)	23/02/2022
47	Denmark	SA.101840	COVID-19: Danish aid scheme for distinct seasonal expenses (under TF 3.1)	04/03/2022
48	Denmark	SA.102187	Denmark COVID-19: Notification of adjustment of SA.59960 as amended by SA.61947, SA.101132 and SA.101789 - limited amounts of compensation – scheme for cancelled, deferred or substantially modified large events	24/03/2022
49	Estonia	SA.102162	COVID-19 - EE- Assistance to cultural and concert organizers	31/03/2022
50	Estonia	SA.102167	COVID-19: GUARANTEES ON LOAN	06/04/2022

			UNDER THE TEMPORARY FRAMEWORK SECTION 3.1 AND 3.2	
51	Estonia	SA.104054	COVID-19: Amendment to commitments under SA.57586 – Recapitalisation and subsidised interest loan for Nordica	30/09/2022
52	Finland	SA.102463	COVID19- Support for uncovered fixed costs under Temporary Framework 3.12. (Re-introduction of scheme SA.63205)	21/04/2022
53	Finland	SA.103178	COVID-19: Amendment of the scheme SA.57059 as already amended	15/06/2022
54	Finland	SA.103101	COVID-19: Prolongation of State loan guarantee for Finnair (amendment to SA.56809)	20/06/2022
55	France	SA.101947	Covid-19: Dispositif de garantie de l'État sur l'investissement dans des quasi-fonds propres de petites et moyennes entreprises et d'entreprises de taille intermédiaire	29/03/2022
56	France	SA.102110	COVID-19: Exceptional compensation for pig farms	07/04/2022
57	France	SA.102077	COVID-19: Régime d'aides destinées à soutenir l'investissement en vue d'une reprise durable	21/04/2022
58	France	SA.103459	COVID-19: Modification du régime cadre temporaire SA.56985	30/06/2022
59	France	SA.102799	COVID-19 - FR - Modifications to SA.62999 (2021/N) - COVID-19: Aid in the form of exemptions from social security contributions (« Régime d'aides sous forme d'exonérations de cotisations sociales »)	04/08/2022
60	France	SA.102804	Réintroduction de SA.59746 (2020/N) - Compensation des clubs sportifs et organisateurs d'événements sportifs	14/12/2022
61	France	SA.105172	COVID-19: Prolongation and amendments to the scheme SA.102077	20/12/2022
62	Germany	SA.101574	Modification to scheme SA.56814	25/01/2022
63	Germany	SA.63946	COVID 19 – aid to Flughafen Berlin Brandenburg	01/02/2022
64	Greece	SA.100939	COVID-19: Prolongation and amendment of the schemes SA.56857, SA.58367, SA.58368, SA.58616, SA.59033, SA.61574, SA.61802, SA.62098, SA.62341, SA.62626, SA.62699, SA.62835, SA.63004, SA.63123 (as already amended)	18/01/2022
65	Greece	SA.101418	COVID-19 - EL - Amendment to SA.100951: subsidy scheme for the municipalities of Mantoudi-Limni-St.Anna and Istiaia-Aidipsos of the region of Northern Evia	20/01/2022
66	Greece	SA.100945	State Aid Grants in the agricultural sectors of i) Fig production crops for drying throughout the country, ii) Lavender cultivation throughout the country, iii) Table Olives except table Olives-“Kalamon” variety and table Olives-others (code 2008190 according to the national Integrated Management and Control System data of OPEKEPE), iv) Industrial potato- Autumn potato, v) Tangerine – “Klimentini” variety and	09/02/2022

			vi) Tobacco growing sector on the basis of the COVID 19 Temporary Framework.	
67	Greece	SA.101934	COVID-19: Working capital in the form of grants to companies continuously and severely affected by COVID-19	04/03/2022
68	Greece	SA.102365	COVID-19: First amendment to SA.101934 (2022/N) – Working capital in the form of grants to companies continuously and severely affected by COVID-19	31/03/2022
69	Greece	SA.102304	COVID-19: Temporary aid measure due to the consequences of the spread of the COVID-19 (umbrella scheme)	01/04/2022
70	Greece	SA.101963	COVID-19: Loan facility to support private investment (RRF)	16/05/2022
71	Greece	SA.102749	COVID-19: Re-introduction of the scheme SA.63896 as amended	16/05/2022
72	Greece	SA.103434	COVID-19: Amendments to the scheme SA.61574, as amended by SA.100939	28/06/2022
73	Greece	SA.63905	COVID-19 - Repayable Advance Scheme for enterprises affected by the Covid-19 outbreak for the months January until March 2021 (Rounds 6 and 7)	11/08/2022
74	Greece	SA.105095	COVID-19: Loan facility to support private investment (RRF) (amendments to SA.101963)	20/12/2022
75	Hungary	SA.101494	COVID-19: Investment support scheme towards a sustainable recovery	02/03/2022
76	Hungary	SA.101821	COVID-19: 2nd investment support scheme towards a sustainable recovery	29/03/2022
77	Hungary	SA.102107	12th amendment request to the Commission Decision of 8 June 2020 in case SA.57468 (2020/N) COVID-19: Umbrella scheme of direct grants provided from the appropriations managed at the level of ministries' budgetary chapters (C(2020) 3951 final)	07/04/2022
78	Hungary	SA.102512	7th amendment to SA.56926 (2020/N) – COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak	26/04/2022
79	Hungary	SA.104991	COVID-19: Prolongation and amendments to the investment support schemes towards a sustainable recovery SA.101494 and SA.101821	15/12/2022
80	Ireland	SA.101267	COVID-19: Live Performance Support Scheme 2021 (amendments to SA. 63067, as already amended in case SA.100717)	19/01/2022
81	Ireland	SA.101580	COVID-19: Commercial Entertainment Capital Grant Scheme (amendments to SA.100526)	01/02/2022
82	Ireland	SA.102196	Beef Sector Efficiency Programme 2022	25/03/2022
83	Ireland	SA.102557	COVID-19: Ireland - Helicopter Emergency Medical Services (HEMS) Scheme	11/05/2022
84	Ireland	SA.103565	COVID-19: Scheme to support investment towards a sustainable recovery	25/07/2022
85	Ireland	SA.104540	COVID-19: Scheme to support investment towards a sustainable recovery (amendments to SA.103565)	30/09/2022

<b>86</b>	Italy	SA.101010	COVID-19: Prolongation of the schemes SA.56966, SA.61599, SA.62576, SA. 64217, SA.100204 and SA.100304	11/01/2022
<b>87</b>	Italy	SA.101056	COVID-19: Prolongation of the schemes SA.58802, SA.64420 and SA.100005	11/01/2022
<b>88</b>	Italy	SA.101076	Modification of schemes SA.62668, SA.100091 and SA.100155.	11/01/2022
<b>89</b>	Italy	SA.101179	Italy - COVID-19 – Patrimonio Rilancio - Prolongation	11/01/2022
<b>90</b>	Italy	SA.101180	COVID-19: Prolongation of the scheme SA.56963	11/01/2022
<b>91</b>	Italy	SA.101314	COVID-19: Prolongation of the scheme SA.56963	11/01/2022
<b>92</b>	Italy	SA.101321	COVID-19: Prolongation of the scheme SA.100597	11/01/2022
<b>93</b>	Italy	SA.101160	COVID-19: Loan guarantees and grants under the ISMEA Guarantee Fund according to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	17/01/2022
<b>94</b>	Italy	SA.101025	COVID-19: reintroduction of the measures and increase of the aid ceilings related to the measures 3.1 and 3.12 of the Temporary Framework	18/01/2022
<b>95</b>	Italy	SA.101474	COVID-19: Re-introduction of the scheme SA.57947 "Support measures for undertakings carrying out activities in the agricultural, forestry, fishery and aquaculture sectors and the activities related thereto, in relation with the COVID-19 outbreak crisis", as already amended	28/01/2022
<b>96</b>	Italy	SA.101055	COVID-19: Aid to companies holding port concessions	01/02/2022
<b>97</b>	Italy	SA.101313	COVID-19: Aid to companies managing aluminium waste sorting and recycling plants	01/02/2022
<b>98</b>	Italy	SA.101535	Grant to breweries	03/02/2022
<b>99</b>	Italy	SA.101598	COVID-19: Plan for the socio-economic emergency of the Campania Region – Reintroduction of the scheme SA.57439, as already amended	03/02/2022
<b>100</b>	Italy	SA.101883	COVID-19: Grant to catering services (Article 43-bis of Decree-Law No 73 of 25 May 2021)	02/03/2022
<b>101</b>	Italy	SA.101935	COVID-19: Measures to compensate road passenger transport companies (re-introduction SA.100126)	17/03/2022
<b>102</b>	Italy	SA.102012	COVID-19: Grant scheme to support the retail trade activities	24/03/2022
<b>103</b>	Italy	SA.101992	COVID-19 - IT - Reintroduction of SA.64342 – undertakings engaged in road passenger transport by bus	28/03/2022
<b>104</b>	Italy	SA.102013	COVID-19: Port fees reimbursement for cruise ships docking in Italian ports	04/04/2022
<b>105</b>	Italy	SA.101428	COVID-19 - Italy- support for cabotage and other maritime services	04/05/2022
<b>106</b>	Italy	SA.102105	COVID-19: Tax credit in favour of tourism	06/05/2022



			undertakings for rental payments	
<b>107</b>	Italy	SA.102136	COVID-19 and RRF: Direct grants and tax credits for tourism undertakings and tax credits for travel agencies and tour operators	11/05/2022
<b>108</b>	Italy	SA.102137	COVID19: Additional tax concessions for the tourism and spa sector	11/05/2022
<b>109</b>	Italy	SA.102779	COVID-19: Second amendment of the scheme SA.100597 COVID-19: Direct grants to SMEs engaging in international activities and operations for the digital and green transitions (RRF), as amended by SA.101321	19/05/2022
<b>110</b>	Italy	SA.102579	COVID-19: Aid scheme for the support of innovative and sustainable investments aimed at promoting the technological and digital transformation of companies	25/05/2022
<b>111</b>	Italy	SA.102966	Incentive to employers that hire workers in extraordinary redundancy fund system	01/06/2022
<b>112</b>	Italy	SA.102925	COVID-19 - Italy - Support to wedding, entertainment, HORECA and other sectors	03/06/2022
<b>113</b>	Italy	SA.102580	COVID-19: Tax credit for productive investments for companies affected by the pandemic in regions that had been hit by the seismic activity in 2016/2017	03/06/2022
<b>114</b>	Italy	SA.102968	exemption from social security contribution payments for private employers active in the tourism and thermal bath sectors engaging with fixed-term or seasonal contracts	07/06/2022
<b>115</b>	Italy	SA.102967	COVID-19: Exemption from social security contribution payments for workers' cooperatives	09/06/2022
<b>116</b>	Italy	SA.103064	COVID-19 - Italy - Support to tourist transport by covered buses (no PSO)	16/06/2022
<b>117</b>	Italy	SA.102702	COVID-19: Investments in favour of a sustainable recovery	20/06/2022
<b>118</b>	Italy	SA.102998	COVID-19 - IT - Tax credit for IMU in the tourism sector	21/06/2022
<b>119</b>	Italy	SA.103161	COVID-19 – IT – Exemption from social security contributions in the sector of travel agencies and tour operators	22/06/2022
<b>120</b>	Italy	SA.102926	COVID-19 - IT - Wage subsidy in the form of an exemption from social security contributions for cabotage and other maritime activities	27/06/2022
<b>121</b>	Italy	SA.103405	Loans provided by ISMEA in favour of undertakings of the agricultural and fishery sector affected by the COVID-19 outbreak	30/06/2022
<b>122</b>	Italy	SA.103122	COVID-19: Exemption from the contribution paid by employers	07/07/2022
<b>123</b>	Italy	SA.103316	COVID-19/TCF: Aid scheme to support investments in the areas affected by the seismic events of 2009 and 2016 (RRF)	03/08/2022
<b>124</b>	Italy	SA.103540	COVID-19: Scheme to support investments for a sustainable recovery of undertakings active in Lombardy, hit by the COVID-19 pandemic	13/09/2022
<b>125</b>	Italy	SA.104510	COVID-19: Scheme to support investments for a sustainable recovery of undertakings active in	07/12/2022



			the Marche region	
<b>126</b>	Italy	SA.105070	COVID-19: Prolongation and amendment to the schemes SA.102579 and SA.102702	16/12/2022
<b>127</b>	Italy	SA.105115	COVID-19: Prolongation and amendment to the scheme SA.103540	16/12/2022
<b>128</b>	Latvia	SA.101079	COVID-19: Prolongation of the scheme SA.62916, as already amended	07/01/2022
<b>129</b>	Latvia	SA.101295	Third Amendments to Support scheme for Latvia - COVID-19: Loan guarantee scheme and subsidized loan scheme, European Commission registered case No. State Aid SA.56722 (amendments SA.60409 and 63139)	12/01/2022
<b>130</b>	Latvia	SA.100494	Equity investments in the companies whose operations have been affected by the Covid-19 impact	13/01/2022
<b>131</b>	Latvia	SA.101506	Fifth Amendment to SA.59592 (2020/N) on grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	27/01/2022
<b>132</b>	Latvia	SA.101601	COVID-19 - LV - Amendments to SA.100605: Reduction of the lease payment for lessees of publicly-owned property	07/02/2022
<b>133</b>	Latvia	SA.101521	COVID-19 - LV - First Amendment to State Aid SA.100598 on the Support to the taxpayers for the continuation of their activity under the conditions of the crisis caused by COVID-19	10/02/2022
<b>134</b>	Latvia	SA.102018	COVID-19: Reintroduction of the scheme SA.62195 "State aid measure for small farmers"	08/03/2022
<b>135</b>	Latvia	SA.101995	COVID-19: LV - Support to arts, entertainment and recreation businesses (re-introduction to SA.62003)	21/03/2022
<b>136</b>	Latvia	SA.102274	COVID-19: Reintroduction of the scheme SA.62681 "State aid for short-term loans in agriculture to relieve the negative impact of the COVID-19 outbreak"	04/04/2022
<b>137</b>	Latvia	SA.102151	Equity investments in the companies whose operations have been affected by the Covid-19 impact	06/04/2022
<b>138</b>	Latvia	SA.63604	COVID-19: Second Recapitalisation of airBaltic	23/05/2022
<b>139</b>	Lithuania	SA.100014	COVID-19 - LT - Deferral of import excise duties and VAT	04/01/2022
<b>140</b>	Lithuania	SA.101446	Amendment to the "Aid Fund for Business" (SA.57008)	25/01/2022
<b>141</b>	Lithuania	SA.101400	COVID-19: Reintroduction and extension of the "Direct COVID-loans" scheme (SA.60379)	09/02/2022
<b>142</b>	Lithuania	SA.101868	Loans to ensure the Liquidity of Economic Entities active in agriculture and aquaculture during the outbreak of Covid-19	15/03/2022
<b>143</b>	Lithuania	SA.102324	COVID-19: Aid to accommodation service providers and tour operators	04/04/2022
<b>144</b>	Lithuania	SA.102468	COVID-19: Temporary State Aid to broiler producers facing economic difficulties caused by the COVID-19 pandemic	22/04/2022
<b>145</b>	Luxembourg	SA.101417	COVID19 - Modification of SA.59428, SA.59322	02/02/2022

146	Luxembourg	SA.102106	COVID-19: Amendments to the schemes SA.59428 and SA.59322	11/04/2022
147	Luxembourg	SA.102539	COVID-19: Aid to the pig sector (3rd part)	25/04/2022
148	Malta	SA.100998	COVID-19: Reintroduction of schemes SA.56843, SA.57163 and SA.57961	12/01/2022
149	Malta	SA.101142	COVID-19: Modifications to SA.57076, SA.57204, SA.58297, SA.58306, SA.100440	19/01/2022
150	Malta	SA.101841	COVID-19: Amendment of the scheme "Temporary State aid to Land Farmers"	24/02/2022
151	Malta	SA.102125	COVID-19: Amendment of the scheme "Temporary State aid to Animal Farmers"	14/03/2022
152	Malta	SA.101993	COVID-19: Guaranteed Co-Lending Scheme (GCLS) for SME	28/04/2022
153	Malta	SA.102010	COVID-19: Temporary State aid to Recognised Swine Co-operatives	02/05/2022
154	Netherlands	SA.101235	Amendment of seven existing aid schemes in accordance with the sixth amendment of the Temporary Framework (block notification the Netherlands) – in response to COVID-19 – Language waiver	19/01/2022
155	Netherlands	SA.101892	COVID-19: Eighth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257, SA.63984, SA.100829 and SA.101235)	21/02/2022
156	Netherlands	SA.102182	NL_LNV_AGRO_EIA_Modification to SA.63576 (2021/N), SA.100202 (2021/N) and SA.100953 (2021/N) - NL LNV AGRO EIA Aid scheme financing uncovered fixed costs agricultural and horticultural undertakings COVID-19	25/03/2022
157	Netherlands	SA.103285	COVID-19: Modification to SA.63576 (2021/N)	21/06/2022
158	Poland	SA.101500	Aid for pig sows producers who are threatened with a loss of financial liquidity due to restrictions on the agricultural market caused by the COVID-19.	31/01/2022
159	Poland	SA.101234	Amendment of SA.61825 (2021/N) - New support to industries affected by the COVID-19 pandemic - December 2021	15/02/2022
160	Poland	SA.101979	COVID-19 - PL - Subsidized interest rates for loans to tour operators – amendments to SA.58102 (2020/N), as amended by SA.62231 (2021/NN)	25/04/2022
161	Portugal	SA.63546	COVID 19 - PT - Apoio Extraordinário à Empregabilidade Açores 21 (AEEA21)	20/01/2022
162	Portugal	SA.63265	COVID 19 - Suporte ao Emprego Regional (SER21)	20/01/2022
163	Portugal	SA.63547	COVID 19 - Incentivo Regional à Normalização da Atividade Empresarial (IRNAE21)	21/01/2022
164	Portugal	SA.102005	COVID-19: Direct grants to micro, small and medium-sized enterprises in specific sectors established in the Outermost Region of the Azores ("APOIAR.PT Açores") - November	07/03/2022

			2021 to January 2022	
165	Portugal	SA.102334	COVID-19: Aid to passengers transport sector in Azores for 2022	06/04/2022
166	Portugal	SA.102911	COVID-19: Direct grants to micro, small and medium-sized enterprises in specific sectors established in the Outermost Region of the Azores (“APOIAR.PT Açores”) – February to April 2022	23/05/2022
167	Portugal	SA.102275	Capitalization and Resilience Fund (FdCR) / Strategic Recapitalization Programme	10/06/2022
168	Romania	SA.101753	Re-introduction of the State Aid scheme SA.100195 – COVID-19: support for SMEs to overcome the economic crisis caused by the COVID-19 pandemic – productive investments	22/02/2022
169	Romania	SA.100434	COVID-19 – Aid scheme to airlines operating in Arad Airport	04/04/2022
170	Romania	SA.102487	COVID-19: Support of the activity of cattle, pig and poultry farmers in the context of the economic crisis caused by the COVID-19 pandemic	26/04/2022
171	Romania	SA.102898	COVID-19: Support for agri-food entities in the form of micro-grants and working capital grants	25/05/2022
172	Romania	SA.102939	COVID-19: Support to small airports in the form of limited amounts of aid under Temporary Framework 3.1	02/06/2022
173	Romania	SA.102830	COVID-19: State Aid scheme associated to the GARANT CONSTRUCT Program	03/06/2022
174	Romania	SA.102828	COVID-19: scheme for the IMM Prod	03/06/2022
175	Romania	SA.103035	COVID-19: State Aid scheme associated to the Rural Invest Program	07/06/2022
176	Romania	SA.103503	COVID-19: Scheme for the award of grants for investment in re-technologisation of SMEs to restore resilience	09/08/2022
177	Slovakia	SA.101088	COVID-19 - SK - Bus companies	17/01/2022
178	Slovakia	SA.100438	COVID-19: Aid scheme to support Slovak air carriers	23/03/2022
179	Slovenia	SA.101099	State Aid SA.101099 (2021/N) – Slovenia COVID-19: Prolongation and amendment of the scheme SA.57724, as already amended	12/01/2022
180	Slovenia	SA.101779	COVID-19: Digital transformation of the economy (RRF)	14/03/2022
181	Slovenia	SA.102649	COVID-19: Re-introduction and amendment of the scheme SA.57782, as already amended	16/05/2022
182	Spain	SA.60190	HAC - Grupo CELSA-España (Barna Steel S.A.)	24/06/2022
183	Spain	SA.103291	COVID-19: Amendment of SA.56851 to enable extension of guarantees	30/06/2022
184	Sweden	SA.101248	Prolongation and amendment of compensation scheme for undertakings faced with turnover losses due to COVID-19 as regards aid periods between December 2021 and March 2022	17/01/2022
185	Sweden	SA.101222	COVID-19: Rent rebate for tenants (prolongation of SA.56972 as amended)	21/01/2022
186	Sweden	SA.101687	COVID -19: Amendments to the aid scheme SA.63116 - Aid for restricted or cancelled events	23/02/2022

			in January-June 2022	
<b>187</b>	Sweden	SA.102496	COVID-19: Re-introduction of the guarantee programme as amended in case SA.100381	28/04/2022
<b>188</b>	Sweden	SA.102780	COVID-19: Loans to Traffic Control Services (amendments to SA.61298 and SA.63289)	24/05/2022

## ANNEX 2

### State aid decisions adopted directly under the Treaty<sup>435</sup> by country

Nr.	Member State	Case number	Title	Decision date
1	Austria	SA.101114	COVID-19; State guarantee to package travel organisers and facilitators of linked travel services	04/02/2022
2	Austria	SA.102132	COVID-19 – Amendments to the existing aid scheme for rail freight transport and the existing aid scheme on the waiver of track access charges	24/05/2022
3	Croatia	SA.102197	Compensation by the Republic of Croatia of damages caused to MZLZ during the COVID-19 pandemic in accordance with Article 107(2)(b) TFEU (SA.102197)	13/12/2022
4	Denmark	SA.101011	Aid scheme for mink farmers and related businesses affected by the COVID-19 out-break (amendment)	10/01/2022
5	Denmark	SA.101243	Re-introduction of SA.57930: Temporary targeted compensation scheme for companies affected by COVID-19 related prohibitions (bans and cancelled events)	16/02/2022
6	Denmark	SA.101238	Re-introduction of SA.62538: targeted fixed cost compensation scheme for companies affected by COVID-19 prohibitions (mixed activities)	16/02/2022
7	Denmark	SA.101406	Re-introduction of State Aid SA.56685: Compensation scheme for cancellation of events related to COVID-19	18/02/2022
8	Finland	SA.63668	COVID-19: Hybrid loan to Finnair II	10/02/2022
9	Finland	SA.102826	Amendment to notifications SA.60113 and SA.63668: Aid to Finnair Plc, Hybrid Loan Facility for Finnair - Finland	20/06/2022
10	France	SA.102804	Réintroduction de SA.59746 (2020/N) - Compensation des clubs sportifs et organisateurs d'événements sportifs	14/12/2022
11	Germany	SA.103381	COVID-19: Reintroduction of the reduction of track access charges for long-distance rail passenger services	25/07/2022
12	Germany	SA.100322	COVID-19: Damage compensation for DB AG to cover damages incurred by DB Netz AG, DB Energie GmbH and DB Station&Service AG	27/07/2022
13	Germany	SA.100323	"SA.100323 - COVID-19: Schadensausgleich DB Fernverkehr AG - Phase 2 [BMDV]	28/11/2022
14	Greece	SA.62588	COVID-19 Damage compensation to Ellinair	02/05/2022
15	Greece	SA.100264	COVID-19 – Second damage compensation to Athens International Airport	12/12/2022
16	Italy	SA.62394	COVID-19 Damage compensation to commercial rail passenger operators – II	02/03/2022

17	Italy	SA.100553	COVID-19: Compensation for large shipping companies	08/06/2022
18	Italy	SA.102270	Reintroduction of the COVID-19 scheme for the reduction of track access charges for rail freight and commercial rail passenger services	17/06/2022
19	Italy	SA.63174	COVID-19 Damage compensation to rail freight operators	20/06/2022
20	Latvia	SA.101755	COVID-19: Second damage compensation for airBaltic	24/05/2022
21	Malta	SA.102240	COVID-19 Damage compensation to Malta International Airport plc	27/06/2022
22	Netherlands	SA.100781	COVID-19: Temporary additional subsidy events COVID-19	16/02/2022
23	Netherlands	SA.101802	COVID-19: Aid to the fireworks sector 2	28/06/2022
24	Netherlands	SA.103614	COVID-19: Temporary subsidy for events 2022	18/07/2022
25	Netherlands	SA.103571	COVID-19: Third compensation scheme for zoos under Article 107(2)(b) TFEU	24/11/2022
26	Romania	SA.60996	COVID-19 – Damage compensation to CFR Calatori	08/02/2022
27	Romania	SA.63360	COVID-19 - Aid to TAROM - damage compensation II	29/04/2022
28	Romania	SA.104966	COVID-19: Scheme for the award of grants for investment in re-technologisation of SMEs to restore resilience (amendments to SA.103503)	15/12/2022
29	Spain	SA.101051	State aid SA.101051 (2021/N) — SPAIN – COVID-19 – Guarantee scheme for undertakings with composition agreements (re-introduction of SA.59045)	26/01/2022
30	Spain	SA.102370	ECON - Programa Solvencia COVID-19 Euskadi	27/04/2022



### ANNEX 3

#### Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia: Decisions adopted by the Commission in 2022 by country

Nr	Member State	Case number	Title	Decision date
1	Austria	SA.103830	TCF: Special aid measure to cushion the additional costs in agriculture due to the increase in the cost of inputs	05/08/2022
2	Austria	SA.104439	TCF - Austria - Energy cost subsidy for enterprises	18/11/2022
3	Belgium	SA.103314	TCF: bridge loans in the Flemish Region	12/07/2022
4	Belgium	SA.103790	TCF: Scheme to compensate for additional costs in the fisheries sector caused by the Russian aggression against Ukraine	01/08/2022
5	Belgium	SA.103842	TCF: “Walloon schemes of temporary limited amounts of aid, public guarantees and subsidized loans for Walloon undertakings affected by the conflict in Ukraine”.	26/09/2022
6	Belgium	SA.104585	TCF: State guarantee for natural gas and electricity suppliers and intermediaries	28/10/2022
7	Belgium	SA.104588	TCF: Aid to undertakings facing increased energy costs following Russian aggression against Ukraine, regarding Q4 of 2022	05/12/2022
8	Belgium	SA.104845	TCF: Amendments to SA.103314 (bridge loans in the Flemish region)	05/12/2022
9	Belgium	SA.105119	TCF: Extension of the Belgian State guarantee for loans to natural gas, electricity suppliers, and intermediaries	20/12/2022
10	Bulgaria	SA.103875	TCF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against Ukraine	16/08/2022
11	Bulgaria	SA.104779	TCF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against Ukraine (amendments to SA.103875 (2022/N))	15/11/2022
12	Croatia	SA.103217	TCF: Support Programme for maize seed producers due to the difficult business conditions caused by the aggression against Ukraine by Russia	23/06/2022
13	Croatia	SA.103167	TCF: Portfolio and individual insurance policy for exporters	01/07/2022
14	Croatia	SA.103003	TCF: State Aid Scheme by Croatian Bank for Reconstruction and Development	07/07/2022
15	Croatia	SA.103558	TCF: HBOR Guarantee Scheme for loans to middle market capitalization entities and large business entities	26/08/2022
16	Croatia	SA.103919	Portfolio and individual insurance policy of liquidity and investment loan for exporters in line with Temporary Crisis Framework for State	29/08/2022

			Aid measures to support the economy following the aggression against Ukraine by Russia - Sections 2.1. and 2.2.	
17	Croatia	SA.103920	State Aid Scheme by Croatian Bank for Reconstruction and Development in line with Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia - Sections 2.1 and 2.3	29/08/2022
18	Croatia	SA.105227	TCF: Portfolio and individual insurance policy for exporters (amendment to SA.103167)	21/12/2022
19	Croatia	SA.105228	TCF: State aid scheme by the Croatian Bank for Reconstruction and Development (amendment to SA.103003)	21/12/2022
20	Cyprus	SA.104833	TCF: State Aid Scheme for Agricultural and Livestock farming sectors and for organized groups of farmers	23/11/2022
21	Cyprus	SA.105054	TCF: Support plan for the Viticulture Sector (Wine Production)	09/12/2022
22	Czechia	SA.103619	TCF: Opex 2022 – Loan Principal Reduction	14/07/2022
23	Czechia	SA.103616	TCF: Opex – Food producers – Loan Principal Reduction	05/08/2022
24	Czechia	SA.104342	Czechia - TCF: Aid in relation to additional costs due to exceptionally severe increases in natural gas and electricity prices	15/11/2022
25	Czechia	SA.105065	TCF: EGAP Plus	15/12/2022
26	Denmark	SA.104461	TCF: Danish deferral scheme for electricity, gas and heating	31/10/2022
27	Denmark	SA.104475	TCF: Limited amounts of aid in the form of direct grants to cover SMEs' administration costs in relation to the Danish deferral scheme on energy prices	31/10/2022
28	Denmark	SA.104505	TCF: Liquidity loan scheme for energy intensive undertakings	04/11/2022
29	Denmark	SA.104602	TCF: Guarantee scheme for financial collaterals for electricity and gas companies	04/11/2022
30	Estonia	SA.103257	TCF: Emergency support for the agricultural sector.	20/06/2022
31	Estonia	SA.103350	TCF: Ukraine crisis loan guarantee scheme for small and medium-sized enterprises (including micro-enterprises) and large enterprises by Rural Development Foundation	14/07/2022
32	Estonia	SA.103788	TCF: Guarantees by the Estonian Business and Innovation Agency	19/08/2022
33	Estonia	SA.103936	TCF: Support for investments in the food industry to ensure security of energy supply	23/09/2022
34	Estonia	SA.105226	TCF: Modification to SA.103788 (EIS) and SA.103350 (MES)	20/12/2022
35	Finland	SA.102914	TCF: Refund of property tax on agricultural production buildings for 2022	20/05/2022
36	Finland	SA.103159	Finnish national framework scheme for state aid measures - Temporary crisis framework for state aid measures to support the economy following the aggression against ukraine by russia (section	13/06/2022

			2.1 of TCF)	
37	Finland	SA.103386	TCF: Guarantee and subsidised loan scheme	15/07/2022
38	Finland	SA.103668	TCF: Temporary emergency support for livestock producers in response to the cost crisis in agriculture caused by Russia's invasion of Ukraine	19/07/2022
39	Finland	SA.104150	TCF: Crisis aid for fisheries - Aid granted to fishing and aquaculture undertakings based on the deterioration of the economic situation due to the Russian aggression against Ukraine	08/09/2022
40	Finland	SA.104201	Amendment to SA.103159	13/09/2022
41	Finland	SA.104267	Liquidity support to municipal electricity companies	07/10/2022
42	Finland	SA.104224	TCF: Liquidity support to systematically significant electricity producers	07/10/2022
43	Finland	SA.105249	TCF: Subsidised loan and guarantee scheme in the municipal energy sector (Amendment to SA.104267)	21/12/2022
44	France	SA.102395	TCF: Guaranteed State Loans “Resilience”	07/04/2022
45	France	SA.102784	TCF: Exceptional scheme to cover the additional animal feed costs of farms and fish farms	10/05/2022
46	France	SA.102783	TCF: Exceptional scheme for the reduction of the social security contributions in favour of undertakings in the agriculture, forestry and aquaculture sectors strongly affected by the consequences of the Russian aggression against Ukraine	16/05/2022
47	France	SA.102839	TCF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine	18/05/2022
48	France	SA.103240	TCF: Dispositif d'indemnisation exceptionnel des exploitations agricoles et des exploitations piscicoles d'élevage dans les départements d'Outre-Mer et en Corse	17/06/2022
49	France	SA.103280	TCF - France - Support to energy-intensive undertakings	30/06/2022
50	France	SA.103548	TCF: Modification to SA.102783 (2022/N)	12/07/2022
51	France	SA.104067	TCF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine (amendments to SA.102839 (2022/N))	26/08/2022
52	France	SA.104325	TCF: Amendments to SA.103280 (2022/N) Aid measures for the additional costs of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict	29/09/2022
53	France	SA.103934	TCF: Régime cadre relatif aux mesures temporaires en faveur des entreprises affectées par le conflit ukrainien	01/12/2022
54	France	SA.104958	TCF - France: Amendments to SA.104325 (2022/N) Aid measures for the additional costs	16/12/2022

			of natural gas and electricity prices in favour of energy-intensive businesses affected by the Ukrainian conflict	
55	France	SA.105217	TCF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine (amendments to SA.102839 (2022/N))	20/12/2022
56	France	SA.104963	TCF - Débridage d'installations éoliennes terrestres	21/12/2022
57	France	SA.105310	TCF: Exceptional scheme for the reduction of the social security contributions in favour of undertakings in the agriculture, forestry and aquaculture sectors strongly affected by the consequences of the Russian aggression against Ukraine (amendment to SA.102783 (2022/N))	21/12/2022
58	Germany	SA.102542	TCF: Federal Framework -Small amounts of aid 2022 („BKR- Bundesregelung Kleinbeihilfen 2022")	19/04/2022
59	Germany	SA.102631	TCF: Umbrella schemes for guarantees on loans and subsidised loans	04/05/2022
60	Germany	SA.103348	TCF - Germany - Temporary cost containment of natural gas and electricity price increases (Energiekostendämpfungsprogramm)	14/07/2022
61	Germany	SA.104019	TCF: Modifications to SA.102542 and SA.102631	18/08/2022
62	Germany	SA.104756	TCF: Modifications to SA.102542, SA.102631, SA.104019	22/11/2022
63	Germany	SA.104587	TCF - Germany - Energy cost containment programme: Granting compensation to temporarily reduce the cost of natural gas and electricity price increases	19/12/2022
64	Germany	SA.104606	TCF - Germany - Temporary cost containment of natural gas, heat and electricity price increases	21/12/2022
65	Greece	SA.102633	TCF State Aid Grants in the livestock farmers	01/06/2022
66	Greece	SA.103457	Subsidy to companies affected by Russia's attack on Ukraine and international sanctions imposed	05/08/2022
67	Greece	SA.104056	TCF - Greece - Aid to newspaper publishers	23/09/2022
68	Greece	SA.103978	TCF - Greece - State Aid Grants in the Energy Sector	03/10/2022
69	Hungary	SA.102986	TCF: Crisis Agricultural Guarantee Programme	17/06/2022
70	Hungary	SA.103089	TCF: Hungarian umbrella scheme to support companies in context of Russia's invasion of Ukraine	20/06/2022
71	Hungary	SA.103315	TCF: Garantiqa “Krizis 2 (Crisis 2)” Guarantee Program	11/07/2022
72	Hungary	SA.104009	TCF: Hungarian umbrella scheme to support companies in context of Russia’s invasion of Ukraine (amendments to SA.103089)	31/08/2022
73	Hungary	SA.104515	TCF: Support scheme in form of guarantees and subsidized loans	26/10/2022
74	Hungary	SA.104850	TCF: Amendments to SA.102986, SA.103089 (as amended), SA.103315 and SA.104515	09/12/2022

75	Ireland	SA.102559	TCF: Licensed Haulage Emergency Support Scheme	27/04/2022
76	Ireland	SA.102990	TCF: Tillage and Protein Crop Scheme under the Temporary Crisis Framework	20/06/2022
77	Ireland	SA.103406	TCF: Fodder Support Scheme	28/06/2022
78	Ireland	SA.103569	Ireland - Ukraine Enterprise Crisis Scheme	11/08/2022
79	Ireland	SA.104737	TCF: Fodder Support Scheme 2023	11/11/2022
80	Ireland	SA.104655	TCF - Temporary Business Energy Support Scheme	24/11/2022
81	Ireland	SA.104761	TCF: Ukraine Credit Guarantee Scheme	12/12/2022
82	Ireland	SA.105276	SA.105276 (2022/N) – Ireland - TCF: Amendments to SA.103569 - Ukraine Enterprise Crisis Scheme	21/12/2022
83	Italy	SA.102522	TCF: Umbrella scheme for the agricultural, forestry and fisheries and aquaculture sectors in compliance with the Temporary Crisis Framework	22/04/2022
84	Italy	SA.102896	TCF: Umbrella scheme for the measures to support undertakings active in the agricultural, forestry, fishery and aquaculture sectors in compliance with the Temporary Crisis Framework	18/05/2022
85	Italy	SA.103166	Garanties sur les prêts en faveur des entreprises agricoles, de pêche et aquacoles affectées par la hausse du coût de l'énergie	22/06/2022
86	Italy	SA.103289	Partial exemption from the payment of social security contribution in disadvantaged areas affected by the Russian aggression against Ukraine	24/06/2022
87	Italy	SA.103480	TCF - IT - Emergency support scheme for haulage operators	14/07/2022
88	Italy	SA.103464	TCF: Direct grants to companies with commercial relationships in Ukraine, Russia, and Belarus affected by the current crisis	19/07/2022
89	Italy	SA.103286	TCF: SACE guarantee scheme	19/07/2022
90	Italy	SA.103403	TCF: Loan guarantees for SMEs and small mid-caps	29/07/2022
91	Italy	SA.103316	COVID-19/TCF: Aid scheme to support investments in the areas affected by the seismic events of 2009 and 2016 (RRF)	03/08/2022
92	Italy	SA.103966	TCF - Italy - Emergency Support Scheme for Haulage Operators (amend SA.103480)	10/08/2022
93	Italy	SA.103965	TCF: Amendment of SA.102896 (2022/N)	18/08/2022
94	Italy	SA.104055	TCF: Umbrella scheme for the agricultural, forestry and fisheries and aquaculture sectors in compliance with the Temporary Crisis Framework (amendments to SA.102522 (2022/N))	19/08/2022
95	Italy	SA.102721	TCF - Framework scheme Friuli Venezia Giulia	22/08/2022
96	Italy	SA.104161	TCF: Direct grants to companies with commercial relationships in Ukraine, Russia, and Belarus affected by the current crisis.	14/09/2022
97	Italy	SA.103947	TCF: Scheme to support undertakings active in	21/09/2022

			Lombardy affected by the Russian aggression against Ukraine	
<b>98</b>	Italy	SA.104242	TCF: Direct grants to companies relying on supply from Ukraine, Russia and Belarus affected by the current crisis.	28/09/2022
<b>99</b>	Italy	SA.103752	TCF - Italy: Emergency Support Scheme for Haulage Operators using liquefied natural gas (LNG) as fuel	13/10/2022
<b>100</b>	Italy	SA.104501	TCF: Guarantees on loans in favour of agricultural, forestry, fishery and aquaculture undertakings having experienced an increase in energy costs (amendments to SA.103166 (2022/N))	21/10/2022
<b>101</b>	Italy	SA.104566	Italy TCF: Emergency Support for Bus Transport Operators	25/10/2022
<b>102</b>	Italy	SA.104460	TCF: Support for the productive system in the Campania Region to address liquidity needs after Russia's aggression against Ukraine	26/10/2022
<b>103</b>	Italy	SA.104358	TCF: Fund for the support of enterprises affected by the Ukrainian crisis	17/11/2022
<b>104</b>	Italy	SA.104492	TCF: Exemption from the contribution paid by employers	24/11/2022
<b>105</b>	Italy	SA.104509	TCF: Marche Region scheme for the support of the economy after the Russian aggression against Ukraine	25/11/2022
<b>106</b>	Italy	SA.104888	TCF: Umbrella scheme for the agricultural, forestry and fisheries and aquaculture sectors in compliance with the Temporary Crisis Framework (amendments to SA.102522 (2022/N))	25/11/2022
<b>107</b>	Italy	SA.104881	TCF: Guarantees on loans in favour of agricultural, forestry, fishery and aquaculture undertakings having experienced an increase in energy costs (amendments to SA.103166 (2022/N))	28/11/2022
<b>108</b>	Italy	SA.104962	Amendments to scheme SA.103289 (2022/N) "Decontribuzione SUD - Agevolazione contributiva per l'occupazione in aree svantaggiate colpite dalla aggressione militare russa in Ucraina" (partial exemption from the payment of social security contribution in disadvantaged areas affected by the Russian aggression against Ukraine)	06/12/2022
<b>109</b>	Italy	SA.105080	Prolongation of SA.103316	14/12/2022
<b>110</b>	Italy	SA.105007	TCF: Emergency Support Scheme for Haulage Operators. Amendment.	14/12/2022
<b>111</b>	Italy	SA.105191	TCF: Umbrella scheme for the measures to support undertakings active in the agricultural, forestry, fishery and aquaculture sectors in compliance with the Temporary Crisis Framework (amendments to SA.102896 (2022/N))	16/12/2022
<b>112</b>	Italy	SA.104722	TCF: Limited amounts of aid for undertakings and modifications to SA.103286	20/12/2022



<b>113</b>	Italy	SA.105124	TCF: Loan guarantees for SMEs and small mid-caps (amendments to SA.103403)	20/12/2022
<b>114</b>	Latvia	SA.103359	TCF: Liquidity support in the form of subsidised loans	01/08/2022
<b>115</b>	Latvia	SA.103400	TCF: Guarantees on loans and leases	01/08/2022
<b>116</b>	Latvia	SA.103707	TCF: Procedures for the granting of State aid to mitigate the negative economic consequences in the agricultural products processing sector	22/08/2022
<b>117</b>	Latvia	SA.104754	TCF: State aid to mitigate negative economic impact on pig and poultry production and covered area vegetable production	14/11/2022
<b>118</b>	Latvia	SA.104408	TCF - Latvia: Support for energy-intensive processing industry merchants to mitigate the economic consequences of Russia's military aggression against Ukraine	25/11/2022
<b>119</b>	Latvia	SA.104794	TCF: Procedures for the granting of State aid to mitigate the negative economic consequences in the agricultural products processing sector (Amendments to State Aid SA.103707 (2022/N))	02/12/2022
<b>120</b>	Lithuania	SA.102772	TCF: Individual guarantees on loans and leases	02/06/2022
<b>121</b>	Lithuania	SA.103706	TCF: Guarantees and loans to support economic entities	23/08/2022
<b>122</b>	Lithuania	SA.103781	TCF Lithuania: Investment of legal entities in changing or reducing the use of fossil fuels and / or the use of renewable energy resources	30/08/2022
<b>123</b>	Lithuania	SA.104109	TCF: The Incentive Financial Instrument 'Direct Loans to Business Operators Affected by War'	21/09/2022
<b>124</b>	Lithuania	SA.104717	The measure "Subsidies to Enterprises Operating in Highly Affected Sectors to Mitigate the Effects of Energy Price Increase"	14/11/2022
<b>125</b>	Lithuania	SA.104975	TCF: Temporary State Aid for apple producers	12/12/2022
<b>126</b>	Lithuania	SA.105108	TCF: Guarantees and loans to support economic entities	14/12/2022
<b>127</b>	Lithuania	SA.104853	TCF: Individual guarantees on loans and leases	14/12/2022
<b>128</b>	Lithuania	SA.104854	TCF: The Incentive Financial Instrument "Direct Loans to Business Operators Affected by War"	14/12/2022
<b>129</b>	Luxembourg	SA.102724	TCF: Aid scheme in the form of guarantees for the Luxembourg's economy following Russia's aggression against Ukraine	20/05/2022
<b>130</b>	Luxembourg	SA.103096	TCF - Luxembourg - Aid scheme for companies particularly affected by the rise in energy prices	26/07/2022
<b>131</b>	Luxembourg	SA.104396	Modification of SA.103096 TCF - Luxembourg - Aid scheme for companies particularly affected by the rise in energy prices	11/11/2022
<b>132</b>	Luxembourg	SA.104945	TCF: Prolongation and amendment of guarantee scheme SA.102724	07/12/2022
<b>133</b>	Malta	SA.102758	TCF: MDB Subsidised Loans Scheme ("SLS")	18/05/2022
<b>134</b>	Malta	SA.102970	TCF: Liquidity Support Guarantee Scheme and Interest Rate Subsidy Scheme	13/06/2022
<b>135</b>	Malta	SA.103223	TCF: Financial compensation for fishers due to the increase of fuel prices caused by the Russian aggression against Ukraine	16/06/2022
<b>136</b>	Malta	SA.103449	TCF: Fertiliser Scheme to Land Farmers	14/07/2022

<b>137</b>	Malta	SA.104238	State aid measure to support undertakings involved in fast ferry passenger sea transport between Malta and Gozo	07/10/2022
<b>138</b>	Malta	SA.104832	TCF: Amendments schemes SA.102758 and SA.102970	28/11/2022
<b>139</b>	Malta	SA.104983	TCF: State aid measure to support undertakings providing fast ferry passenger sea transport between Malta and Gozo	02/12/2022
<b>140</b>	Malta	SA.105206	TCF: Amendments to schemes SA.103223 (2022/N) and SA.103449 (2022/N)	19/12/2022
<b>141</b>	Netherlands	SA.104994	TCF - Temporary energy price limit	16/12/2022
<b>142</b>	Poland	SA.102555	TCF - Aid to agricultural producers in connection with the increase in fertilizer prices following the aggression against Ukraine by Russia	19/04/2022
<b>143</b>	Poland	SA.102866	TCF - Guarantees on loans	30/06/2022
<b>144</b>	Poland	SA.102867	TCF - Guarantees on factoring products	30/06/2022
<b>145</b>	Poland	SA.103176	TCF: Aid in the form of loans	30/06/2022
<b>146</b>	Poland	SA.103175	Grants or loans from the funds of operational programmes for 2014-2020 to support the Polish economy in connection with the aggression against Ukraine by Russian Federation	08/08/2022
<b>147</b>	Poland	SA.103902	TCF - Amendment to scheme SA.102866 "Guarantees on loans"	11/08/2022
<b>148</b>	Poland	SA.103903	TCF: Amendment of case SA.102867 "Guarantees on factoring products"	11/08/2022
<b>149</b>	Poland	SA.105214	TCF: State aid measures (second amendment to SA.102866, SA.102867 and first amendment to SA.103176)	20/12/2022
<b>150</b>	Poland	SA.105229	TCF: Grants or loans from the funds of Operational Programmes for 2014-2020 to support the Polish economy in connection with the aggression against Ukraine by the Russian Federation (amendments to SA.103175)	20/12/2022
<b>151</b>	Poland	SA.104932	TCF: Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices in Poland incurred in 2022	20/12/2022
<b>152</b>	Poland	SA.105347	TCF: Subsidised loan scheme for undertakings in the gas market	22/12/2022
<b>153</b>	Portugal	SA.102757	TCF: Portugal - Limited amounts of aid in Portugal for the gas intensive industry 2022	03/06/2022
<b>154</b>	Portugal	SA.103207	TCF - Portugal - Extraordinary and exceptional support for the undertakings of road freight transport for hire or reward	20/06/2022
<b>155</b>	Portugal	SA.104277	TCF: Limited amounts of aid for the gas intensive industry 2022	03/10/2022
<b>156</b>	Portugal	SA.104549	TCF - Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices for the gas intensive industry	09/12/2022
<b>157</b>	Romania	SA.103249	Aid to undertakings involved in road transport of goods and persons	28/06/2022
<b>158</b>	Romania	SA.103626	TCF: The IMM Invest Plus State aid scheme	09/09/2022
<b>159</b>	Romania	SA.104273	TCF: Framework State aid scheme in the context	17/11/2022

			of the economic crisis caused by Russia's aggression against Ukraine	
<b>160</b>	Romania	SA.104570	TCF: Support for operators in the milling industry, oils and fats, dairy products and animal feed preparations	18/11/2022
<b>161</b>	Romania	SA.105291	Aid to undertakings involved in road transport of goods and persons (amendments to SA.103249)	21/12/2022
<b>162</b>	Slovakia	SA.104395	TCF - State aid scheme to support the food sector following Russia's aggression against Ukraine	12/10/2022
<b>163</b>	Slovakia	SA.104815	TCF: State aid scheme to support primary agricultural production, fisheries and aquaculture	23/11/2022
<b>164</b>	Slovakia	SA.104846	TCF: State aid scheme to support undertakings following Russia's aggression against Ukraine	30/11/2022
<b>165</b>	Slovakia	SA.105113	TCF: State aid scheme to support primary agricultural production, fisheries and aquaculture (amendments to SA.104815 (2022/N))	09/12/2022
<b>166</b>	Slovakia	SA.104872	TCF - Slovakia: Support scheme for enterprises operating in primary agricultural production in the context of Russia's aggression against Ukraine	20/12/2022
<b>167</b>	Slovenia	SA.102841	TCF-Soft loans to support the economy following the aggression against Ukraine by Russia	30/06/2022
<b>168</b>	Slovenia	SA.103115	TCF: Aid to the livestock sector	13/07/2022
<b>169</b>	Slovenia	SA.103664	TCF: Aid to the agricultural sector due to the high prices of energy products used for agricultural machinery	22/07/2022
<b>170</b>	Slovenia	SA.103723	TCF: Aid to the marine commercial fishing sector due to the high prices of energy products used to power fishing vessels	27/07/2022
<b>171</b>	Slovenia	SA.103726	TCF: Aid to the agricultural sector due to the high prices of reproductive material used for primary agricultural production	28/07/2022
<b>172</b>	Slovenia	SA.103930	TCF: Amendment of SA.103726 (2022/N)	08/08/2022
<b>173</b>	Slovenia	SA.104110	TCF: Amendments to the Protocol of SID bank on State aid in accordance with the TCF	13/09/2022
<b>174</b>	Slovenia	SA.104116	TCF - Slovenia - Aid to the economy due to high increases in electricity and natural gas prices	10/10/2022
<b>175</b>	Slovenia	SA.105106	TCF: Aid to the beekeeping sector due to the high prices of reproductive material	12/12/2022
<b>176</b>	Spain	SA.102650	TCF: Aid for the increase in the costs of milk producers	28/04/2022
<b>177</b>	Spain	SA.102645	TCF: Aid to fishing vessel companies	02/05/2022
<b>178</b>	Spain	SA.102615	TCF - Spain - Aid to transport sector due to increase in fuel prices	04/05/2022
<b>179</b>	Spain	SA.102613	TCF - Limited amounts of aid in Spain for the gas intensive industry 2022	10/05/2022
<b>180</b>	Spain	SA.102616	TCF: Aid to private rail freight undertakings	13/05/2022
<b>181</b>	Spain	SA.102711	TCF - National Guarantee Scheme	02/06/2022
<b>182</b>	Spain	SA.102771	TCF: Umbrella scheme	10/06/2022
<b>183</b>	Spain	SA.103941	TCF: Modifications to SA.102771, SA.102711, SA.102645, SA.102616 and SA.102615	18/08/2022

<b>184</b>	Spain	SA.104884	TCF: Modifications to SA.102771 (as amended by SA.103941)	12/12/2022
<b>185</b>	Spain	SA.105056	TCF: Second amendment to the National Guarantee Scheme (SA.102711)	20/12/2022
<b>186</b>	Sweden	SA.103489	TCF: Aid for agriculture due to increased costs	06/07/2022
<b>187</b>	Sweden	SA.103543	TCF: Aid for fisheries due to increased costs	07/07/2022

## ANNEX 4

### State aid decisions adopted directly under the Treaty in the context of aggression against Ukraine by Russia by country

Nr	Member State	Case	Title	Decision date
1	Finland	SA.104831	Solvency support in favour of Meyer Turku Oy	20/12/2022
2	Germany	SA.103662	Temporary lignite power supply reserve to save gas	30/09/2022
3	Germany	SA.105001	Recapitalisation of SEFE GmbH	20/12/2022
4	Germany	SA.103791	Recapitalisation of Uniper SE	20/12/2022
5	Italy	SA.103757	TCF: State guarantee for reinsurance of natural gas and electricity trade credit risk	30/09/2022
6	Netherlands	SA.103012	Gas storage Bergermeer	12/07/2022
7	Portugal	SA.102569	TCF - Portugal - MIBEL fossil cost adjustment mechanism	08/06/2022
8	Spain	SA.102454	TCF - Spain - MIBEL fossil fuel cost adjustment mechanism	08/06/2022