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Report on Competition Policy 2023

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1. Introduction

The Annual Competition Report of 2023 is addressed by the European Commission (Commission) to the European Parliament, the Council of the European Union, the European Economic and Social Committee and the Committee of the Regions. It describes key developments in EU competition policy and enforcement during 2023.

The year 2023 was another challenging year for the EU. Russia's continued war of aggression against Ukraine and increasing geo-political tensions reminded us again how interconnected the world is, not least the EU with its neighbouring countries. The Commission took swift and resolute action, including measures in State aid, to alleviate the negative effects on the EU economy caused by these events.

There were also positive developments in 2023, notably the fact that the EU economy proved resilient to the impact of Russia's continued aggression towards Ukraine. By the end of 2023, EU energy prices fell below their peak in 2022. EU competition policy was one of many tools successfully used for the continued crisis response, the economic recovery, as well as delivering on the green and digital transitions.

The digital revolution has expanded the global reach of firms, not only for ´Big Techs´ but for all companies. Digitalisation drives economic growth across all economic sectors. But rapid market developments create new challenges for competition enforcers. One of the main challenges the Commission faces – in both antitrust and merger control enforcement – is how to define relevant markets when confronted with dynamic developments in markets. This is why the Commission continued working on a new Market Definition Notice in 2023. These market developments and challenges also led the Commission to launch an evaluation of its investigative and decision-making powers for the enforcement of Articles 101 and 102 TFEU in 2022 as set out in Regulation 1/2003[1]. This work continued in 2023. The Commission is also drafting new Guidelines on exclusionary abuses of dominance under Article 102 TFEU.

Close cooperation between competition authorities across jurisdictions is more important than ever. In November 2023, the Commission ordered *Illumina* to unwind its acquisition of *GRAIL*[2], both US companies. Throughout the case, the Commission stayed in close contact with the U.S. Federal Trade Commission that had similar competition concerns.

State aid policy was also challenged by global and political trends. Building on the Temporary Crisis Framework[3], the Commission adopted the Temporary Crisis and Transition Framework (TCTF)[4] to

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[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1.
[2] Case M.10939 - *Illumina/GRAIL*.
[3] 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.

also accommodate support measures in sectors which are key for the transition to a net-zero economy, in line with the Green Deal Industrial Plan. While geopolitical developments may challenge EU interests, the EU must remain true to the fundamental logic of State aid control - to prevent that State aid undermines the Single Market. Competitiveness comes from competition, not subsidies, and public funds should not finance investments that the private sector would be able to make itself. This is why the TCTF rules that enable support to key sectors are limited in time and include strict safeguards. The partial phase-out of the TCTF's crisis sections in late 2023 and the scheduled phase-out of the remaining crisis sections in 2024 send a strong signal to Member States and companies to this effect. In response to a request from the European Council that the Commission 'report to the Council on the impact of the current State aid policy on the integrity of the Single Market as well as on the EU's global competitiveness'[5]. This Report contains a comprehensive overview and analysis of State aid and its impact on competition in the Single Market and on EU competitiveness (see Section 6).

In 2023, the Commission has shown when and how EU competition policy must adapt to keep EU markets fair, competitive, and open for the benefit of businesses and consumers alike. The Commission will continue to do so going forward.

Moreover, as of May 2023, the Commission applies the new rules of the Digital Markets Act (DMA)[6] to keep digital markets open and contestable. A full report of the activities undertaken by the European Commission in the context of the DMA in 2023 is published in parallel to this report, as foreseen in Article 35 DMA. And in October 2023, the notification obligations under the Foreign Subsidies Regulation (FSR)[7] entered into force to address market distortions caused by foreign subsidies.

2. Using the State aid rules and the Recovery and Resilience Facility to mitigate the negative effects of external economic shocks

2.1. Temporary Crisis and Transition Framework

In March 2022, the Commission adopted the Temporary Crisis Framework (TCF)[8] to enable Member States to support the economy in the context of Russia's war of aggression against Ukraine. The original TCF included State aid intended to deal with the immediate economic crisis caused by

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[4] Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia 2023/C 101/03, C/2023/1711, OJ C 101, 17.3.2023, p. 3.

[5] European Council meeting (26 and 27 October 2023), EUCO 14/23, point 22(g).

[6] 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.

[7] 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.

[8] 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.

Russia's invasion of Ukraine, for example liquidity support in the form of State guarantees and subsidised loans, aid to compensate for high energy prices, and measures aimed at supporting electricity demand reduction. The TCF was amended twice – in July 2022 and October 2022 – as the crisis developed.

In March 2023, the Commission adopted the Temporary Crisis and Transition Framework[9]. This Framework not only enables crisis aid but also enables Member States to support key sectors for the transition to a net-zero economy, in line with the Green Deal Industrial Plan.

In particular, the TCTF (i) prolongs until 31 December 2025 the possibility for Member States to accelerate the roll-out of schemes for renewable energy, energy storage and for the decarbonisation of industrial production processes, (ii) amends the scope of such measures to make easier for Member States to design such schemes and make them more effective, and (iii) introduces new measures, applicable until 31 December 2025, to further accelerate investments in key sectors for the transition towards a net-zero economy. The TCTF enables investment support for the manufacturing of strategic equipment, namely batteries, solar panels, wind turbines, heat pumps, electrolysers, and carbon capture usage and storage, as well as for production of key components and for production and recovery of related critical raw materials, through schemes or individual aid up to the amount of subsidy which the beneficiary could receive for an equivalent investment in a third country jurisdiction outside the EEA, or the amount needed to incentivise the company to locate the investment in the EEA (the so-called 'funding gap') whichever is the lowest. .

In November 2023, after consultation of the Member States, the Commission prolonged until 30 June 2024 sections enabling Member States to grant limited amounts of aid (sections 2.1) and aid to compensate for high energy prices (section 2.4), notably in view of the remaining vulnerability of energy markets[10] where energy-intensive industries are particularly sensitive.

In 2023, the Commission adopted 220 decisions (of which 91 amendment decisions) under the TCF and TCTF, approving 147 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 77.94 billion. For more information about State Aid granted under these two instruments please refer to Section 6 below.

2.2. The phasing out of the State Aid Covid Temporary Framework supporting the economy in the context of the COVID-19 outbreak was completed

With the effects of the coronavirus outbreak abating, the Commission started in 2023 to phase out the Temporary Framework supporting the economy in the context of the COVID-19 outbreak

[9] Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 101, 17.3.2023, p. 3.

[10] Communication from the Commission – Amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C, C/2023/1188, 21.11.2023, p. 1.

('Temporary Framework for State aid measures')[11]. Limited sections were given a later expiry date, enabling investment and solvency support measures to continue until 31 December 2023[12]. In addition, the Temporary Framework enabled a flexible transition, with clear safeguards in place, especially for the conversion and restructuring of debt instruments, like loans and guarantees, into other forms of assistance, such as direct grants, until 30 June 2023[13].

2.3. Implementing the Recovery and Resilience Facility

Implementation of the Recovery and Resilience Facility (RRF)[14] – the centrepiece of the NextGenerationEU initiative – continued in 2023[15]. It aims, next to and on top of Cohesion Policy, to promote cohesion among Member States by mitigating the social and economic fallout of the COVID-19 pandemic to better prepare the EU for future challenges, notably by supporting the green and digital transitions.

Most of the measures financed by the RRF do not constitute State aid. Of those that do, the majority can be implemented directly by the Member States, either under a block-exemption regulation[16] or under a *de minimis* regulation[17].

Still, several measures were notified for the Commission's prior authorisation. To this end, the Commission published in April 2023 updated State aid guiding templates[18] to assist Member States design, in line with State aid rules, support measures to be included in their national Recovery and Resilience Plans (RRPs). The updated templates make it easier for Member States to create State aid measures that contribute further to the implementation of the European Green Deal, while reducing dependence on Russian fossil fuels and accelerating the green transition as set out in the REPowerEU Plan. In 2023, the Commission adopted more than 50 State aid decisions concerning RRF-funded measures.

3. Ensuring that competition rules remain fit for the future – Progress on an extensive policy agenda

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[11] See: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2980

[12] Communication from the Commission: Amendment to the Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 423, 7.11.2022, p. 9.

[13] Communication from the Commission Sixth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance 2021/C 473/01, C/2021/8442, OJ C 473, 24.11.2021, p. 1.

[14] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3131

[15] See: https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html?lang=en

[16] Commission Regulation (EU) No 651/2014 of 17 June 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, as last amended by Commission Regulation (EU) 2021/1237, OJ L 270, 29.7.2021, p. 39.

[17] Commission Regulation (EU) No1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1.

[18] See: https://competition-policy.ec.europa.eu/state-aid/legislation/rrf-guiding-templates_en

3.1. Updating antitrust and merger rules and guidance

Rules on horizontal cooperation agreements adopted

The Commission adopted in June 2023 revised Horizontal Block Exemption Regulations on Research and Development (R&D)[19] and Specialisation agreements[20] (together HBERs), accompanied by revised Horizontal Guidelines[21]. The revised rules provide up-to-date guidance to help businesses assess the compatibility of their cooperation agreements with EU competition rules, including types of cooperation that can contribute to the digital and green transitions. The HBERs exempt certain pro-competitive R&D and specialisation agreements from the prohibition under Article 101(1) TFEU. Among other changes, the revised rules expand the scope of the Specialisation Block Exemption Regulation to cover multi-party agreements for more types of production agreements and provide more flexibility for the calculation of market shares.

The revised Horizontal Guidelines have been updated to reflect recent case law and enforcement practice. They contain expanded guidance on information exchange, including digital forms of exchange, and on joint purchasing, including the distinction between legitimate joint purchasing and buyer cartels. A new chapter provides guidance on the application of the competition rules to sustainability agreements.

[19] Commission Regulation (EU) 2023/1066 of 1 June 2023 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 143, 2.6.2023, p. 9.
[20] Commission Regulation (EU) 2023/1067 of 1 June 2023 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 143, 2.6.2023, p. 20.
[21] Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 259, 21.7.2023, p. 1.

Source: European Commission.

Motor Vehicle Block Exemption Regulation prolonged

The EU has a specific regime for vertical agreements in the motor vehicle sector, the Motor Vehicle Block Exemption Regulation (MVBER)[22], which was set to expire on 31 May 2023. In April 2023, the Commission prolonged the MVBER for five years until 31 May 2028. The Commission limited the prolongation to five years to be able to react in a timely manner to market developments, such as those resulting from vehicle digitalisation, electrification, and new mobility patterns.

The Commission also updated the Supplementary Guidelines[23] for the sector. Vehicle-generated data is becoming an increasingly important factor of competition for repair and maintenance operators. The revised Guidelines will help companies in the automotive sector assess the compatibility of their vertical agreements with EU competition rules, while ensuring that aftermarket operators, including garages, continue to have access to vehicle-generated data necessary for repair and maintenance.

[22] Commission Regulation (EU) No 461/2010 of 27 May 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 as amended by Commission Regulation (EU) 2023/822 of 17 April 2023 on amending Regulation (EU) No 461/2010 as regards its period of application, OJ L 102I, 17.4.2023, p. 1.
[23] Commission Notice: 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 as amended by Communication from the Commission Amendments to the Commission Notice – 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 2023/C 133 I/01, OJ C 133I , 17.4.2023, p. 1.

Merger simplification package adopted

In April 2023, the Commission adopted the Merger simplification package. It includes: (i.) a revised Implementing Regulation[24], (ii.) a Notice on Simplified Procedure[25], and (iii.) a Communication on the transmission of documents[26]. The package aims to simplify and expand the scope of the Commission's review process of unproblematic mergers (simplified cases). It also reduces the amount of information required for notifying transactions and introduces electronic notifications as default. The Notice lists in more detail the circumstances where the Commission may investigate a case under the normal review procedure even though it formally qualifies for simplified treatment. The merger simplification rules entered into force on 1 September 2023.

Guidelines on sustainability agreements in agriculture adopted

Article 101 TFEU prohibits agreements between companies that restrict competition, such as those between competitors that lead to higher prices or reduced quantities. However, Article 210a of Regulation 1308/2013 (CMO Regulation)[27] excludes certain restrictive agreements in the agricultural sector from the scope of this general prohibition when such agreements are indispensable to achieve sustainability standards. After a public consultation in the first half of 2023[28] on the draft Guidelines on article 210a of the CMO Regulation[29], the Commission adopted the Guidelines in December 2023. The Guidelines aim to facilitate the adoption of sustainability agreements in agriculture by explaining how to fulfil the conditions for exclusion set out in Article 210a of the CMO Regulation and by providing concrete examples.

No extension of the block exemption for liner shipping consortia

Liner shipping services involve the regular, scheduled carriage of non-bulk cargo transport along a specific route. They are regularly provided by several shipping companies organised in consortia.

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[24] Commission Implementing Regulation (EU) [2023/914] implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

[25] Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 160, 5.5.2023, p. 1.

[26] Communication from the Commission – Communication pursuant to Articles 3(2), 13(3), 20, and 22 of Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ C 160, 5.5.2023, p. 1.

[27] Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union, OJ L 435, 6.12.2021, p. 262.

[28] Public consultation on the draft guidelines for sustainability agreements in agriculture, from 10.01.2023 to 24.04.2023, see: https://competition-policy.ec.europa.eu/public-consultations/2023-sustainability-agreements-agriculture_en

[29] See: https://competition-policy.ec.europa.eu/about/reaching-out/sustainability-guidelines-agri-food-supply-chain_en

The Consortia Block Exemption Regulation ('CBER') allows liner shipping companies to collaborate within certain boundaries without violating EU competition law. At the time of adoption in 2009, the primary objective of this exemption was to facilitate cooperation among shipping lines to enhance operational efficiency, optimise vessel utilisation, and improve service quality. However, after evaluation, the Commission found that the number of consortia covered by the CBER was relatively low. The CBER's effectiveness and efficiency is therefore limited. The Commission decided not to extend the block exemption and let it expire on 25 April 2024[30].

Preparations started for Guidelines on the application of Article 102 TFEU

In March 2023, the Commission published a call for evidence for the future Guidelines on the application of Article 102 TFEU to exclusionary conduct[31]. The Guidelines will reflect EU case law as well as the extensive experience gained by the Commission in the enforcement of Article 102 TFEU. The Commission will publish a draft of the Guidelines for public consultation and will carefully consider stakeholders' submissions.

Evaluation of Regulation 1/2003 continued

Regulation 1/2003[32] and its implementing act, Regulation 773/2004[33] establish a procedural framework aimed at ensuring the effective and uniform application of Articles 101 and 102 TFEU in the EU. New challenges for the enforcement of competition rules have emerged over time, for example related to the digitalisation of the economy and the increasing complexity of antitrust investigations. Following a public consultation in 2022[34], the Commission continued its evaluation in 2023. To this end, the Commission organised a workshop with a wide variety of stakeholders in October 2023. The Commission has also commissioned an evaluation support study. Throughout the evaluation, the Commission is liaising with the NCAs.

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[30] Communication to the Commission Expiry of Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81 (3) of the Treaty of the certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), 10.10.2023, C(2023) 6700 final.

[31] Call for Evidence regarding guidelines on exclusionary abuses by dominant undertakings, from 27.03.2023 to 24.04.2023, see: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13796-EU-competition-law-guidelines-on-exclusionary-abuses-by-dominant-undertakings_en

[32] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1.

[33] Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18.

[34] Public consultation on the EU antitrust procedural rules - evaluation, from 30.6.2022 to 6.10.2022, see: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation_en

Evaluation of the rules on technology transfer agreements

In November 2022, the Commission launched an evaluation of the Technology Transfer Block Exemption Regulation (TTBER)[35] and the accompanying guidelines[36]. This work continued throughout 2023. The evaluation will allow the Commission to decide whether the TTBER should be allowed to expire, be prolonged, or revised.

3.2. Updating State aid rules and guidance

The General Block Exemption Regulation amended

In June 2023, the Commission adopted a targeted amendment to the General Block Exemption Regulation (GBER) to further simplify and speed up support for the EU's green and digital transitions, while ensuring the functioning of the Single Market[37]. The revised GBER grants Member States more flexibility to design and implement State support measures in key sectors for the transition to climate neutrality and to a net-zero industry. In addition, it will help speeding up investment and financing for Clean Tech production in the EU, in line with the Green Deal Industrial Plan[38].

The revised GBER increases and streamlines the possibilities to grant State aid for environmental protection and energy. Moreover, it facilitates the support of Important Projects of Common European Interest (IPCEI) in the research and development fields and extends the possibilities for training and reskilling employees. It also facilitates the granting of aid in form of regulated prices for electricity, gas or heat by including this category into the scope of the GBER. The revised GBER also increases the notification thresholds for environmental aid as well as Research, Development and Innovation (RDI) aid. In addition, the revised GBER clarifies and streamlines the possibilities for risk finance aid for small and medium-sized enterprises (SMEs). The provisions concerning fixed and mobile broadband networks are also clarified and expanded in key areas, such as the possibility to finance active mobile equipment and new provisions for backhaul networks. The GBER was prolonged until the end of 2026 and the provisions of the GBER have been aligned with the revised Regional Aid Guidelines, the Climate, Environmental protection and Energy aid Guidelines, the Risk Finance Guidelines, the Research, Development and Innovation Framework and the Broadband Guidelines.

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[35] Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) TFEU to categories of technology transfer agreements, OJ L 93, 28.3.2014, p. 17.

[36] Communication from the Commission — Guidelines on the application of Article 101 TFEU to technology transfer agreements, OJ C 89, 28.3.2014, p. 3.

[37] Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 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 (Text with EEA relevance), C/2023/4278, OJ L 167, 30.6.2023, p. 1.

[38] 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, A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final.

Revised general de minimis regulation adopted

In December 2023, the Commission adopted the new general *de minimis* regulation[39], while the previous de minimis regulation expired on 31 December 2023. The Regulation exempts small aid amounts from the scope of EU State aid control because they are deemed to have no effect on trade between Member States and not to distort or threaten to distort competition. The exemption from State aid control for small aid amounts significantly reduces the administrative burden for companies - in particular SMEs - and Member States. The main changes are an increased ceiling of EUR 300 000 over three years to adjust to inflation and the introduction of a mandatory *de minimis* register at national or EU level to increase transparency. While under the previous regulation, businesses were required to keep track of *de minimis* aid received, the new *de minimis* Regulation includes the obligation for all Member States to provide as from 2026 complete information on de minimis aid granted in a central register at national or EU level and to check that any new grant of aid does not exceed the relevant ceiling.

Revised SGEI de minimis regulation adopted

In December 2023, the Commission adopted Regulation (EU) 2023/2832 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (SGEI)[40]. This Regulation entered into force on 1 January 2024 and replaces Regulation (EC) No 360/2012[41], which expired on 31 December 2023. The Commission decided to increase the SGEI de minimis aid threshold to EUR 750 000 per undertaking providing an SGEI over any three-year period.

Revised State aid rules for the agricultural, forestry, fishery, and aquaculture sectors adopted

In January 2023, the revised Agricultural Block Exemption Regulation (ABER) and Fishery Block Exemption Regulation (FIBER), and the Guidelines for State aid to the agricultural and forestry sectors and in rural areas (Agricultural Guidelines) entered into force[42]. The Guidelines for State aid in the fishery and aquaculture sector (Fisheries Guidelines), endorsed by the Commission in December 2022, apply from April 2023[43].

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[39] Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L, 2023/2831, 15.12.2023, p.1.
[40] Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L, 2023/2832, 15.12.2023, p.1.
[41] Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest Text with EEA relevance, OJ L 114, 26.4.2012, p. 8.
[42] 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.
[43] Communication from the Commission - Guidelines for State aid in the fishery and aquaculture sector, OJ C 107, 23.3.2023, p. 1.

The ABER and the FIBER extend the scope of block-exempted measures. The new rules block-exempt up to 50% of cases which had to be notified under the old framework. The new Agricultural Guidelines and Fisheries Guidelines reflect the Commission's case experience as well as the current EU strategic priorities, in particular the Common Agricultural Policy, the Common Fisheries Policy, the European Maritime, Fisheries and Aquaculture Fund and the European Green Deal, the Farm to Fork Strategy as well as the Biodiversity Strategy. The revised Fisheries Guidelines help Member States to meet the ambitious EU green targets by improving energy efficiency and mitigating the effect of climate change.

In October 2023, the Commission adopted an amendment to the *de minimis* regulation for the fishery and aquaculture sector[44]. The revised regulation increases the *de minimis* aid ceiling per company over three years, from EUR 30 000 to EUR 40 000. Moreover, the processing and marketing of fishery and aquaculture products are no longer covered by the Fishery *de minimis* Regulation but by the General *de minimis* Regulation.

IPCEI Code of good practices adopted

The IPCEI Communication[45] sets the eligibility and compatibility criteria that the Commission applies in the assessment of State aid granted for Important Projects of Common European Interest (IPCEI). Following the assessment and subsequent approval of State aid for a number of IPCEI, the Member States and the Commission gained experience in assessing State aid for IPCEI. Based on this experience, the Commission prepared in May 2023 a code of good practices for the design of IPCEI[46], allowing a streamlined assessment. This Code does not express an applicable legal position or constitute a legally binding approach for the IPCEI's direct participants. It also does not create any further rights, nor imposes any new obligations.

Joint European Forum for Important Projects of Common European Interest

In the Autumn of 2023, the Commission launched the Joint European Forum for Important Projects of Common European Interest (JEF-IPCEI)[47], which met for the first time on 20 October 2023. The forum - a partnership between the Commission and the Member States - covers the entire IPCEI lifecycle and aims to increase the effectiveness of the design, assessment (based on existing State Aid rules) and implementation of IPCEI as well as identifying areas of strategic EU interest for potential

[44] Commission Regulation (EU) 2023/2391 of 4 October 2023 amending Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 360/2012 as regards de minimis aid for the processing and marketing of fishery and aquaculture products, and Regulation (EU) No 717/2014 as regards the total amount of de minimis aid granted to a single undertaking, its period of application and other matters, OJ L 2391, 05.10.2023, p.1.

[45] 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 2021/C 528/02OJ C 528, 30.12.2021, p. 10.

[46] DG COMP Code of good practices for a transparent, inclusive, faster design and assessment of IPCEIs, 17 May 2023, see: https://competition-policy.ec.europa.eu/system/files/2023-05/IPCEIs_DG_COMP_code_of_good_practices.pdf

[47] Joint European Forum for IPCEI - European Commission (europa.eu)

future IPCEI. The JEF-IPCEI works towards these objectives by better aligning potential new IPCEI with the policy objectives of the EU industrial strategy. The JEF-IPCEI will meet several times per year.

Interpretative Guidelines on Regulation (EU) No 1370/2007 adopted

In 2023, the Commission adopted a revised version of the Interpretative Guidelines on Regulation (EU) No 1370/2007 on land public service obligations[48]. The aim of the guidelines is to provide further guidance to Member States and stakeholders on the application of several provisions of that Regulation, in view of the changes brought about by the 4th Railway Package and the relevant case law of EU Courts.

Evaluations

In line with the Better Regulation Guidelines, DG Competition continued its evaluations of the rules for State aid to banks in difficulty[49] and for aid in the form of public guarantees[50].

4. Competition policy enforcement contributed to the Commission's principal priorities

Preserving market discipline by effective enforcement of the EU competition rules is of vital importance to the green and digital transformation of the EU economy as well as building an economy that works for people. Moreover, enforcing the competition rules contributes to the removal of remaining barriers to the Single Market and eliminates market restrictions. By its nature the Single Market helps increase the economic resilience of the EU economy by strengthening incentives to invest, innovate, diversify supply chains and find new business opportunities.

4.1. Competition policy enforcement contributed to the digital transition and a strong and resilient Single Market

By making markets work better for consumers, businesses and society, competition policy plays a crucial role as the EU strives for global digital leadership. The digital transition has a profound impact on every aspect of the economy and society. By stimulating change and driving innovation, competition policy helps the EU to unlock the full potential of the digital age. Enforcement in antitrust contributed to the digital transition and a strong and resilient Single Market.

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[48] Commission notice on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road 2023/C 222/01, C/2023/3978, OJ C 222, 26.6.2023, p. 1.

[49] Communication from the Commission on the application 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 and the related communications: 2009 Recapitalisation Communication (2009/C10/03), 2009 Impaired Assets Communication (2009/C72/01), 2009 Restructuring Communication (2009/C195/04), 2010 Prolongation Communication (2010/C329/07), 2011 Prolongation Communication (2011/C356/02).

[50] 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.

Antitrust enforcement contributed to the digital transition and a strong and resilient Single Market

The central processing unit (CPU) is one of the core components in any computer, so it is crucial for the entire digital sector that the market for CPUs remains competitive. In 2009, the Commission fined *Intel* EUR 1.06 billion for an infringement of Article 102 TFEU. Intel was found to have engaged in two forms of illegal conduct[51]. Intel gave rebates to computer manufacturers on condition that they bought all, or almost all, of their x86 CPUs from Intel (‘conditional rebates’). Intel also made direct payments to computer manufacturers to halt or delay the launch of specific products containing competitors' x86 CPUs (‘naked restrictions’). In 2022, the General Court partially annulled the initial Commission decision of 2009, as regards the conditional rebates. Following this, in September 2023, the Commission re-adopted a decision imposing a fine on Intel of EUR 376.36 million for the naked restrictions.

Digital music subscription services are widely used by consumers in the EU, which makes it important that competition in this sector works well. To this end, the Commission issued in February 2023 a Statement of Objections[52] to *Apple* informing the company about its preliminary view that Apple abused its dominant position by restricting application developers' ability to inform iPhone and iPad users of alternative music subscription services. The Commission took the preliminary view that Apple's anti-steering obligations are unfair trading conditions in breach of Article 102 TFEU.

In a Statement of Objections issued in June 2023, the Commission informed *Google* of its preliminary view that Google infringed Article 102 TFEU by distorting competition in the advertising technology industry (adtech)[53]. Google is present at all levels of the adtech supply chain. If competition is reduced for adtech services, it would have a broad impact in the digital sector because not only Google’s direct competitors would be negatively affected but also publishers and the advertisers themselves. The Commission is concerned that Google favoured its own online display adtech services to the detriment of competitors, advertisers and online publishers. The Commission’s preliminary finding is that Google abused its dominant position by favouring its own ad exchange AdX in the ad selection auction run by its adserver, DFP, and by favouring AdX in the way its ad buying tools Google Ads and DV360 place bids on ad exchanges.

Forming a cartel is one of the most serious infringements of competition. Cartels cause serious harm to the economy without enhancing any efficiency. By charging higher prices and limiting output, horizontal cartels reduce economic efficiency and welfare. They discourage businesses from developing new products and technologies, thereby reducing innovation and consumer choice.

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[51] Case AT. 37990 - *Intel.*
[52] Case AT.40437 - *Apple - App Store Practices (music streaming)*.
[53] Case AT.40670 - *Google – Adtech and Data-related practices*.

In September 2023, the Commission penalised for the first time a cartel in the defence sector and imposed a fine on *Diehl* of EUR 1.2 million for participating together with its competitor *RUAG*[54] in a cartel concerning the sale of military hand grenades. *RUAG* was not fined because it revealed the cartel to the Commission under the EU leniency programme. The Commission found that the companies split national markets between themselves across the EEA during almost 14 years. Both companies admitted their involvement in the cartel and agreed to settle the case.

In October 2023, the Commission also adopted a decision against a cartel in the pharmaceutical sector. It fined *Alkaloids of Australia*, *Alkaloids Corporation*, *Boehringer*, *Linnea* and *Transo-Pharm* a total of EUR 13.4 million in a settlement procedure for participating in a long-lasting cartel concerning pharmaceutical ingredient N-Butylbromide Scopolamine/ Hyoscine (SNBB) necessary to produce abdominal antispasmodic drugs[55]. *C2 PHARMA* was not fined because it revealed the cartel to the Commission under the EU leniency programme. The six companies coordinated and agreed to fix the minimum sales price of SNBB to their customers (distributors and generic drug manufacturers) and to allocate quotas. In addition, the companies exchanged commercially sensitive information.

In November 2023, the Commission fined *Rabobank* EUR 26.6 million for participating in a cartel concerning the trading of certain Euro-denominated bonds with *Deutsche Bank*[56]. The latter was not fined as it revealed the cartel to the Commission under the EU leniency programme. The Commission's investigation revealed that between 2006 and 2016 the two banks, through some of their traders, exchanged commercially sensitive information and coordinated their trading and pricing strategies.

In November 2023[57], the Commission informed six companies and one trade association of its preliminary view that they have breached antitrust rules by colluding to increase the prices of automotive starter batteries sold to car producers in the EEA.

Finally, in the groceries sector, the Commission continued in 2023 its investigation into possible restrictions by *Mondelez* of parallel trade between Member States for chocolate, biscuits, and coffee products.[58] The Commission also started an investigation into alleged market foreclosing practices in energy drinks markets and made unannounced inspections at Red Bull[59].

In 2023, the Commission carried out unannounced inspections in a variety of sectors, for example in the fragrance[60], energy drinks[61], fashion[62], medical devices[63], construction chemicals[64], and online food delivery[65] sectors.

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[54] Case AT.40760 - *Hand grenades*.
[55] Case AT.40636 - *SNBB*.
[56] Case AT.40512 - *Euro-denominated bonds*.
[57] Case AT.40545 - *Automotive starter batteries*.
[58] See:https://ec.europa.eu/commission/presscorner/detail/en/IP_21_281
[59] See:https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1802
[60] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1532

Judgment of the General Court in the Videogames case[66]

In September 2023, the General Court upheld the Commission's infringement decision against *Valve* in the *Videogames* case. In its decision, the Commission found that Valve and five publishers of PC videogames had entered into anticompetitive agreements/concerted practices restricting parallel imports of PC video games by means of geo-blocking. The General Court confirmed that the agreements/concerted practices were anticompetitive by object in so far as they were intended to restrict parallel imports and that the legal and economic context was not such as to call this into question. Moreover, the General Court confirmed that Article 101(1) TFEU refers to all agreements and concerted practices that distort competition, irrespective of the market where the parties operate.

The General Court also clarified the relationship between EU competition law and copyrights. The General Court confirmed that the granting of licenses (including exclusive licenses) as such is not contrary to Article 101 TFEU. However, additional territorial limitations of licenses making it impossible to access the protected subject matter from outside the territory covered by the license, may have an anti-competitive object and be caught by Article 101 TFEU.

Merger control contributed to the digital transition and a strong and resilient Single Market

Merger control underpins the Commission's key priorities when it comes to digital innovation and transformation, avoiding creation of excessive market power, foreclosure, and elimination of market entrants. In 2023, the Commission continued to enforce its merger control rules to protect consumers from price increases but also from a deterioration of other important parameters of competition such as quality, choice, and innovation.

In 2023, the Commission's merger control activities remained at a high level. The Commission adopted 333 merger decisions in various sectors (in 2022 the Commission adopted 368 merger decisions) of which 271 were approved following a simplified procedure. The Commission intervened in 11 proposed acquisitions, of which 9 transactions were approved subject to conditions and one was prohibited. One notified transaction was abandoned by the parties and withdrawn in Phase II.

The Commission blocked Booking's acquisition of eTraveli

In September 2023, the Commission prohibited the proposed acquisition of *eTraveli* by *Booking*[67]. The Commission found that the transaction would have strengthened Booking's dominant position in the market for hotel online travel agencies (OTAs), leading to higher costs for hotels and possibly for consumers. The Commission conducted an extensive analysis of the proposed commitments offered by Booking and found that the proposed remedies were not sufficiently comprehensive and effective and did not eliminate entirely the identified competition concerns.

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61 See: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1802
62 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2352
63 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4517
64 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5061
65 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5944
66 Judgment of the General Court of 27.9.2023 in Case T-172/21, *Valve v European Commission*, ECLI:EU:T:2023:587.
67 Case M.10615 - *Booking Holdings/eTraveli Group*.

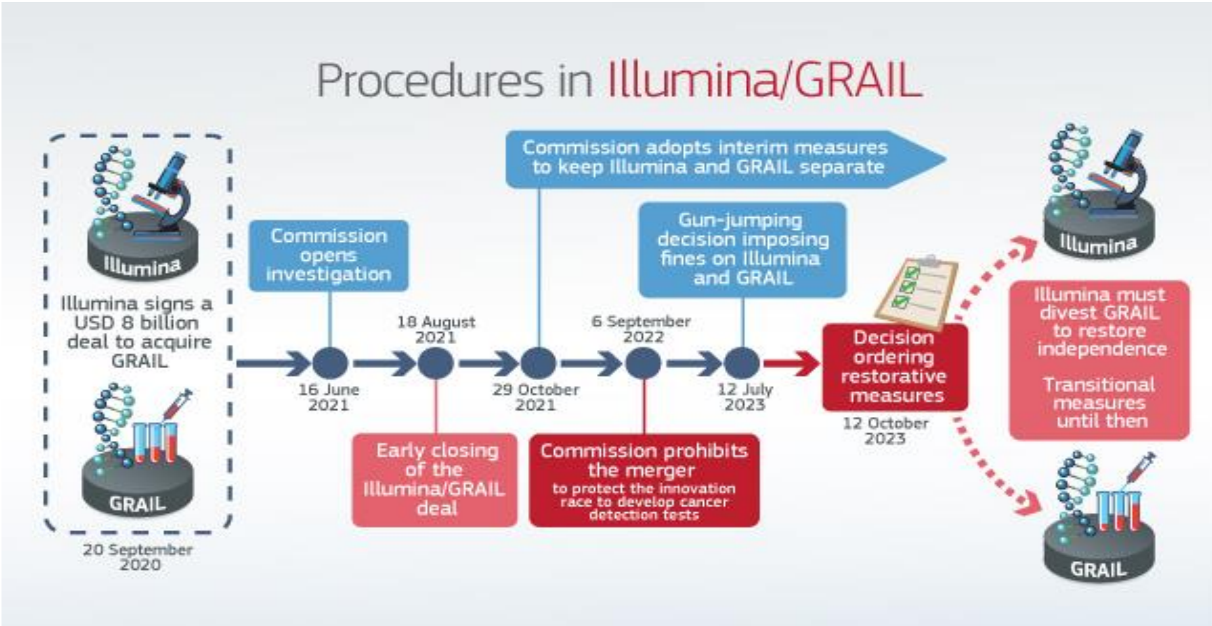
Source: European Commission.

The Commission fined Illumina and GRAIL for implementing their merger without prior approval

In July 2021, the Commission opened an in-depth investigation into Illumina's acquisition of GRAIL. In September 2022, the Commission blocked the transaction over concerns that it would have significant anticompetitive effects, stifling innovation and reducing choice in the market for blood-based early cancer detection tests[68]. However, in August 2021, while the Commission's review was still ongoing, Illumina publicly announced that it had completed its acquisition of GRAIL. In July 2023, the Commission fined Illumina and GRAIL approximately EUR 432 million and EUR 1,000 respectively, for implementing their proposed merger before approval by the Commission[69]. The Commission concluded that Illumina and GRAIL knowingly and intentionally breached the standstill obligation during the Commission's in-depth investigation. This is a very serious infringement which undermines the effective functioning of EU merger control. The fine imposed on Illumina corresponds to the statutory limit of 10% of Illumina's turnover. In its decision, the Commission noted that GRAIL, as the target company, was aware of the standstill obligation and played an active role in the infringement. However, given that it was the first time it imposed a fine for 'gun-jumping' on a target company, the Commission decided to only impose a symbolic fine of EUR 1,000 on GRAIL.

In October 2023, the European Commission adopted a decision, ordering restorative measures consisting of divestment measures requiring Illumina to unwind the acquisition of GRAIL. The decision also included transitional measures that Illumina and GRAIL need to comply with until Illumina has dissolved the transaction[70].

[68] Case M.10188 - *Illumina/GRAIL*.
[69] Case M.10483 - *Illumina/GRAIL (Art. 14 procedure)*. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3773
[70] Case M.10939 - *Illumina/GRAIL. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4872*



Source: European Commission.

In 2023, the Commission continued to safeguard competition for fixed network infrastructure. The Commission approved in March 2023 the acquisition of *VOO* and *Brutélé* by *Orange*, subject to conditions[71]. The Commission was concerned that the proposed transaction would (i) reduce the number of operators from three to two in areas covered by VOO and Brutélé's own fixed networks, eliminating Orange as an innovative and significant competitive constraint, (ii) significantly reduce competition in the markets where Orange, VOO and Brutélé are close competitors, and (iii) increase the likelihood of coordination between the remaining operators in areas covered by VOO and Brutélé's own fixed networks. To address the Commission's competition concerns, Orange committed to grant competitor Telenet access for at least 10 years to VOO's and Brutélé's existing fixed network infrastructure in the Walloon region and parts of Brussels, as well as to Orange's future fibre-to-the-premises network.

In May 2023, the Commission accepted commitments offered by *Microsoft* as a condition to approve its acquisition of *Activision Blizzard*[72]. The Commission was concerned that the proposed acquisition would allow Microsoft to harm competition (i) for the distribution of console and PC video games, including multi-game subscription services and cloud game streaming services; and (ii) for the supply of PC operating systems. Microsoft committed to provide (i) a free license to consumers in the EEA that would allow them to stream, via any cloud game streaming services of their choice, all current and future Activision Blizzard PC and console games for which they have a license, and (ii) a corresponding free license to cloud game streaming service providers to allow EEA-based gamers to stream any Activision Blizzard's PC and console games. These commitments fully address the

[71] Case M.10663 - *Orange / VOO / Brutélé*.
[72] Case M.10646 - *Microsoft / Activision*.

competition concerns identified by the Commission. The commitments have a duration of 10 years, and their compliance will be monitored by an independent trustee working under the supervision of the Commission.

Source: European Commission.

In July 2023, the Commission approved the proposed acquisition by *Broadcom* of *VMware*, subject to conditions[73]. The Commission had concerns that the transaction may restrict competition in the market for hardware components which interoperate with VMware's virtualisation software. To address the Commission's competition concerns, Broadcom offered several access and interoperability commitments to both existing and future competitors in the market. Considering the commitments offered by Broadcom, the Commission concluded that the merger would no longer raise competition concerns.

In July 2023, the Commission approved the proposed acquisition by *Advent* of *GfK*, subject to conditions[74]. The Commission had concerns that the transaction, as initially notified, would have raised serious competition concerns (i) in the market for retail measurement services for fast moving consumer goods; and (ii) in the market for consumer panel services. The Commitments offered by Advent remove the overlaps between NielsenIQ's and GfK's activities in the German and Italian markets for consumer panel services as well as the possibility for NielsenIQ to foreclose competitors in the markets for retail measurement services for fast moving consumer goods and consumer panel services.

In May 2023, the Commission approved the proposed acquisition of *OMV Slovenija* by *MOL*, subject to conditions[75]. Both companies are active in the retail fuel supply sector. The approval was

[73] Case M.10806 - *Broadcom / VMware*.
[74] Case M.10860 - *Advent / GfK*.
[75] Case M.10438 - *MOL / OMV Slovenija*.

conditioned on the divesture by MOL to the Shell Group of 39 fuel stations in Slovenia. The Commission took the view that the divested assets constituted a viable business that would enable the Shell Group to effectively compete with the merged entity in the Slovenian market.

In June 2023, following an in-depth investigation and subject to conditions, the Commission approved the acquisition of *Lagardère* by *Vivendi*[76]. The Commission had concerns that the transaction, as initially notified, would harm competition in the book publishing and press magazines sectors, respectively. To address the Commission's concerns, Vivendi offered to divest its publishing business as well as its celebrity press magazine Gala. The Commission concluded that the divested assets constitute a viable business that would enable a potential buyer to effectively compete with the merged entity.

In December 2023, the Commission approved the proposed merger between *Chr Hansen A/S* and *Novozymes A/S*, subject to conditions[77]. The Commission had concerns that the transaction would have raised serious competition concerns regarding the manufacture of lactase using genetic modification technology because Novozymes had a strong market position and Chr Hansen was a potential entrant. The commitments create a business with the necessary production assets and research and development capabilities to become a viable competitive producer of lactase.

State aid control contributed to the digital transition and the resilience of the Single Market

Investments in digital infrastructure, technologies and services are key drivers of economic growth, not only in the digital sector but in the economy as a whole. Such investments are necessary to achieve the policy objectives set out in the Digital Decade Policy Programme[78]. State support for risky investments in the digital sphere can be necessary to address market failures (that is to say when relying on private initiatives only would result in investment levels that are too low from the society point of view).

In April 2023, the Commission approved a EUR 2.9 billion French aid measure to support STMicroelectronics and GlobalFoundries in the construction of a new microchips manufacturing facility in France[79]. The measure will strengthen Europe's security of supply, resilience, and digital sovereignty in semiconductor technologies, in line with the objectives set out in the European Chips Act Communication[80].

[76] Case M.10433 - *Vivendi / Lagadère*.
[77] Case M.11043 - *Novozymes/Christian Hansen.*
[78] Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030.
[79] Case SA.102430 - France – *Project Liberty – New semiconductor manufacturing plant by STMicroelectronics and GlobalFoundries.*
[80] 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.

In June 2023, the Commission approved a EUR 680 million Spanish scheme, which was funded thanks to the RRF, to roll out equipment and infrastructure for high-performing 5G standalone networks in underserved rural areas[81].

In November 2023, the Commission approved EUR 172 million of aid (including support from the European Regional Development Fund) for the deployment in Portugal of fixed networks providing at least 1 Gbps download speed and 150 Mbps upload speed under usual peak time conditions in areas where networks do not provide at least 100 Mbps of download speed under usual peak time conditions[82].

IPCEI in microelectronics and communication technologies

In June 2023 the Commission approved an Important Project of Common European Interest (IPCEI) which supports research, innovation and first industrial deployment of microelectronics and communication technologies across the value chain (IPCEI ME/CT)[83]. Fourteen Member States[84] will provide up to EUR 8.1 billion in public funding, which is expected to unlock an additional EUR 13.7 billion in private investments. As part of the IPCEI, 56 companies including SMEs and start-ups will carry out 68 projects. These projects are part of the wider *IPCEI ME/CT* ecosystem involving over 30 associated participants, including universities, research organisations and companies located in five additional EU Member States[85] and Norway. The *IPCEI ME/CT* enables the digital and green transformation by (i) creating innovative microelectronics and communication solutions, and (ii) developing energy-efficient and resource-saving electronics systems and manufacturing methods. The projects will contribute to the technological advancement of many sectors, including communications (5G and 6G), autonomous driving, artificial intelligence, and quantum computing. They will also support companies active in energy generation and distribution and will be used in their green transition. The first products are scheduled to be introduced to the market in 2025 with completion of the overall project in 2032. The IPCEI ME/CT is expected to create some 8,700 direct jobs and many more indirect ones.

IPCEI in cloud and edge technologies

In December 2023 the Commission approved an IPCEI to support research, development and first industrial deployment of advanced cloud and edge computing technologies across multiple providers in Europe (*IPCEI CIS*)[86]. Seven Member States[87] will provide up to EUR 1.2 billion in public funding, which is expected to unlock additional EUR 1.4 billion in private investments. As part of this IPCEI, 19 companies, including SMEs, will carry out 19 highly innovative projects. IPCEI CIS is the first IPCEI in the cloud and edge computing domain. It concerns the development of the first interoperable and openly accessible European data processing ecosystem, the multi-provider cloud to edge continuum.

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[81] Case SA.104933 - Spain – *Support for 5G equipment and infrastructure*.

[82] Case SA.105187 – Portugal – *Deployment of fixed access networks*.

[83] Cases SA.101202 (Austria), SA.101141 (Czechia), SA.101143 (Finland), SA.101193 (France), SA.101129 (Germany), SA.101210 (Greece), SA.101151 (Ireland), SA.101186 (Italy), SA.101201 (Malta), SA.101171 (The Netherlands), SA.101175 (Poland), SA.101192 (Romania), SA.101200 (Slovakia) and SA.101150 (Spain).

[84] Austria, Czechia, Finland, France, Germany, Greece, Ireland, Italy, Malta, The Netherlands, Poland, Romania, Slovakia and Spain.

[85] Belgium, Hungary, Latvia, Portugal, and Slovenia.

[86] Cases SA.102498 (France), SA.102517 (Germany), SA.102520 (Hungary), SA.102519 (Italy), SA.102516 (The Netherlands), SA.102527 (Poland) and SA.102514 (Spain).

[87] France, Germany, Hungary, Italy, The Netherlands, Poland, and Spain.

4.2 Competition policy enforcement contributed to the green transition

Competition policy contributes to the EU's environmental objectives and climate targets, for example the decarbonisation of the economy, the transport sector shift from fossil fuels to alternative fuels and the development of clean technologies. Competition law enforcement contributes to the European Green Deal[88] by keeping markets efficient, fair, and innovative. It also safeguards the free flow of resources necessary for the circular economy and the Green Deal's objectives.

Antitrust enforcement contributed to the green transition

In 2023, the Commission continued to take action against anti-competitive market behaviour that could hinder the green transition.

In December 2023, the Commission fined *Lantmännen ek för and its subsidiary Lantmännen Biorefineries AB (formerly named Lantmännen Agroetanol AB)* a total of EUR 47.7 million for colluding to influence the price formation mechanism for ethanol in Europe[89]. When blended with petrol, ethanol can be used as biofuel for engines. The Commission had settled the case with a second cartel member in 2021 and closed its investigation against the remaining suspected cartel member in 2023.

The Commission also continued its investigations into the synthetic turf industry[90] and into a possible collusion concerning the recycling of end-of-life passenger vehicles[91] to determine whether the companies active in these sectors have violated EU antitrust rules.

Merger control contributed to the green transition

In 2023, the Commission remained vigilant in enforcing merger control rules in markets key to the circular economy and the attainment of sustainability goals. The Commission endeavoured to preserve competition against the rise of excessive market power, foreclosure risks and barriers to market entry. In doing so, the Commission consistently considered sustainability aspects of mergers in sectors such as renewables, recycling infrastructure, gas and electricity infrastructure, and e-mobility services.

In February 2023, the Commission approved the acquisition of *MBCC* by *Sika* subject to conditions[92]. The investigation focused on the impact of the transaction on the industry's efforts to reduce carbon emissions from concrete production. In particular, the innovative chemical admixtures produced by the parties can help minimize the content of carbon intensive materials – such as cement – in concrete mixes. The transaction, as initially notified, would have substantially reduced

88 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, the European Green Deal, COM(2019) 640 final.
89 Case AT.40054 - *Ethanol benchmarks*.
90 See:https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3133
91 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1765
92 Case M.10560 - *Sika / MBCC*.

competition in the markets for chemical admixtures and concrete admixtures. To address the Commission's concerns, Sika offered to divest MBCC's chemical admixture businesses in the EEA, Australia, Canada, New Zealand, Switzerland, the UK, and the U.S. The divestiture removed the horizontal overlaps between the parties in chemical admixture markets in the EEA. The Commission considered that the purchaser of this stand-alone business would be able to act as a viable competitive force on a lasting basis.

In October 2023, the Commission approved the proposed acquisition of Thales' ground transportation business (GTS) by Hitachi Rail. The approval is conditional on full compliance with commitments offered by Hitachi Rail, such as the sale of Hitachi Rail's mainline signalling platforms in France and in Germany for interlockings, overlay and re-signalling projects[93].

State aid control contributed to the green transition

In 2023, the Commission approved a number of State aid measures intended to support the green transition of the EU, supporting for example renewable energy, industrial decarbonisation and clean mobility.

In January and December 2023, the Commission approved under the CEEAG[94] two Danish schemes to support the roll-out of carbon capture and storage technologies[95, 96] with a combined budget of EUR 1.45 billion. The measures contribute to the achievement of Denmark's climate targets and the Green Deal, in particular the 2050 climate neutrality goal.

In February 2023, the Commission approved under the CEEAG a EUR 2.08 billion French measure to support offshore wind energy generation[97]. The same month, the Commission also approved a EUR 1.1 billion German scheme to support rail transport operators using electric traction in the context of spikes in electricity prices[98]. The measure will contribute to ensuring that the rail sector remains competitive while preserving the environmental performance of electric rail, in line with the objectives of the Commission's Sustainable and Smart Mobility Strategy[99] and of the European Green Deal[100].

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[93] Case M.10507 - *Hitachi Rail / Ground Transportation systems business of Thales*.

[94] Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, OJ C 80, 18.2.2022, p. 1.

[95] Case SA.102777 - Denmark – *State aid scheme for Carbon Capture and Storage*.

[96] Case SA.108284 - Denmark – RRF – *State aid scheme for Carbon Capture and Storage.*

[97] Case SA.100269 - *France – Parc éolien flottant en mer dans une zone au large du sud de la Bretagne*.

[98] Case SA.105120 - *Germany – Electricity brake for rail – Temporary cost containment of electricity price increases – rail transport operators*.

[99] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM(2020) 789 final.

[100] 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, the European Green Deal, COM(2019) 640 final.

The Commission approved in May 2023 two Dutch schemes with a total budget of approximately EUR 1.47 billion aimed at reducing nitrogen deposition on nature conservation areas[101].

In August 2023, the Commission approved under the CEEAG, a EUR 350 million State aid scheme for the deployment of high-power recharging infrastructure for electric vehicles along the German motorways[102].

In December 2023, the Commission approved under CEEAG a EUR 17.7 billion Italian scheme[103] supporting the construction and operation of a centralised electricity storage system. The measure will be implemented over a ten-year period and will facilitate the integration of renewable energy sources in the Italian electricity system, therefore contributing to the achievement of the Green deal objectives.

In 2023 the Commission approved, both under the CEEAG and under the TCTF, a number of State aid measures with an overall aid amount of approximately EUR 9 billion in several Member States (Spain, Poland, Belgium, France, Germany and Czechia) to decarbonise the production processes of large industrial greenhouse gas emitters, primarily in the steel sector but also in other energy-intensive sectors.[104]

In 2023 the Commission approved eight national schemes under section 2.8 TCTF, with an overall aid amount of approximately EUR 9 billion. These national schemes aim to accelerate, in line with the Green Deal Industrial Plan, investments in sectors strategic for the transition towards a net-zero economy (including batteries, solar panels, wind turbines, heat pumps, electrolysers and carbon capture and storage equipment) in Spain (EUR 2.5 billion)[105], Hungary (EUR 2.4 billion)[106],

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[101] Case SA.106555 - The Netherlands – *National scheme for closure of livestock husbandry units aiming at reducing nitrogen emissions*, and Case SA.106559 – The Netherlands – *National cessation scheme on peak load livestock sites (LBV Plus)*.

[102] Case SA.105414, Germany - *Aid scheme for High Power Charging infrastructure for electric vehicles along the motorways in Germany*.

[103] Case SA.104106 - Italy - *Support for the development of a centralised electricity storage system in Italy*.

[104] Case SA.104904 - Spain - *ArcelorMittal Spain (Gijon)*, Case SA.105006 - Poland - *RRF-Aid to LOTOS Green H2 Sp. z o.o.*, Case SA.104897 - Belgium - *Project ArcelorMittal (Ghent)*, Case SA.104903 - France – *ArcelorMittal France*, Case SA.105244 - Germany - *Aid to ThyssenKrupp for project tkH2Steel*, Case SA.104686 - Czechia – *TCTF: Modernisation Fund – Programme ENERG ETS.*

[105] Case SA.107094, Spain - RRF – TCTF - Integrated action line on the industrial value chain – Batteries; Case SA.108653, Spain. RRF – TCTF - Scheme for projects of equipment necessary for the transition towards a net-zero economy.

[106] Case SA.107689, Hungary -TCTF - Scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy.

Germany (EUR 3 billion)[107], Slovakia (EUR 1 billion)[108], Italy (EUR 100 million)[109], Austria (EUR 60 million)[110] and Belgium (EUR 50 million)[111].

4.3. Competition policy contributed to an economy that works for people

Contribution of EU competition policy to innovation and fairness in payments

In 2023, the Commission continued its monitoring of the application of the Interchange Fee Regulation (IFR)[112]. A study on new developments in card-based payment markets primarily related to the application of the IFR was finalised in December 2023. Furthermore, the Commission published an open call for tender for a study on competition in online payment services in June 2023.

DG Competition also contributed to the Commission's work on regulatory initiatives forming part of 'An Economy that works for people' aligning them with competition policy principles. This work stream included Commission proposals on the Digital Euro, Financial data access (Open Finance) and payments (Open Banking: review of the second Payment Services Directive).

Antitrust enforcement in the financial services and insurance sectors

In 2023, the Commission continued its investigation into Apple's conduct related to mobile payment services. In its Statement of Objections issued in 2022[113], the Commission provisionally found that *Apple* restricted competition by abusing its dominant position in the mobile wallet market on iOS devices, by limiting access to the Near Field Communication (NFC) functionality on iPhones for in-store payments thereby reserving access to Apple Pay.

In November 2023, the Commission fined the members of a cartel concerning the trading of certain Euro-denominated bonds[114].

In travel health insurance services, the Commission investigated an alleged breach of competition law by Czechia. Legislation adopted by Czechia conferring to a public company the exclusive right to operate in the Czech market for travel health insurance services for foreigners could constitute a breach of Article 102 TFEU in conjunction with Article 106 TFEU. The exclusive right granted by the State excluded competing insurance providers. DG Competition's investigation was closely co-ordinated with the parallel investigation of the DG for Financial Stability, Financial Services and Capital Markets Union (DG FISMA). In July 2023, the Commission addressed to Czechia a Letter of

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[107] Case SA.108068, Germany -TCTF - Aid to support the transition to a net-zero economy.
[108] Case SA.109989, Slovakia -TCTF - State aid scheme for providing Extraordinary Investment Aid in sectors strategic for the transition to a net-zero economy.
[109] Case SA.108953, Italy – TCTF - RRF - Investment aid scheme for the production of electrolysers.
[110] Case SA.109170, Austria - TCTF – Scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy.
[111] Case SA.109169, Belgium - RRF-TCTF: Decarbonisation of Walloon companies - Enhancing investments in value chains linked to the energy transition.
[112] 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.
[113] Case AT.40452 - *Mobile Payments*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2764
[114] Case AT.40512 - *Euro-denominated bonds (EDB).*

Formal Notice, concluding that the Czech law breached Article 56 TFEU and the Solvency II Directive[115]. Following the Commission's intervention, Czechia amended the legislation by abolishing the exclusive right of the public undertaking.

In motor insurance, following the adoption in 2022 of a Commission decision into the access conditions to a data sharing system administered by *Insurance Ireland,* the Commission continued to monitor Insurance Ireland's compliance with the binding commitments the company made[116]. As a result of the commitments, new companies were granted access to Insurance Ireland and to the data sharing system. The commitments continue to apply until 2032.

Merger enforcement in the financial services sector

In 2023, the Commission reviewed mergers across a variety of financial service markets, including banking, insurance, payment services, and other specialised financial services.

On 25 May 2023, the European Commission unconditionally approved the merger between Credit Suisse and UBS[117]. The Commission found that the merger would not significantly reduce competition in the markets where the parties' activities overlap within the EU. Due to the financial difficulties faced by Credit Suisse, the Commission decided to grant the merging firms a derogation from the standstill obligation, and allowed UBS to implement certain measures, including the closing of the transaction.

In 2023, the Commission continued monitoring mergers in the financial services industry to identify transactions that may warrant referral to the Commission under Article 22 of Council Regulation (EC) No 139/2004 (EU Merger Regulation)[118]. In August 2023, the Commission accepted requests by three Member States and one EFTA Country to assess the proposed acquisition of Nasdaq's European power trading and clearing business by European Energy Exchange AG. The Commission considered that the proposed merger met the criteria for referral under Article 22 of the EU Merger Regulation. In particular, the transaction combined the only two providers of services facilitating the on-exchange trading and subsequent clearing of Nordic power contracts. The Commission investigation is on-going[119].

State aid enforcement in the financial services sector

In November 2023, the Commission approved an amendment to the support measures approved in 2022 in support of the resolution of Getin Noble Bank, one of the ten largest Polish banks. The amended support measure facilitated the sale of a bridge bank set up in the resolution process. The

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[115] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) OJ L 335, 17.12.2009, p.1.
[116] Case AT.40511 - *Insurance Ireland - Insurance claims database and conditions of access*.
[117] Case M.11111 - *UBS / Credit Suisse.*
[118] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.
[119] Case M.11241 - *EEX / NASDAQ POWER*

measures also aimed to maximise the recovery value for the Polish Resolution Fund by carving out from the bank a portfolio of impaired assets[120].

Moreover, the Commission prolonged certain existing schemes whereby Member States can subsidise the restructuring or orderly market exit of banks in distress. For Poland, the Commission authorised the extension of both the scheme for the liquidation of credit unions (in place since February 2014)[121] and the scheme for the resolution of cooperative and small commercial banks (in place since December 2016).[122] For Ireland, the Commission authorised two prolongations of the restructuring scheme for credit unions (in place since October 2014)[123] and the extension of the orderly winding-up scheme for credit unions (in place since December 2011)[124]. For Denmark, the Commission approved the second re-introduction of the winding-up scheme for small banks.[125]

In November 2023, the Commission approved the re-introduction of Hercules, an asset protection scheme in Greece[126].The re-introduced scheme will be in place until the end of 2024 and will assist banks in securitising and moving non-performing loans off their balance sheets.

On 21 September 2023, the Commission adopted a new decision on the past FITD (Deposit Guarantee Scheme) measures to support Banca Tercas[127]. This new decision followed the annulment by the Court of Justice[128] of the 2015 Commission Decision[129]. In its new decision, the Commission concluded that the support granted by the FITD to Banca Tercas was not imputable to Italy and therefore did not constitute illegal State aid.

State aid in insurance

In February 2023, the Commission approved a EUR 1.5 billion French State Fund, set up to protect travellers if travel organisers become insolvent[130]. The Fund will ensure that consumers are adequately protected despite insufficient insurance cover sometimes offered by private insurance providers, following the severe impact of the COVID-19 pandemic on the tourism sector.

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[120] Case SA.109418, *Poland - Amendment to the liquidation aid to Getin Noble S.A. in resolution (SA.100687).*

[121] Case SA.108852 - *Poland – Thirteenth prolongation of the Credit Unions Orderly Liquidation Scheme*.

[122] Case SA.108989 - *Poland - Eighth prolongation of the resolution scheme for cooperative banks and small commercial banks and amendment of the offered commitments*.

[123] Case SA.106983 - Ireland - *17th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*; Case SA.109639 - Ireland – *18th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*.

[124] Case SA.107306 - Ireland - *19th prolongation of the Credit Union Resolution Scheme 2023-2024.*

[125] Case SA.106526 - Denmark – *Prolongation of the second re-introduction of the winding-up scheme for small banks*.

[126] Case SA.109365 - Greece - *Re-introduction of the Hercules Scheme*.

[127] Case SA.39451 – Italy – *Banca Tercas.*

[128] Judgment of the Court of Justice of 2.3.2021 in Case C-425/19 P, *European Commission v Italian Republic and Others*, EU:C:2021:154.

[129] Case SA.39451 – Italy – *Banca Tercas.*

[130] SA.104022 – France - *State guarantee fund for travel operators*.

State aid in public guarantees

In 2023, the Commission adopted two decisions regarding Slovakia[131] and Denmark[132] under the Guarantee Notice[133]. In the decisions, the Commission approved methodologies used to determine market-conform guarantee premiums. These premiums serve as a reference when calculating the State aid element included in public guarantees.

5. New complementary Single Market tools became operational

5.1. Digital Markets Act

The Digital Markets Act (DMA)[134] is an internal market legislation harmonising the obligations of so-called gatekeepers across the EU. It became fully applicable in May 2023. The DMA aims to make the digital sector more contestable and put an end to unfair practices by companies acting as 'gatekeepers' in the online platform economy. A gatekeeper may be able to act as a *de-facto* private rule-maker, acting as a gateway between business users and end-users, allowing it to engage in unfair behaviour and undermine market contestability.

When an online digital platform meets the thresholds and criteria set out in the DMA, it has to be notified to the Commission for designation as a gatekeeper[135]. Companies formally designated as gatekeepers have to comply with a set of obligations set out in the Regulation[136]. In April 2023, the

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[131] Case SA.109147 - Slovakia - *Calculation of aid elements in the provision of guarantees to SMEs*.

[132] Case SA.109413 - Denmark - *Prolongation and amendment of calculation method for Danish guarantee scheme (SA.60070).*

[133] 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.

[134] 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.

[135] Under the DMA, the online digital platform is considered to have a significant impact on the Single Market if the following cumulative criteria are met: (1.) The presumed gatekeeper must generate EU-wide turnover of at least EUR 7.5 billion; have an average market capitalisation exceeding EUR 75 billion and provide the same core platform services in at least three Member States. (2.) The presumed gatekeeper operates a platform service working as a gateway for business users to reach end users with at least 45 million monthly active end users and a minimum of 10 000 yearly active business users. (3.) The presumed gatekeeper must benefit from an entrenched and durable market position over the last three financial years.

[136] For example, companies designated as gatekeepers under the DMA must allow third parties to inter-operate with the gatekeeper's own services in certain specific situations; allow their business users to access the data they generate when operating the platform; provide platform advertisers with the tools and information necessary for verifying advertisements hosted by the gatekeeper; allow business users to promote their offers and conclude contracts with customers outside the gatekeeper's platform. Designated gatekeepers are, for example, prohibited from treating their own products and services more favourably in ranking than similar products and services or products offered by third parties; they can no longer prevent consumers from linking up to businesses outside its platforms; they cannot prevent users from un-installing any pre-installed software or app or track end users outside the core platform service for the purpose of targeted advertising without consent.

Commission adopted implementing rules setting out how certain proceedings under the DMA will be conducted[137].

In September 2023, the Commission designated six companies as gatekeepers: *Alphabet*[138], *Amazon*[139], *Apple*[140], *ByteDance*[141], *Meta*[142], and *Microsoft*[143]. In total, 22 core platform services provided by these gatekeepers were designated[144]. For three core platform services (Gmail, Outlook.com and the Samsung Internet Browser), the Commission concluded that - although they meet the quantitative thresholds under the DMA to qualify as gatekeepers - Alphabet, Microsoft and Samsung provided sufficiently substantiated arguments showing that these services do not qualify as gateways for their respective core platform services.

In parallel to these designations, the Commission opened in September 2023 four market investigations to further assess Microsoft's and Apple's submissions arguing that, despite meeting the thresholds, some of their core platform services do not qualify as gateways. For Microsoft these platforms are Bing, Edge and Microsoft Advertising, and for Apple it is iMessage. These investigations aim to ascertain whether Microsoft and Apple should be designated as gatekeepers in relation to the services in question. These investigations aim to ascertain whether the services in question should be designated as gatekeepers. The investigations should be completed by February 2024. Moreover, the Commission opened a market investigation to further assess whether Apple should be designated as gatekeeper in relation to its operating system iPadOS, despite not meeting the thresholds. This investigation should be completed by September 2024.

Following their designation, gatekeepers have until March 2024 to comply with the full list of 'Do's and Don'ts' under the DMA. However, some of the obligations started to apply from the moment of designation, for example the obligation to inform the Commission of intended acquisitions. By March 2024, gatekeepers must submit detailed compliance reports outlining how they comply with

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137 Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, OJ L 102, 17.4.2023, p. 6.

138 Case DMA.100011 - *Alphabet – OIS Verticals*; Case DMA.100002 - *Alphabet – OIS AppStores*; Case DMA.100004 - *Alphabet – Online search engines*; Case DMA.100005 - *Alphabet – Video sharing*; Case DMA.100006 - *Alphabet – Number independent interpersonal communication services*; Case DMA.100009 - *Alphabet – Operating systems*; Case DMA.100008 - *Alphabet – Web browsers*; Case DMA.100010 - *Alphabet – Online advertising services*.

139 Case DMA.100018 - *Amazon – Online intermediation services – marketplaces*; Case DMA.100016 - *Amazon, Online advertising services*.

140 Case DMA.100013 - *Apple – Online intermediation services – app stores*; Case DMA.100025 - *Apple – operating systems*; Case DMA.100027 - *Apple – web browsers*.

141 Case DMA.100040 - *ByteDance – Online social networking services*.

142 Case DMA.100020 - *Meta – Online Social networking* services; Case DMA.100024 - *Meta – Number independent interpersonal communication* services; Case DMA.100035 - *Meta – Online Advertising services*; Case DMA.100044 - *Meta – Online intermediation services – Marketplace*.

143 Case DMA.100017 - *Microsoft – online social networking services*; Case DMA.100023 - *Microsoft – number-independent interpersonal communications services*; Case DMA.100026 - *Microsoft – operating systems.*

144 Non-confidential versions of the Commission decisions are published at the Commission's DMA page, see: https://digital-markets-act-cases.ec.europa.eu/gatekeepers

the obligations of the DMA. To address non-compliance with the obligations, the Commission can impose fines of up to 10% of the company's worldwide turnover. Moreover, in case of systematic non-compliance, higher fines and proportionate behavioural or structural remedies may be imposed on such companies.

In November 2023, three gatekeepers challenged their designations under the DMA. ByteDance appealed to the General Court the Commission's decision to designate it as a gatekeeper in relation to its online social networking service TikTok[145]. The company argues that the TikTok platform does not act as a gateway but is rather a challenger in the digital space. ByteDance also applied for interim measures before the General Court in December 2023. Apple appealed to the General Court, arguing that the Commission should not have designated it as a gatekeeper in relation to its online intermediation service App Store[146]. Apple also appealed the Commission's decision to open a market investigation into its iMessage[147]. Finally, Meta appealed to the General Court seeking clarifications concerning its designation in relation to Messenger and Marketplace[148].

The Commission (with DG COMP and DG CNECT in the lead) is the central enforcer of the DMA but works in close cooperation with the National Competition Authorities within the European Competition Network (ECN) in accordance with Articles 37 and 38 of the DMA. The rules in the DMA are without prejudice to the enforcement of the EU competition rules and national competition rules for unilateral conduct.

5.2. Foreign Subsidies Regulation

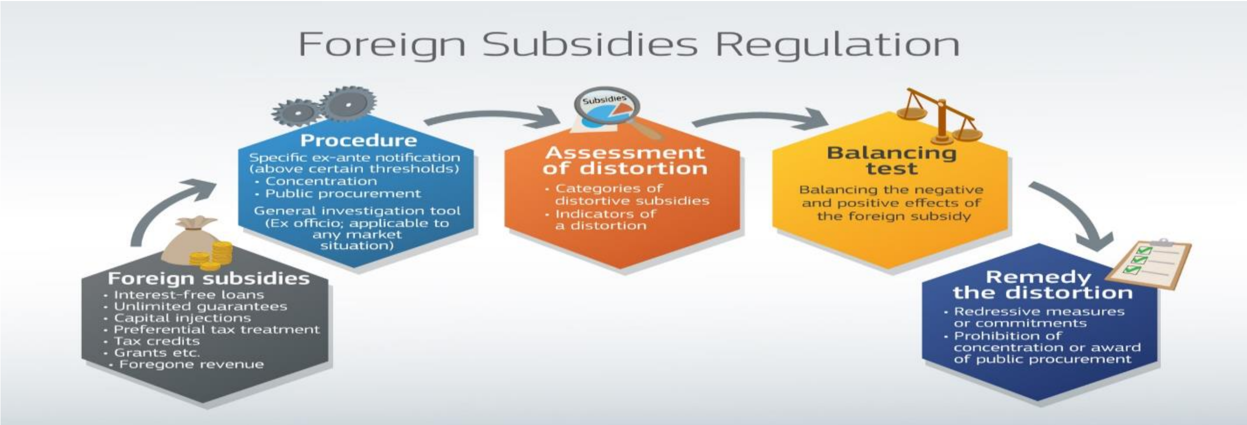
The Regulation on foreign subsidies distorting the internal market (FSR)[149] closes a regulatory gap, making it possible to address foreign subsidies that distort competition in the Single Market. While State aid granted by EU Member States are subject to the EU State aid rules, subsidies granted by countries outside of the EU to individual firms active in the EU Single Market were not scrutinised before the entry into force of the FSR. The FSR entered into force in January 2023, started to apply in July 2023 and the notification obligation[150] applies since October 2023. In July 2023, the Commission adopted the FSR Implementing Regulation[151]. The Commission is now able to

[145] Case T-1077/23 - Bytedance v Commission.
[146] Case T-1080/23 - Apple v Commission - Gatekeeper Designation and iMessage Classification.
[147] Case T-1079/23 - Apple v Commission – iMessage Market Investigation.
[148] Case T-1078/23 - Meta Platforms v Commission.
[149] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L330, 23.12.2022, p. 1.
[150] Under the FSR, concentrations must be notified where the acquired company, one of the merging parties, or the joint venture is established in the EU and generates an EU turnover of at least EUR 500 million and where the parties to the transaction were granted combined aggregate foreign financial contributions of at least EUR 50 million over the past three years. Public procurement procedures must be notified to the Commission, where the estimated contract value is at least EUR 250 million, and the bid concerned involves combined aggregate foreign financial contributions of at least EUR 4 million per third country over the past three years.
[151] Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market, OJ L 177, 12.7.2023, p. 1. The Implementing Regulation

investigate and redress, when appropriate, the distortive effects caused by foreign State support. This includes the power to open own-initiative investigations if there are indications that a foreign subsidy distorts the EU Single Market.

A notified merger cannot be completed, and an investigated bidder cannot be awarded the public procurement contract while under investigation by the Commission. If this obligation is not respected, the Commission can impose fines of up to 10% of the company's annual turnover. The Commission can also prohibit the completion of a subsidised merger or the awarding of a public procurement contract to a subsidised bidder.

After it started to apply in July 2023, the Commission received submissions from firms concerning the application of the FSR. Since the start of the notification obligation on 12 October 2023, DG Competition has started pre-notification discussions in 41 cases and has received 11 merger notifications under the FSR.[152]



Source: European Commission.

covers procedural aspects and contains notification forms for merger transactions involving foreign financial contributions and for foreign financial contributions in public procurement procedures.

[152] For enforcing the Foreign Subsidies Regulation in foreign financial contributions to public procurement procedures, see: https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation_en.

6. Impact of State aid policy on the integrity of the Single Market and on the EU’s global competitiveness

- The European model is rooted in a strong social market economy, delivering inclusive economic prosperity based on sustainable growth, fair competition, open trade and economic security. The Single Market is at the core of the EU’s competitiveness and the Commission is committed to ensuring a level playing field in the Single Market and globally.
- Against this background, State aid rules have undergone an in-depth review process in this mandate to ensure that they are fit for the green and digital transition and contribute to a competitive and resilient EU economy. The rules have been updated where relevant and provide effective tools for Member States to address public investment needs for key priorities such as environmental protection and decarbonisation, regional cohesion, breakthrough innovation, as well as for manufacturing capacity in strategic sectors, notably for the transition towards a net-zero economy. The most recently available data show that in 2022, Member States disbursed EUR 112 billion of (non-crisis) State aid, corresponding to 0.7% of EU GDP.
- The unprecedented crises triggered by the COVID-19 pandemic as well as the Russian invasion of Ukraine made it necessary for the Commission to use the full flexibility of the State aid toolbox, notably via targeted and temporary rules, to enable Member States to limit the impact of the crises on the EU economy, while putting in place safeguards to protect the Single Market.
- The data and analysis of the actual implementation of the COVID-19 Temporary Framework (which is fully phased out) has shown that the State aid granted by each Member State was significantly lower than the amounts approved (around 30%) and largely corresponded to the economic damage suffered by the Member State during the crisis in terms of GDP loss.
- The most recently available data shows that Member States granted EUR 141 billion in crisis aid in 2022 and the first half of 2023, corresponding to 0.6% of the EU GDP in that period, to limit the economic impact of the Russian invasion of Ukraine. Currently available data shows that Member States have granted under 20% of the amounts approved. There are divergences in spending between Member States, which in part likely reflect varying fiscal capacity, but these may also in part be explained by differences in the impact of the energy crisis and in the size of the economies.
- Finally, point 86 in the Temporary Crisis and (Transition) Framework (TCTF) is a useful addition to the toolbox, to accelerate the transition towards a net-zero economy and to address risks of new investments in sectors strategic for the transition towards a net-zero economy being diverted outside the EU in favour of third countries due to subsidies. This provision allows individual aid up to the amount of subsidy which the beneficiary could receive for an equivalent investment in a third country jurisdiction outside the EEA, or the amount needed to incentivise the company to locate the investment in the EEA (the so-called ‘funding gap’) whichever is the lowest.
- The Commission constantly works to ensure that State aid rules remain fit for purpose and to monitor the implementation of aid measures, with the aim of enabling well targeted public support to the EU’s priorities and long-term competitiveness, as well as temporary measures to address crises, while limiting undue competition distortions in the Single Market.

To protect the fairness and proper functioning of the Single Market, the TFEU generally prohibits State aid by Member States that distorts or threatens to distort competition. State aid control ensures that competition between companies takes place on the merits rather than based on the level of government support, thus avoiding subsidy races and the favouring of companies from Member States with 'deeper pockets'. At the same time, in some circumstances government interventions can be necessary for a well-functioning and equitable economy. Therefore, the TFEU leaves ample room for State aid to support policy objectives, if it is necessary, proportionate, and appropriate to achieve those objectives without unduly distorting competition on the Single Market. By focusing on aid that is legitimate and effective and by avoiding overcompensation, State aid control also maximises the utility of limited public resources.

In October 2023, the European Council recalled its invitation to the Commission to report to the Council on the impact of the current State aid policy on the integrity of the Single Market as well as on the EU's global competitiveness. Indeed, when evaluating the impact of State aid policy, it is crucial to consider the double challenge it faces from an internal and external perspective. State aid control must fulfil its mandate to avoid undue distortions to competition within the Single Market, while allowing the EU economy to stay at the forefront of innovation and lead the twin transitions in the current challenging geopolitical climate.

The Commission regularly and continuously collects data on the implementation of State aid measures by Member States to monitor its impact:

- First, the Commission prepares an annual **"State aid Scoreboard"** based on data submitted by Member States[153] on their expenditure (i.e., amounts disbursed) under approved aid measures, including a quantification of the aid element of the expenditure, i.e., the advantage granted by the aid[154]. The most recent data cover 2022.
- Second, in view of the significant amounts of aid disbursed in recent crises, i.e., in the context of the COVID-19 pandemic and in response to Russia's aggression against Ukraine, the Commission on an exceptional basis has launched **periodical surveys to collect timely information on the aid actually granted** (i.e., amounts to which companies have received a legal entitlement, while disbursement may happen over time) by Member States under approved crisis measures. The most recent survey covers 2022 until end-June 2023. While in the context of the annual reporting the Member States are also required to provide a quantification of the aid elements, in response to those crisis surveys, Member States report

[153] The information is based on the annual reporting by Member States pursuant to Article 6(1) of Commission Regulation (EC) 794/2004. The accuracy of the data remains the responsibility of Member States.

[154] The aid element depends on the form of the aid. For grants, the advantage passed on to the beneficiary normally corresponds to the budgetary expenditure. For other aid instruments, the advantage to the beneficiary and the cost to government may differ. In the case of guarantees, for example, the beneficiary avoids the risk associated with the guarantee, since it is carried by the State. Such risk-carrying by the State should normally be remunerated by an appropriate premium. Where the State forgoes all or part of such a premium, this represents the aid element.

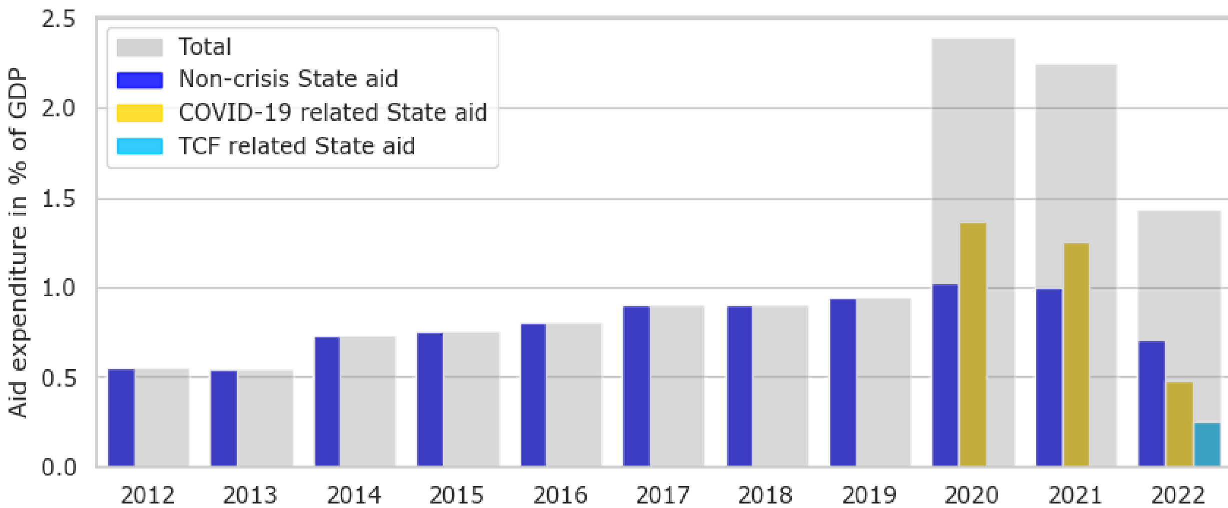
on nominal amounts of the aid granted, to simplify the data collection and lessen the administrative burden.

6.1 Overall picture of State aid disbursement of crisis and non-crisis aid in 2022

According to the most recent annual reports of Member States, in 2022, the 27 Member States disbursed EUR 227.98 billion, corresponding to 1.43% of their 2022 GDP, on State aid for both non-crisis and crisis measures (the latter mainly based on the Temporary Crisis Framework to respond to Russia's aggression against Ukraine).

The total expenditure is significantly reduced compared to the previous year (a reduction of around the 35% when adjusting for inflation). First, the reduction was mainly driven by the reduction in the total expenditure for COVID-19 measures in light of the phase-out of the COVID-19 Temporary Framework by end-June 2022. The reduction in COVID-19 measures amounted to EUR 76.66 billion (around -60% if compared to the previous year, adjusting for inflation), representing 0.48% of EU27 GDP. Second, aid for non-crisis objectives also dropped significantly, by around 28%, from around EUR 155.55 billion (in constant prices) in 2021 to EUR 112 billion in 2022 (see further below).

Table 1: Total State Aid expenditure, aid elements in percentage of GDP, breakdown between COVID-19 related State aid, TCF related State aid and non-crisis State aid measures



In relative terms, looking at the distribution of State aid expenditure (crisis and non-crisis) at the Member State level as a share of national GDP, there is a significant dispersion of spending across Member States, although significantly reduced compared to 2021. The Member States spending the most spent around 1.8-2.1% of their national GDP (Hungary and Germany), while the Member States spending the least spent around 0.3%-0.6% of their national GDP (Ireland, Cyprus and Luxembourg).

The overall picture derived from those data is that, while there are significant differences between the aid amounts disbursed by Member States (with, unsurprisingly, large Member States disbursing the highest amounts of aid in absolute terms), the picture is more nuanced looking at relative State aid expenditure compared to GDP.

Furthermore, a significant part of the expenditure in Germany in 2022 relates to crisis aid for an ad hoc situation concerning two systemic energy utilities that required public support after the disruption of gas deliveries as a result of Russia's war in Ukraine (see further below).

It should also be noted that Member States may have granted significant support to their economies and households through other – non-State aid – measures. This means that the overall support to economies and households differs from the data derived from annual reports from Member States mentioned above, that exclusively refer to disbursements under measures that qualify as State aid.

Table 2: Total State Aid expenditure by Member State in 2022, aid elements in EUR billion, breakdown between COVID-19 related State aid, TCF related State aid and non-crisis State aid measures

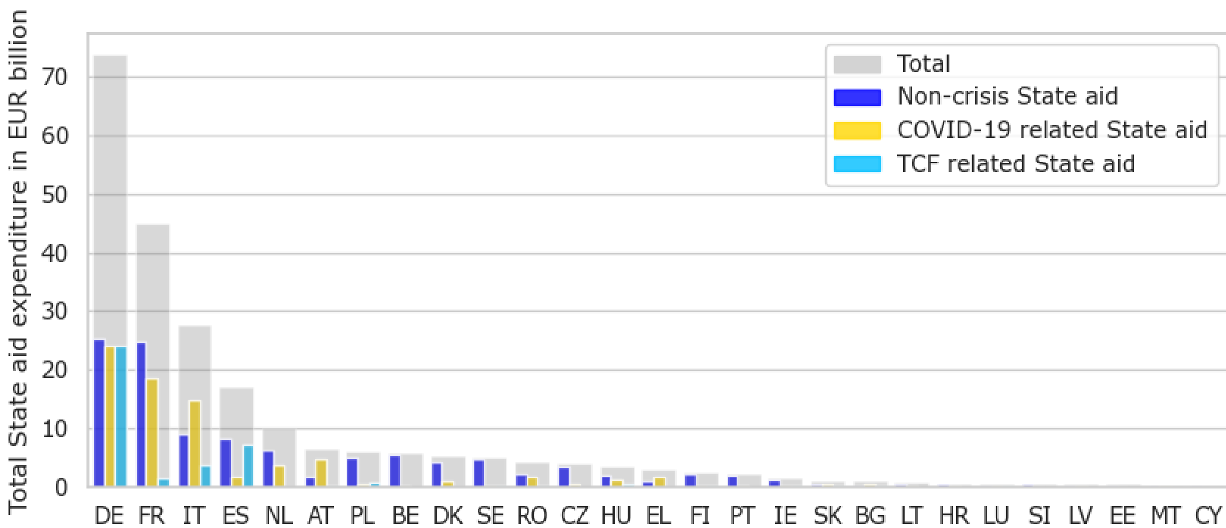
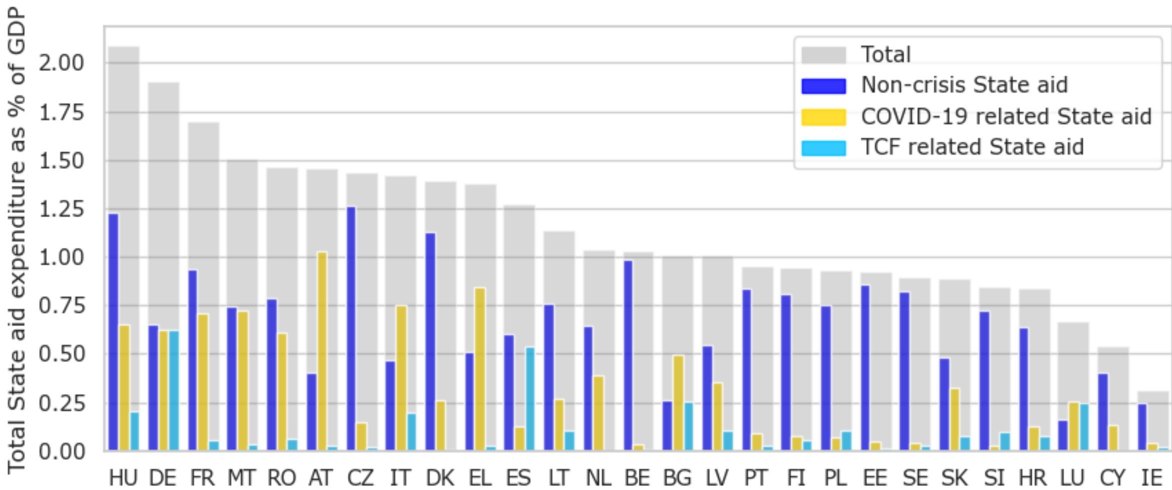


Table 3: Total State aid expenditure by Member State, as % of 2022 national GDP, breakdown between COVID-19 related State aid, TCF related State aid and other (non-crisis) State aid measures



Focusing on **non-crisis aid in 2022**, compared to 2021, the amount disbursed by Member States fell in nominal terms in 20 Member States. The reduction was particularly marked in Germany (-59% in nominal terms, adjusted for inflation), Croatia (-52%) and Malta (-50%), as well as Bulgaria, Latvia, Luxembourg, and Hungary, where it fell by approximately 40%. A substantial reduction, of more than the 20% was also observed in Poland and Lithuania (both around -28%) and Estonia (-22%). Non-crisis aid also went down in Finland (-18%), Slovenia (-17%), Czechia (-14%), the Netherlands and Austria (-12% in both countries), France and Cyprus (-11%), Ireland (-9%), Belgium and Italy (-6%).

Conversely, non-crisis aid substantially increased in Portugal (+66% in nominal terms, adjusted for inflation), Denmark (+44%) and Spain (+30%). In Slovakia, non-crisis aid increased by 14% compared to 2021, in Greece by 4%. Romania and Sweden both reported the same level of support for non-crisis measures in 2021 and 2022.

Overall, the reduction in non-crisis State aid appears mainly driven by a reduction in the aid disbursed for environmental protection, including for energy savings, from around EUR 77.3 billion in 2021 to EUR 41.5 billion in 2022. Further analysis is needed, but the reduction may be explained in part by the alternatives provided by the Temporary Crisis Framework, introduced in March 2022, and its subsequent amendments that enabled Member States to provide aid to accelerate the rollout of renewable energy and aid for the decarbonisation of industrial processes. Nevertheless, the data show (see Table 4) that aid disbursed for environmental protection remains by far the largest category of non-crisis State aid and has remained between four times and twice as high even in times of crisis as compared to ten years ago (in constant prices, adjusted for inflation).

Table 4: State Aid expenditure excluding crisis aid between 2012 and 2022, aid elements in EUR billion in constant prices, breakdown by objective of the aid

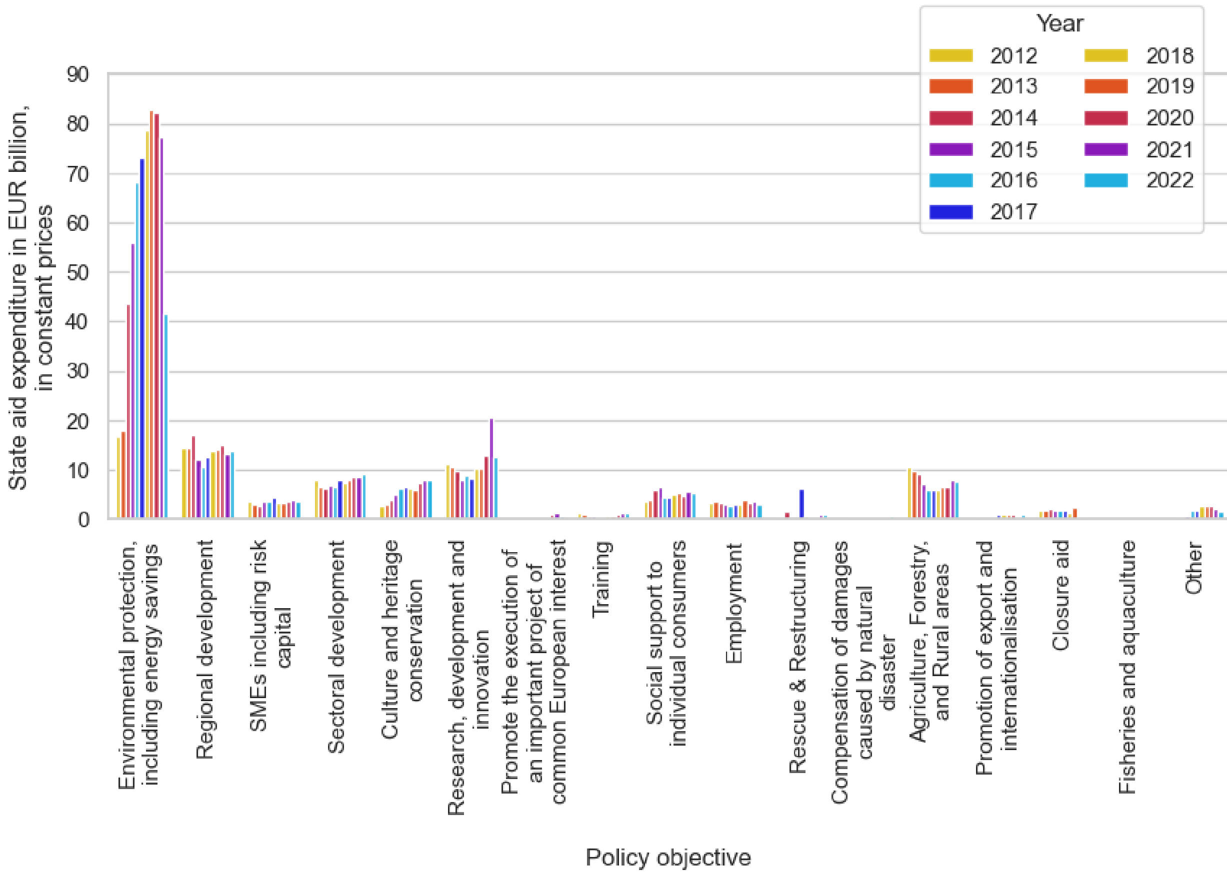


Table 5: Non-crisis State Aid expenditure, breakdown by objective of the aid

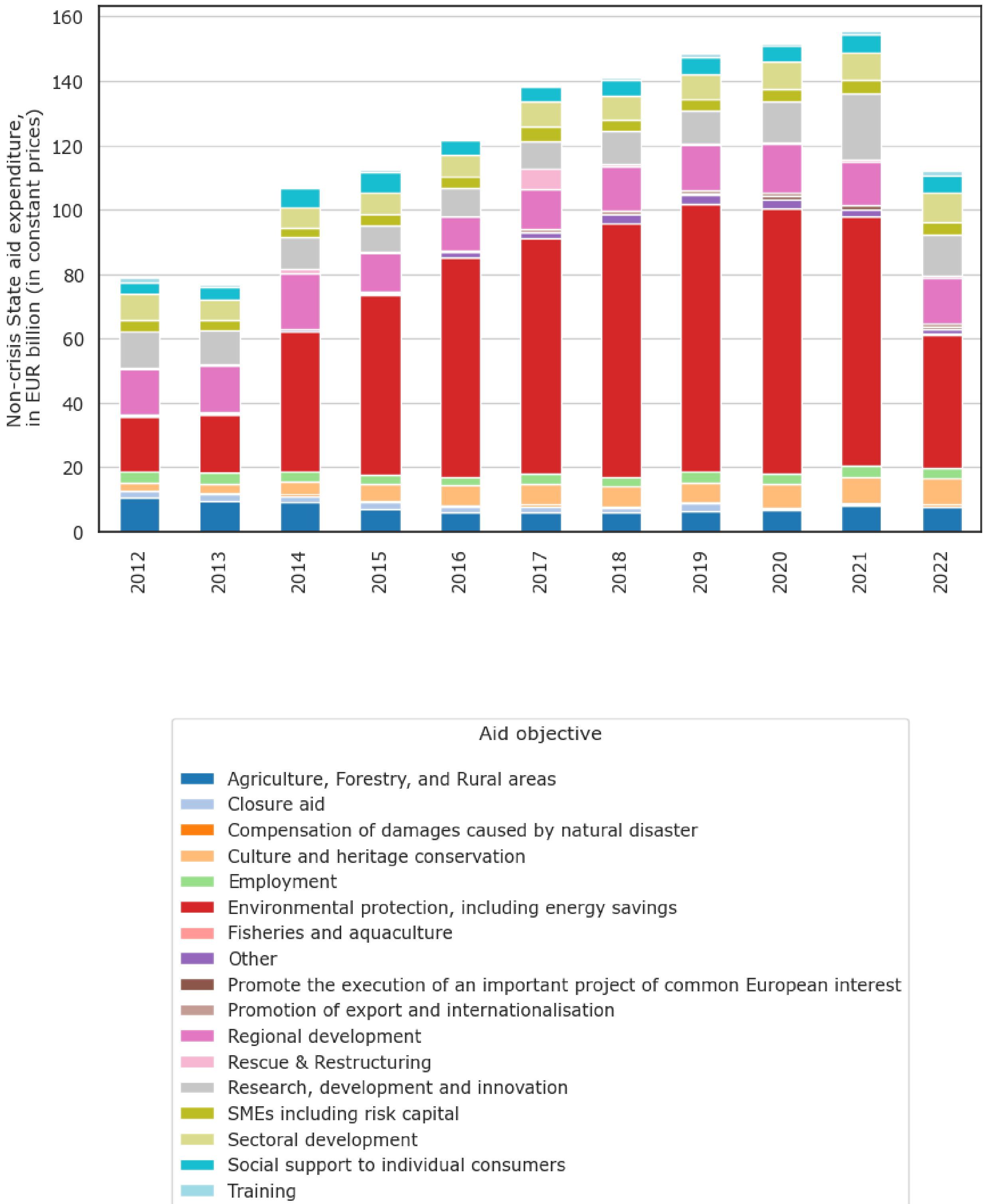
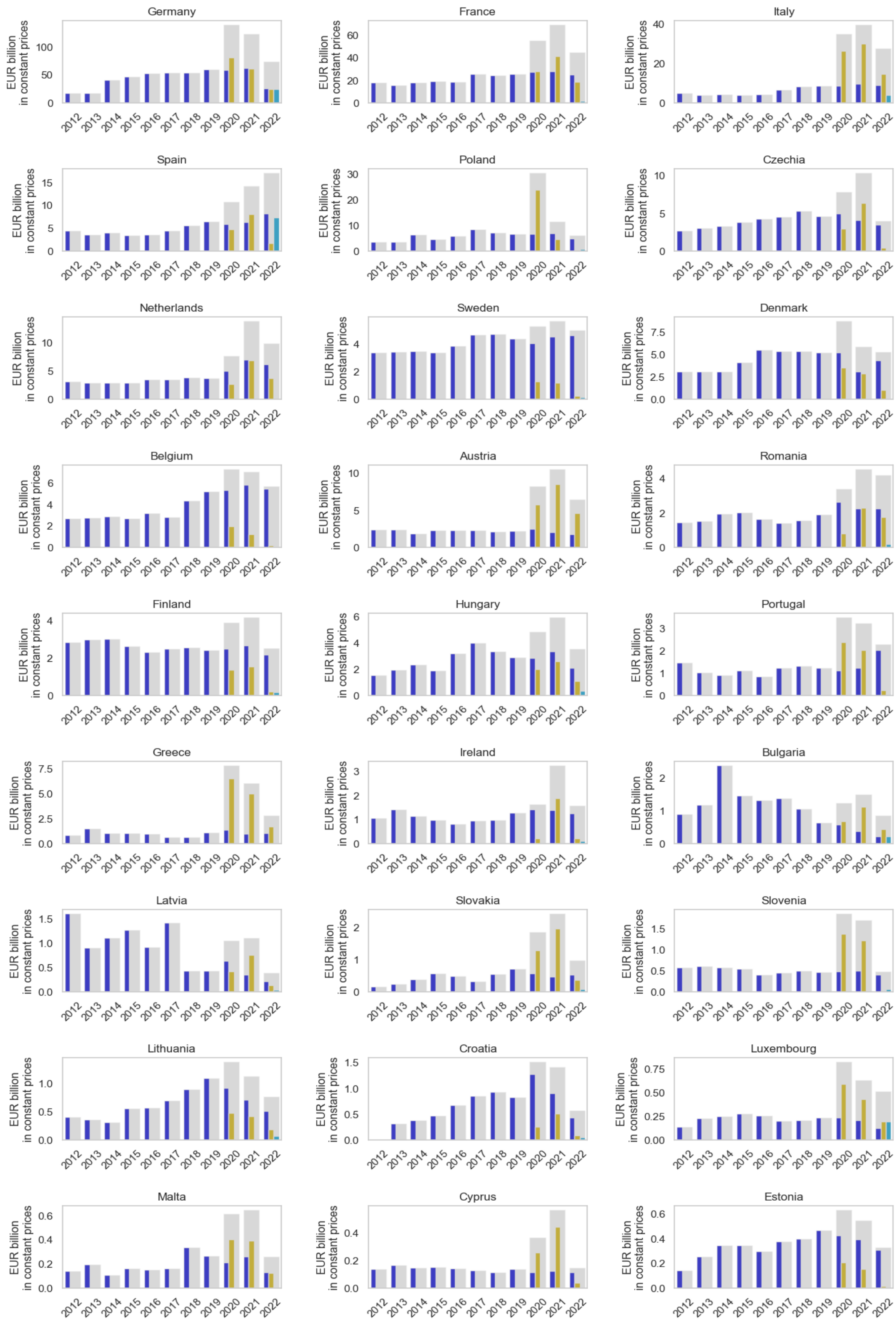


Table 6: Total State aid expenditure by Member State, in nominal amounts (EUR billion in constant prices), breakdown between COVID-19 related State aid, TCF related State aid and other (non-crisis) State aid measures, 2012-2022 (the order of the Member States is based on the cumulative expenditure)



6.2 Crucial yet cautious use of State aid in times of crises

Due to the multiple crises in recent years, the possibilities set out in the TFEU to allow State aid in 'exceptional occurrences' or 'to remedy a serious disturbance in the economy of a Member State' have been used extensively. These provisions have enabled the Commission, for example, to approve State aid measures to address the consequences of the COVID-19 pandemic on the economy, and more recently, the energy crisis that resulted from Russia's aggression against Ukraine (under the Temporary Crisis Framework – TCF – and subsequently the Temporary Crisis and Transition Framework – TCTF, both referred to as TC(T)F).

To have an overview of aid granted under the **COVID-19 Temporary Framework**, the Commission carried out surveys covering the period between March 2020, when the Framework entered into force, until end-2021. The evidence collected on the actual implementation of the Framework showed that State aid granted by each Member State (EUR 940 billion, representing around 30% of the amounts approved, i.e. EUR 3.1 trillion) matched the economic damage suffered by the Member State during the crisis in terms of GDP loss.[155] This sent a reassuring message in view of potential concerns on the level playing field across Member States due to significant dispersion across Member States. The COVID-19 Temporary Framework has now been fully phased out.

Similarly, to have an overview of the aid granted under the **TC(T)F or in line with its principles**, the Commission carried out surveys covering the period between March 2022, when the TCF entered into force, and June 2023 (there is insufficient data available for the second half of 2023). During this period, the Commission approved nearly EUR 730 billion in State aid under the TC(T)F or in line with the same principles. The input collected from Member States in the surveys shows that EUR 141 billion was actually granted to companies, representing only 19.3% of the aid approved and corresponding to 0.6% of the EU GDP in 2022 and the first half of 2023[156]. It is worth noting that Member States may formally grant the full aid amount at a given time in one year yet put it at the beneficiaries' disposal over several years (so that the amounts may not have been (fully) paid out in 2022 or the first half of 2023).

During the period in question, Germany granted EUR 72.8 billion, representing 52% of the EUR 141 billion, followed by Italy, which granted EUR 39.2 billion, and Spain, with EUR 12.1 billion. In absolute terms, the three largest spenders have granted 88% of all the aid. In relative terms, Hungary was the largest spender, having granted an amount corresponding to 1.35% of its GDP in 2022 and the first half of 2023. The second largest spender in relative terms was Italy (1.32% of GDP), followed by Germany (1.23% of GDP) and Romania (0.85% of GDP).

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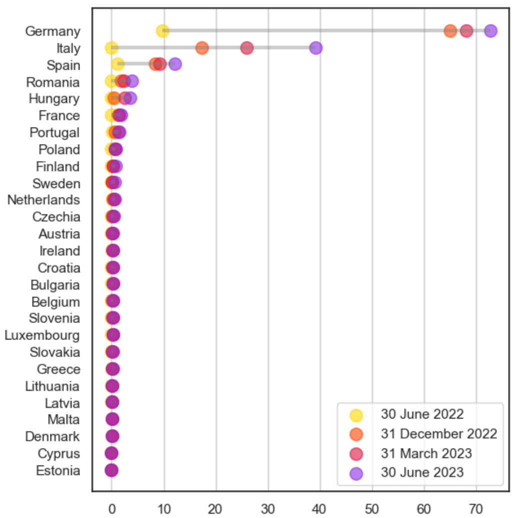
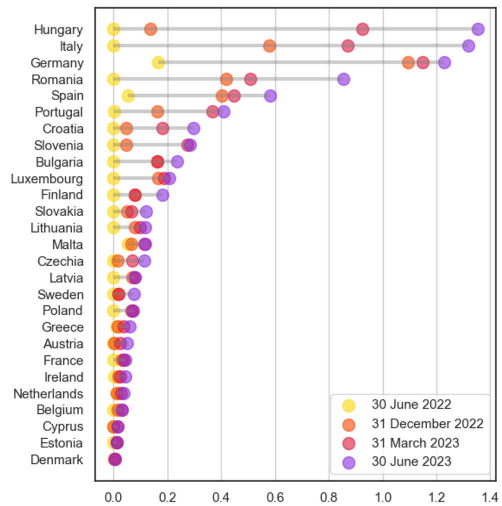
[155] DG COMP Policy Brief "Looking back at the State aid COVID Temporary Framework: the take-up of measures in the EU" dated October 2022, available here.

[156] The information made available to the Commission by Member States is preliminary and data may be subject to correction by Member States.

Table 7: State aid granted in nominal amounts until June 2023 under the TC(T)F or based on its principles in absolute amounts (left chart) and as percentage of national GDP (right chart)



Total State aid granted under the TC(T)F or based on its principles in EUR billion (cumulative values)



Total State aid granted under the TC(T)F or based on its principles in % of 2022 + half 2023 GDP

Looking closer at the aid granted by Germany, 85% of the total amount was granted to two beneficiaries: it covers the recapitalisations of Uniper SE (EUR 33 billion) and SEFE GmbH (EUR 6.5 billion) and loans and subsidised loans made available to these two companies under a German umbrella scheme (credit lines of EUR 16 billion and EUR 7 billion respectively[157], which may not have been drawn). These interventions were necessary to avoid the collapse of these two systemic energy utilities that had outstanding long-term contracts which they could no longer honour following Russia's drastic reduction of gas supplies to Germany. Given their systemic position on the market, their collapse would have had severe consequences for their customers and more generally on the German as well as the European energy market.

Furthermore, these survey figures should be read while keeping several additional considerations in mind. They exclusively refer to measures that qualify as State aid and that have been notified to and approved by the Commission. Moreover, they represent the nominal amount of State aid granted using different instruments (for example, direct grants, equity, loans and guarantees), which have different distortive impacts on competition. When looking at the aid granted through different instruments, aid elements should be considered, as they represent the actual advantage passed on to

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[157] The size of the credit lines was reduced due to improving market conditions.

the undertaking and may constitute a better metric for a fair comparison of aid granted through repayable and non-repayable instruments. This is because non-repayable instruments, such as grants, are generally more distortive of competition compared to repayable instruments such as guarantees or soft loans.

The aid element can be estimated in different ways depending on the type of instrument: for non-repayable instruments, the advantage passed on to the beneficiary normally corresponds to the nominal amount, which is the budgetary expenditure itself. For repayable aid instruments, the advantage to the undertaking and the cost to government may differ. The aid element, and the budgetary expenditure, is generally (much) lower than the nominal amount. For aid instruments such as loans or guarantees, the advantage to the undertaking and the cost to government is respectively the lower interest rate and the reduced guarantee fee actually paid by the undertaking compared to the one that would have been paid at market values.

In this respect, considering the estimated aid elements, Germany, has granted around 0.9% of its GDP for 2022 and the first half of 2023, mainly in the form of equity interventions, again notably for the recapitalisations of the systemic energy suppliers Uniper and SEFE (55% of the total aid granted). The next largest State aid spenders are Hungary (approximately 0.68% of its own GDP), Spain (0.45%) and Portugal (0.41%). Italy and Romania have granted a smaller share of their respective GDPs when looking at aid elements, reflecting the large use of repayable instruments, mainly guarantees.

Further, Member States have implemented horizontal fiscal policy measures to mitigate the impact of high energy prices on households and business. These are mostly measures that do not qualify as State aid. Based on the estimates in the Commission's Autumn economic forecast[158], in 2023, the net budgetary cost of such energy measures[159] amounted to around EUR 165 billion, corresponding to 0.97% of EU27 GDP, down from EUR 195 billion and 1.2% of EU27 GDP in 2022.

In absolute terms, the measures implemented by Germany, France, and Italy had the highest net budgetary cost in 2023, of EUR 59.4 billion, EUR 22.8 billion and EUR 21.4 billion respectively, representing altogether 63% of all the energy fiscal measures in the EU (respectively around 36%, 14%, and 13% of the total EU spending on energy fiscal measures). These are followed by Spain, with EUR 13.5 billion (8% of the total) and the Netherlands, with EUR 10.6 billion (6% of the total).

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[158] European Commission's Directorate-General for Economic and Financial Affairs (2023), European Economic Forecast, Autumn 2023. Available at: https://economy-finance.ec.europa.eu/document/download/4139ef72-9eb3-4fad-a116-ee87979f4d35_en?filename=ip258_en.pdf. The budgetary impact reflect the measures put in place or announced before the end of October 2023. For Slovakia, the forecast estimates have been updated after the submission of the 2024 Draft Budgetary Plan on 12 December 2023.

[159] For the purposes of these estimations, 'energy measures' are defined as: (1) measures that have a direct impact on the marginal cost of energy consumption for households and/or firms ('price measures'); (2a) measures that provide temporary income support to households; (2b) measures that provide compensation to firms other than price measures (both 'income measures'); and (3) revenues from (new taxes or levies on) windfall profits by energy companies.

In all other Member States, the net budgetary cost was between 3% (Poland) and 0.01% (Greece) of total EU spending on energy fiscal measures.

In relative terms as a share of their 2023 GDP, the measures implemented by Slovakia, Croatia and Malta had the highest net budgetary cost (1.89%, 1.77% and 1.6%, respectively). They are followed by Austria (1.56%) and Germany (1.45%). Hungary (1.34%), Portugal (1.25%), Czechia (1.18%), Italy (1.04%) and the Netherlands (1.03%) had a budgetary cost above the EU27 average (0.97%).

From a macroeconomic perspective, the past years were marked by several complex and dynamic factors. The COVID-19 pandemic gradually subsided, with restrictions lifted, and at the same time the Russian aggression in Ukraine escalated, with the subsequent crisis as well as the risk of escalation in the Middle East increasing geopolitical tensions. These events have had significant implications for economic conditions in the EU and its Member States. According to the Commission 2024 Winter Economic Forecast[160], growth in both the EU and euro area has been more modest than expected (0.5% in 2023, a slight decrease from the 0.6% projected in the previous Autumn Forecast). At EU level, last year's modest growth is largely due to the momentum of the post-pandemic economic rebound in the previous two years, while the decline in headline inflation in 2023 has been faster than expected, and largely driven by declining energy prices.

These factors and the respective exposure of a Member State's economy have had significant implications for their economic performance and also for the implementation and evaluation of State aid measures adopted in response. Among the Member States having granted the largest amounts of aid in relative terms or in terms of estimated aid elements, the German and Hungarian economies slightly contracted in 2023 (by 0.3% and 0.8%, respectively), while Spain experienced above average growth (2.5%). Similarly, among Member States having granted the least amount of aid in relative terms or in terms of estimated aid elements, Denmark experienced average growth (0.5%) and Cyprus above-average growth (2.4%), while the Estonian economy contracted by 3.5%. This shows that it is not possible to draw even tentative conclusions about the impact of State aid, viewed in isolation, on GDP growth, as this impact is combined with the effects of multiple other factors, considering the heterogeneity and uncertainty of the context in each Member State.

The analysis above and the data presented, illustrate the importance of assessing the impact of crisis aid beyond the 'headline figures', but also the lack of data at this stage to assess correlations or causality. Member States may have had varying energy sensitivities to the war in Ukraine, differently structured economies – in particular in terms of size or importance of heavy or energy –intensive industries – and/or differently structured energy sectors. Furthermore, Member States' ability to support companies may differ significantly. While State aid is approved subject to clear safeguards to ensure that it is necessary, proportionate and does not unduly distort competition, temporary rules should be phased out as soon as market conditions justify it. This is why the remaining crisis sections of the TCTF are set to expire in June 2024.

[160]European Economic Forecast – Winter 2024, Institutional Paper 268, February 2024

6.3 Pursuing the digital and green transition and other EU priorities

Although the State may play an important role to create the appropriate circumstances in the economy to deliver competitiveness, many of its actions to that effect may not entail State aid in the sense of Article 107(1) TFEU, and State aid measures are usually not sufficient on their own in this respect.

That being said, State aid rules offer many possibilities for Member States to fulfil policy objectives supporting a well-functioning and equitable economy, and to address market failures. In this respect, the review of State aid rules has sought to ensure that they are fit for purpose and aligns them with the EU's green, digital, and resilience objectives.

By the end of 2023, the Commission finalised the review of almost all major State aid guidelines. The revised guidelines specify how Member States can support their economies, especially to invest in green and digital technologies, without unduly distorting competition in the Single Market while contributing to global competitiveness[161].

- To support the **green transition**, the Climate, Environmental Protection and Energy Aid Guidelines (CEEAG) and the ETS State aid Guidelines facilitate aid to green the economy in line with the EU Green Deal, while helping to safeguard the competitiveness of the EU economy. They enable Member States to support the roll-out of renewable energy generation, to decarbonise industrial production, and to support energy-intensive users subject to international competition.
- Member States may also design their support measures for renewable energy, storage and decarbonisation of the industry under the TCTF. These rules aim to give an urgent boost to and accelerate the roll-out of renewable energy and decarbonised production processes. While the support schemes must be set-up and aid granted by 2025, aid can be disbursed also in the following years. Experience with this simplified framework will inform further reflections for the future.
- State aid rules also respond to **global competitiveness challenges**: for example, the TCTF enables Member States to set up simple and effective schemes to support the production of strategic equipment necessary for the net-zero transition (namely batteries, solar panels, wind turbines, heat-pumps, electrolysers and equipment for carbon capture usage and storage, as well as for production of key components and for production and recycling of related critical raw materials).
- Where there is a real risk of investments in such strategic equipment being diverted away from the EU due to subsidies in third jurisdictions, Member States can provide State aid up to

[161] The Commission can exceptionally also approve aid outside guidelines and directly under the TFEU. For instance, on 27 July 2023, the Commission approved a EUR 28.8 million Austrian aid measure to support the modernisation of Sandoz GmbH penicillin production site in Tyrol, which will help to maintain in the EU the last fully integrated production of amoxicillin, contributing to the security of supply of essential and live-saving medicines, see Case SA.62915, Austria - Aid for maintaining Sandoz penicillin production in Kundl (Tyrol).

the amount of support available for an equivalent investment in the alternative location, or the amount needed to incentivise the company to locate the investment in the EEA (the so-called 'funding gap') whichever is the lowest.

- EU State aid rules also play a fundamental role in supporting the **digital transition**. For example, the new Broadband Guidelines are aligned to the latest market and technological developments, including very high-capacity networks and 5G deployment. Furthermore, in view of the extraordinary strategic relevance of semiconductors, the Commission has set out criteria for approving State aid up to the funding gap for the establishment in the EU of first-of-a-kind facilities defined in the EU Chips Act.
- Another example is the Regional Aid Guidelines (RAG), supporting **investments in less developed regions** of the EU including for green and digital objectives. In 2021, the Commission increased overall maximum aid intensities to support the European Green Deal and Digital Strategy objectives, thereby enabling additional incentives for such investments in the disadvantaged areas of the EU.
- Finally, **Important Projects of Common European Interest (IPCEI)** are an important State aid tool, which ensures that cutting-edge technologies are developed and deployed in the EU. IPCEIs enable Member States to pool State resources in strategic sectors and technologies of common EU interest where the market alone does not always deliver, for example microelectronics, hydrogen, and cloud services. IPCEIs enable strategic, jointly designed, cross-border innovative research and development activities, and their first industrial deployment. They also enable open infrastructure projects. These initiatives generate significant spill-over effects across the EU. With the 2023 amendment of the General Block Exemption Regulation (GBER), the Commission has also facilitated the possibility for SMEs to participate in such IPCEIs.

Thus, in 2022, industrial aid[162], including based on above-mentioned guidelines, amounted to EUR 106.85 billion in total, accounting for approximately 0.26% of EU GDP and corresponding to EUR 238 per capita in the EU. Of this, as mentioned above, aid disbursed for environmental protection, including for energy savings, has been the main policy objective in the last ten years and amounted to EUR 41.5 billion in 2022, representing 38.8% of total industrial aid, approximately 0.1% of EU GDP and corresponding to EUR 92 per capita. Furthermore, the aid disbursed under IPCEI measures in 2022 amounted to EUR 1.04 billion and investment aid under the RAG to support the batteries sector amounted to EUR 262 million.

In terms of process, most State aid measures that are unlikely to raise competition concerns may be implemented directly by Member States based on the criteria of the GBER, without requiring advance notification to and approval by the Commission. In 2022, Member States implemented 2203

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[162] Industrial aid refers to State aid expenditure, in aid element, in 2022 as reported in annual reports, excluding State aid with the following policy objectives: 'Culture', 'Heritage conservation', and 'Compensation of damages caused by natural disasters'. The analysis also excludes crisis aid, i.e., State aid expenditure provided in the context of the COVID-19 crisis and State aid expenditure in response to the Russian invasion of Ukraine.

measures under State aid block exemptions, corresponding to 84% of all new State aid measures and 93% of new measures, if crisis measures (which are based on notifications under the COVID-19 Temporary Framework and the TC(T)F, or based on their principles) are excluded. This trend is expected to continue in 2024 as a result of the adoption in June 2023 of a targeted amendment of the GBER, which further simplifies and speeds up support for the EU's green and digital transitions.

6.4 Safeguarding a well-functioning Single Market for a competitive EU economy

As the Commission's October 2023 Report on EU policy initiatives for the promotion of investments in clean technologies[163] demonstrates, the EU has been leading the green transition both domestically and globally, thanks to decisive actions taken in line with the European Green Deal, not least in State aid policy. In this mandate, the Commission used the inbuilt flexibility of State aid rules to adapt to the needs of Member States and companies, to enable the EU economy to seize the green and digital transitions and to respond to crises, while putting in place safeguards to avoid undue distortions to competition and preserve a level playing field within the Single Market.

Indeed, the Commission is committed to ensuring a level playing field in the Single Market both from an internal and external perspective. When competition is distorted by foreign subsidies to the detriment of competitors and consumers, the Commission will use its tools such as trade defence instruments and the Foreign Subsidies Regulation (FSR), where appropriate. The FSR started to apply on 12 July 2023 and sends a strong message: the EU economy remains open to trade and investment, but it will not be undermined or taken advantage of by foreign subsidies distorting the Single Market.

At the same time, while third countries are also implementing significant aid programs, such as the US Inflation Reduction Act, the available data on its impact on the EU economy is so far not conclusive. The concrete effects of the IRA on EU investment can only be assessed in the longer term due to the long-term investment cycles and long-lasting capital assets of the clean technology industry.

This is also because competitiveness cannot be built on subsidies alone. There is no obvious correlation between overall economic performance and the subsidies granted. Many other factors come into play such as innovation, cost efficiency and human capital. Companies must feel the need to innovate, to find more efficient solutions, and to invest. An effective enforcement of competition policy stimulates businesses to innovate and invest and ensures that the businesses that succeed are those offering the best products to consumers at affordable prices. At the level of society, businesses should expect trustworthy and transparent institutions and public authorities, a stable macroeconomic and regulatory framework, legal certainty, access to necessary skills and to high-quality infrastructure, all supporting an investment-friendly business environment.

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[163] COM(2023) 684 final

This is what the Single Market offers, along with one of the world's largest integrated market areas. And this is where its competitiveness has come from. But the Single Market is not a static achievement. The health and the competitiveness of the EU economy depend on joint and continuous efforts to tend to the Single Market and to ensure that it remains aligned with economic realities. And to deliver the EUR 650 billion required annually for the twin transition and for our economic resilience[164] – investments will primarily have to come from the private sector, regardless of Member States' fiscal capacity. Moreover, EU funding remains necessary to address financing needs while avoiding fragmentation of the Single Market due to varying levels of national (temporary) State aid support, and to reduce regional disparities. Not least, remaining barriers that impede effective trade in and across the Single Market must be addressed to allow companies to benefit from the full potential of the Single Market.[165]

7. Measuring the impact of competition enforcement on customers

DG Competition estimates that direct customer savings generated by the Commission's antitrust and merger enforcement over the period 2012-2022 amount to between EUR 145 - 250 billion. On average, antitrust and merger enforcement generated approximately EUR 13 to 23 billion of direct benefits for customer per year. Overall customer benefits of competition enforcement also include indirect or deterrent effects of enforcement as well as positive effects on innovation and quality. These effects are more difficult to quantify or estimate, but they are likely to be 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 real EU GDP relative to the baseline in the range of 0.6% to 1.1% (the equivalent of an uplift of EUR 80 to 150 billion in 2019 GDP) in the medium to long term[166].

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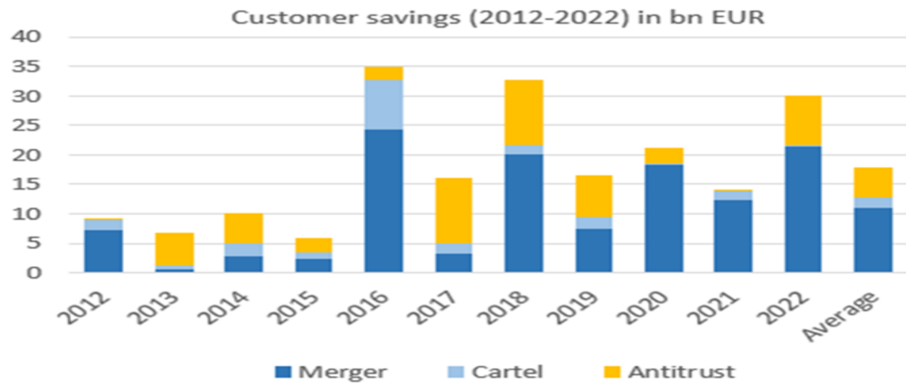
[164] The overall additional investment needs to meet the objectives of the twin transitions have been estimated at around EUR 650 billion annually for 2022 to 2030, see https://commission.europa.eu/strategy-and-policy/strategicplanning/strategic-foresight/2022-strategic-foresightreport_en#:~:text=It%20is%20estimated%2C%20at%20lower,regions%20in%20Europe%20and%20beyond, and https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3194.

[165] In the COM(2024)77 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The 2024 Annual Single Market and Competitiveness Report" , the Commission has provided an analysis of the Single Market and its competitiveness, structured along nine competitiveness drivers: the functioning of the Single Market, access to private capital, public investment and infrastructure, research and innovation, energy, circularity, digitalisation, education and skills, and trade and open strategic autonomy.

[166] 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.

Table 8: Customer savings (midpoints) 2012-2022



Source: DG Competition based on internal data.

In 2023, DG Competition continued its work on the 'State of EU Competition' project. The purpose of this project is to explore the evolution of market and industry concentration across different sectors and Member States and identify potentially malfunctioning sectors. It will also assess and document the benefits of competition, inter alia based on price concentration analyses at sector level, macro-economic modelling, and a survey among enterprises. For this purpose, DG Competition will be able to draw on the results of two preparatory studies, one conducted by the OECD (final report expected in 2024) and another by an external consultant (final report received December 2023, publication forthcoming.)

8. Modernising DG Competition's working methods to fit current and future enforcement needs

8.1. Digital business solutions

In 2023, DG Competition continued the transformation of its working methods in line with the Commission's revised Digital Strategy[167]. The use of the *CASE@EC* case handling application was extended. In parallel, work on replacing the old case management system for antitrust and cartel enforcement with CASE@EC progressed well in 2023 and is expected to be completed in 2024.

In 2023, DG Competition also continued improving and digitalising its communications with external parties. The *COMP Cases* application[168] - which allows the publication of cases and helps citizens and external stakeholders to better access, search, and export public data on competition data - was revamped. Moreover, *ECN2* - the collaboration tool used in the European Competition Network – now supports enforcement cooperation under the FSR. In addition, many of the tools used

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[167] Communication of the Commission, European Commission digital strategy - Next generation digital Commission, C(2022) 4388 final, 30.6.2022.

[168] See: https://competition-cases.ec.europa.eu/search

for DG Competition's enforcement activities were upgraded, for instance *eRFI*[169], *eLeniency*[170], *eConfidentiality*[171], as well as the *State Aid Notification* (*SANI2*)[172] and *Reporting* (*SARI2*)[173] applications. DG Competition is continuously improving the handling of the ever-larger volumes of case-related submissions. In 2023, *eDiscovery* - used by case teams to review large amounts of documents – was revamped, improving functionality and user experience.

8.2. Data analysis and technology

The Chief Technology Officer's Team - DG Competition's unit for data analysis and technology – continued and developed its activities in 2023. The team advises the Competition Commissioner and the Director-General. It also guides and oversees all data and technology-related initiatives and work streams of DG Competition. The Chief Technology Officer's Team functions as a centre of excellence for digital investigative tools and data science supporting DG Competition's enforcement instruments. It also provides state-of-the-art Forensic IT (FIT) support as well as intelligence and investigative assistance. Finally, the unit plays an active role in the network of digital investigation experts in the ECN working group on data protection and competition enforcement.

DG Competition ensures that all procedures remain compliant with data protection rules, while making sure this protection is not abused to hamper or delay investigations. In 2023, the General Court in Case T-451/20, *Meta* held that the Commission was entitled to process personal data for the purposes of a competition investigation and that the procedural safeguards applied by the Commission are fully compliant with the Commission's obligations under EU data protection rules[174].

8.3. Whistle-blower tool strengthened

The Commission operates a whistle-blower tool, a facility where members of the public can report anonymously if they have detected suspected cartel activity or other anti-competitive activities such as abuse of a dominant market position. In January 2023, the Commission extended the scope of the anonymous whistle-blower tool, enabling individuals and companies to also report suspected merger-related and State aid infringements[175].

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[169] See: https://competition-policy.ec.europa.eu/mergers/procedures/erfi_en
[170] See: https://competition-policy.ec.europa.eu/antitrust-and-cartels/leniency/eleniency_en
[171] See: https://competition-policy.ec.europa.eu/index/it-tools/econfidentiality_en
[172] See: https://competition-policy.ec.europa.eu/state-aid/legislation/forms-notifications-and-reporting_en
[173] See: https://competition-policy.ec.europa.eu/state-aid/overview_en
[174] Judgement of the General Court of 24.5.2023 in Case T-451/20, *Meta Platforms Ireland v Commission*, EU:T:2023:276.
[175] See: https://competition-policy.ec.europa.eu/index/whistleblower_en.

9. Advocacy and outreach supporting competition policy and enforcement

In 2023, the Commission continued with its competition policy advocacy and outreach activities at multiple levels to support the effectiveness of EU competition policy, most prominently with Executive Vice-President Vestager participating in events and press conferences, giving interviews, and participating in social media. Senior managers at DG Competition participated in outreach activities in Member States. These activities complement DG Competition's external communication initiatives such as press releases, policy briefs, newsletters, and social media.

In 2023, the Commission launched the Markets for People itinerant debate series, taking place in five mid-sized cities in five different EU countries between April 2023 and early 2024. The Commission invites personalities from different policy fields to debate the economic and social impact of competition policy on people's lives. The locations, speakers and topics are determined together with National Competition Authorities, the Commission's Representations in Member States, and local Europe Direct centres. The first debate was held in April 2023 in Modena, Italy, the second in Salzburg, Austria in June 2023, the third debate in Salamanca, Spain in October 2023 and the fourth debate in Brno, Czechia in December 2023.

In June 2023, also as part of its ongoing evaluation of Regulation 1/2003, the Commission celebrated twenty years of EU antitrust enforcement under Regulation 1/2003 with a conference in Brussels. It brought together enforcers, private practitioners, in-house counsel, and academics to discuss and reflect on the achievements, needs and challenges of the current antitrust procedural framework.

10. Competition policy in a European and global context

10.1 Joining forces in shaping a European and global competition culture

Policy coherence through the European Competition Network

Since 2004, the Commission and the NCAs in all EU Member States cooperate through the European Competition Network (ECN)[176]. The objective of the ECN is to ensure that EU antitrust rules are applied in an effective and coherent manner against companies engaging in business practices that restrict competition and that are liable to affect trade between EU Member States. In 2023, the Commission continued to safeguard the coherent application of Regulation 1/2003 through the ECN. The Regulation contains two key mechanisms supporting cooperation. First, NCAs inform the Commission about any new investigation at the stage of the first formal investigative measure. Second, NCAs consult the Commission before adopting certain types of decisions. In 2023, 140 new investigations were launched within the network and 88 envisaged decisions were submitted to the Commission.

[176] 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.

Other work streams within the ECN also ensure a coherent enforcement of competition policy in the EU. ECN members meet regularly to discuss cases, policy issues and matters of strategic importance. In 2023, 48 meetings across horizontal working groups and sector-specific sub-groups were organised, where competition experts from the various authorities exchanged views and explored best practices.

A continuous and constructive inter-institutional dialogue

The European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions are key partners to the Commission in the continuing dialogues on competition policy.

In the European Parliament, Executive Vice-President Vestager participated in 2023 in several exchanges of views or structured dialogues, including with the Economic and Monetary Affairs Committee, the Internal Market and Consumer Protection Committee, the Employment and Social Affairs Committee and the Legislative Affairs Committee. In addition, Executive Vice-President Vestager participated in plenary debates on competition policy and on the EU response to the US Inflation Reduction Act.

In the Council, Executive Vice-President Vestager participated in 2023 in exchanges of views and debates on competition policy matters and on long-term competitiveness and productivity, including in several meetings of the Competitiveness Council (Internal market and industry).

10.2. Competition policy cooperation across the world

Multilateral relations

In 2023, the Commission continued its active engagement in international competition fora such as the OECD Competition Committee, the International Competition Network, where the Commission continued its three-year co-chair role in the Merger Working Group, and the United Nations Conference on Trade and Development (UNCTAD). The Commission continued its endeavours to improve international rules regarding subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules.

Bilateral relations

In March 2023, the Commission and the U.S. Competition Authorities held the third meeting of the Joint Technology Competition Policy Dialogue, discussing cooperation efforts to ensure and promote fair competition in the digital sector. In the EU-U.S. Trade and Technology Council, the 4th ministerial meeting was held in May 2023.

In 2023, the Commission continued its cooperation in competition policy with third countries, including technical cooperation programmes with several Asian[177] and African[178] countries. The

[177] See: https://asia.competitioncooperation.eu/

Commission continued negotiations to conclude Free Trade Agreements (FTAs) with Australia, India, Indonesia, Thailand and ESA5[179].

As regards candidate countries[180] and potential candidates[181] for EU enlargement, the Commission's main policy objective is to assist them with a perspective to join the EU in meeting the membership criteria defined by the Treaty on European Union and by the European Council[182]. For example, the Commission assists candidate countries and potential candidates to align their legal frameworks on antitrust, mergers and State aid with the EU *acquis* and to develop well-functioning and operationally independent competition authorities.

In November 2023, the European Commission adopted its 2023 Enlargement Package, providing a detailed assessment of the state of play and the progress made by the Western Balkans, Türkiye, Georgia, Moldova and Ukraine on their respective paths towards the EU[183]. Considering the results achieved by Ukraine and Moldova, and the ongoing reform efforts, the Commission recommended that the European Council open accession negotiations with both countries, provided that certain steps are taken[184].

In the case of Georgia, the Commission recommended that the European Council grant Georgia the status of a candidate country on the understanding that a number of steps will be taken[185].

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[178] See: https://africa.competitioncooperation.eu/

[179] Five Eastern and Southern Countries: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe.

[180] Countries granted candidate country status by the European Council on the basis of a recommendation by the European Commission: Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

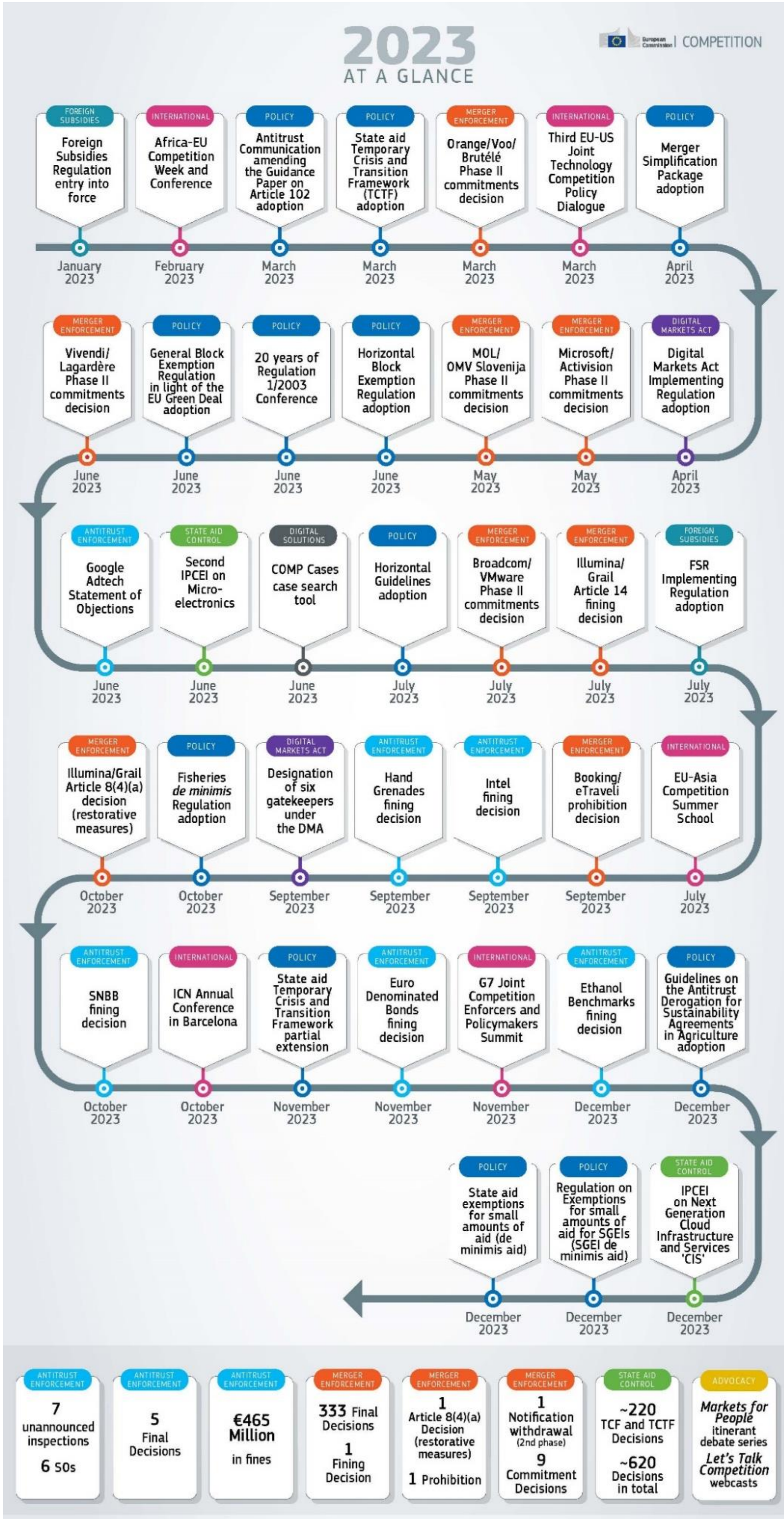
[181] Potential candidate for EU membership: Kosovo.

[182] For more details on the membership criteria, see: https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership_en

[183] See : https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en

[184] On 14 December 2023, the European Council decided to open accession negotiations with Ukraine and Moldova. The European Council invited the Council to adopt the respective negotiating frameworks once the relevant steps set out in the respective Commission recommendations of 8 November 2023 are taken.

[185] On 14 December 2023, Georgia was granted candidate status by the European Council, on the understanding that the relevant steps set out in the Commission recommendation of 8 November 2023 are taken.


2023
AT A GLANCE
European Commission | COMPETITION
FOREIGN SUBSIDIES
Foreign Subsidies Regulation entry into force
January 2023
INTERNATIONAL
Africa-EU Competition Week and Conference
February 2023
POLICY
Antitrust Communication amending the Guidance Paper on Article 102 adoption
March 2023
POLICY
State aid Temporary Crisis and Transition Framework (TCTF) adoption
March 2023
MERGER ENFORCEMENT
Orange/Voo/Brutélé Phase II commitments decision
March 2023
INTERNATIONAL
Third EU-US Joint Technology Competition Policy Dialogue
March 2023
POLICY
Merger Simplification Package adoption
April 2023
DIGITAL MARKETS ACT
Digital Markets Act Implementing Regulation adoption
April 2023
MERGER ENFORCEMENT
Microsoft/Activision Phase II commitments decision
May 2023
MERGER ENFORCEMENT
MOL/OMV Slovenija Phase II commitments decision
May 2023
POLICY
Horizontal Block Exemption Regulation adoption
June 2023
POLICY
20 years of Regulation 1/2003 Conference
June 2023
POLICY
General Block Exemption Regulation in light of the EU Green Deal adoption
June 2023
MERGER ENFORCEMENT
Vivendi/Lagardère Phase II commitments decision
June 2023
ANTITRUST ENFORCEMENT
Google Adtech Statement of Objections
June 2023
STATE AID CONTROL
Second IPCEI on Micro-electronics
June 2023
DIGITAL SOLUTIONS
COMP Cases case search tool
June 2023
POLICY
Horizontal Guidelines adoption
July 2023
MERGER ENFORCEMENT
Broadcom/VMware Phase II commitments decision
July 2023
MERGER ENFORCEMENT
Illumina/Grail Article 14 fining decision
July 2023
FOREIGN SUBSIDIES
FSR Implementing Regulation adoption
July 2023
INTERNATIONAL
EU-Asia Competition Summer School
July 2023
MERGER ENFORCEMENT
Booking/eTraveli prohibition decision
September 2023
ANTITRUST ENFORCEMENT
Intel fining decision
September 2023
ANTITRUST ENFORCEMENT
Hand Grenades fining decision
September 2023
DIGITAL MARKETS ACT
Designation of six gatekeepers under the DMA
September 2023
POLICY
Fisheries *de minimis* Regulation adoption
October 2023
MERGER ENFORCEMENT
Illumina/Grail Article 8(4)(a) decision (restorative measures)
October 2023
ANTITRUST ENFORCEMENT
SNBB fining decision
October 2023
INTERNATIONAL
ICN Annual Conference in Barcelona
October 2023
POLICY
State aid Temporary Crisis and Transition Framework partial extension
November 2023
ANTITRUST ENFORCEMENT
Euro Denominated Bonds fining decision
November 2023
INTERNATIONAL
G7 Joint Competition Enforcers and Policymakers Summit
November 2023
ANTITRUST ENFORCEMENT
Ethanol Benchmarks fining decision
December 2023
POLICY
Guidelines on the Antitrust Derogation for Sustainability Agreements in Agriculture adoption
December 2023
STATE AID CONTROL
IPCEI on Next Generation Cloud Infrastructure and Services 'CIS'
December 2023
POLICY
Regulation on Exemptions for small amounts of aid for SGEIs (SGEI de minimis aid)
December 2023
POLICY
State aid exemptions for small amounts of aid (de minimis aid)
December 2023
ANTITRUST ENFORCEMENT
7 unannounced inspections
6 SOs
ANTITRUST ENFORCEMENT
5 Final Decisions
ANTITRUST ENFORCEMENT
€465 Million in fines
MERGER ENFORCEMENT
333 Final Decisions
1 Fining Decision
MERGER ENFORCEMENT
1 Article 8(4)(a) Decision (restorative measures)
1 Prohibition
MERGER ENFORCEMENT
1 Notification withdrawal (2nd phase)
9 Commitment Decisions
STATE AID CONTROL
~220 TCF and TCTF Decisions
~620 Decisions in total
ADVOCACY
Markets for People itinerant debate series
Let's Talk Competition webcasts