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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

(Text with EEA relevance)

(OJ L 187, 26.6.2014, p. 1)

Amended by:

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CHAPTER I
COMMON PROVISIONS

Article 1

Scope

1. This Regulation shall apply to the following categories of aid:
- (a) regional aid;
 - (b) aid to SMEs in the form of investment aid, operating aid and SMEs' access to finance;
 - (c) aid for environmental protection;
 - (d) aid for research and development and innovation;
 - (e) training aid;
 - (f) recruitment and employment aid for disadvantaged workers and workers with disabilities;
 - (g) aid to make good the damage caused by certain natural disasters;
 - (h) social aid for transport for residents of remote regions;
 - (i) aid for broadband infrastructures;
 - (j) aid for culture and heritage conservation;

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- (k) aid for sport and multifunctional recreational infrastructure;
- (l) aid for local infrastructures;
- (m) aid for regional airports; and
- (n) aid for ports.

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2. This Regulation shall not apply to:
- (a) schemes under Sections 1 (with the exception of Article 15), 2, 3, 4, 7 (with the exception of Article 44), and 10 of Chapter III of this Regulation, if the average annual State aid budget exceeds EUR 150 million, from six months after their entry into force. The Commission may decide that this Regulation shall continue to apply for a longer period to any of these aid schemes after having assessed the relevant evaluation plan notified by the Member State to the Commission, within 20 working days from the scheme's entry into force;
 - (b) any alterations of schemes referred to in Article 1(2)(a), other than modifications which cannot affect the compatibility of the aid scheme under this Regulation or cannot significantly affect the content of the approved evaluation plan;
 - (c) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;

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- (d) aid contingent upon the use of domestic over imported goods.
3. ►**M1** This Regulation shall not apply to:
- (a) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council⁽¹⁾ with the exception of training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, regional investment aid in outermost regions and regional operating aid schemes;
- (b) aid granted in the primary agricultural production sector, with the exception of regional investment aid in outermost regions, regional operating aid schemes, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;
- (c) aid granted in the sector of processing and marketing of agricultural products, in the following cases:
- (i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;
- (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision 2010/787/EU⁽²⁾;
- (e) the categories of regional aid referred to in Article 13. ◀

Where an undertaking is active in the excluded sectors as referred to in points (a), (b) or (c) of the first subparagraph and in sectors which fall within the scope of this Regulation, this Regulation applies to aid granted in respect of the latter sectors or activities, provided that Member States ensure by appropriate means, such as separation of activities or distinction of costs, that the activities in the excluded sectors do not benefit from the aid granted in accordance with this Regulation.

⁽¹⁾ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

⁽²⁾ Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

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4. This Regulation shall not apply to:

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(a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;

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(b) ad hoc aid in favour of an undertaking as referred to in point (a);

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(c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes and regional operating aid schemes, provided those schemes do not treat undertakings in difficulty more favourably than other undertakings.

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5. This Regulation shall not apply to State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law, in particular:

(a) aid measures where the grant of aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State; However, the requirement to have an establishment or branch in the aid granting Member State at the moment of payment of the aid is allowed.

(b) aid measures where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;

(c) aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) ‘aid’ means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty;
- (2) ‘small and medium-sized enterprises’ or ‘SMEs’ means undertakings fulfilling the criteria laid down in Annex I;
- (3) ‘worker with disabilities’ means any person who:
 - (a) is recognised as worker with disabilities under national law; or
 - (b) has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers;
- (4) ‘disadvantaged worker’ means any person who:
 - (a) has not been in regular paid employment for the previous 6 months; or

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- (b) is between 15 and 24 years of age; or
 - (c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or
 - (d) is over the age of 50 years; or
 - (e) lives as a single adult with one or more dependents; or
 - (f) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
 - (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;
- (5) ‘transport’ means transport of passengers by aircraft, maritime transport, road, rail, or by inland waterway or freight transport services for hire or reward;
 - (6) ‘transport costs’ means the costs of transport for hire or reward actually paid by the beneficiaries per journey, comprising:
 - (a) freight charges, handling costs and temporary stocking costs, in so far as these costs relate to the journey;
 - (b) insurance costs applied to the cargo;
 - (c) taxes, duties or levies applied to the cargo and, if applicable, to the deadweight, both at point of origin and point of destination; and
 - (d) safety and security control costs, surcharges for increased fuel costs;
 - (7) ‘remote regions’ means outermost regions, Malta, Cyprus, Ceuta and Melilla, islands which are part of the territory of a Member State and sparsely populated areas;
 - (8) ‘marketing of agricultural products’ means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;
 - (9) ‘primary agricultural production’ means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;
 - (10) ‘processing of agricultural products’ means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

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- (11) ‘agricultural product’ means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013;
- (12) ‘outermost regions’ means regions as defined in Article 349 of the Treaty. In accordance with European Council Decision 2010/718/EU, from 1 January 2012, Saint-Barthélemy ceased to be an outermost region. In accordance with European Council Decision 2012/419/EU on 1 January 2014, Mayotte became an outermost region;
- (13) ‘coal’ means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines ⁽¹⁾;
- (14) ‘individual aid’ means:
- (i) ad hoc aid; and
 - (ii) awards of aid to individual beneficiaries on the basis of an aid scheme;
- (15) ‘aid scheme’ means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (16) ‘evaluation plan’ means a document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the final evaluation report, the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation;
- (17) ‘ad hoc aid’ means aid not granted on the basis of an aid scheme;
- (18) ‘undertaking in difficulty’ means an undertaking in respect of which at least one of the following circumstances occurs:
- (a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from

⁽¹⁾ OJ L 336, 21.12.2010, p. 24.

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reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU ⁽¹⁾ and ‘share capital’ includes, where relevant, any share premium.

- (b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, ‘a company where at least some members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.
- (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- (d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.
- (e) In the case of an undertaking that is not an SME, where, for the past two years:
- (1) the undertaking's book debt to equity ratio has been greater than 7,5 and
 - (2) the undertaking's EBITDA interest coverage ratio has been below 1,0.
- (19) ‘territorial spending obligations’: mean the obligations imposed by the authority granting the aid on beneficiaries to spend a minimum amount and/or conduct a minimum level of production activity in a particular territory;
- (20) ‘adjusted aid amount’ means the maximum permissible aid amount for a large investment project, calculated according to the following formula:

$$\text{maximum aid amount} = R \times (A + 0,50 \times B + 0 \times C)$$

where: R is the maximum aid intensity applicable in the area concerned established in an approved regional map and which is in force on the date of granting the aid, excluding the increased aid intensity for SMEs; A is the initial EUR 50 million of eligible costs, B is the part of eligible costs between EUR 50 million and EUR 100 million and C is the part of eligible costs above EUR 100 million

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

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- (21) ‘repayable advance’ means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;
- (22) ‘gross grant equivalent’ means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charge;
- (23) ‘start of works’ means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;
- (24) ‘large enterprises’ means undertakings not fulfilling the criteria laid down in Annex I;
- (25) ‘fiscal successor scheme’ means a scheme in the form of tax advantages which constitutes an amended version of a previously existing scheme in the form of tax advantages and which replaces it.
- (26) ‘aid intensity’ means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;
- (27) ‘assisted areas’ means areas designated in an approved regional aid map for the period 1.7.2014 - 31.12.2020 in application of Articles 107(3)(a) and (c) of the Treaty;
- (28) ‘date of granting of the aid’ means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;
- (29) ‘tangible assets’ means assets consisting of land, buildings and plant, machinery and equipment;
- (30) ‘intangible assets’ means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;
- (31) ‘wage cost’ means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs;
- (32) ‘net increase in the number of employees’ means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;
- (33) ‘dedicated infrastructure’ means infrastructure that is built for *ex-ante* identifiable undertaking(s) and tailored to their needs.

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- (34) ‘financial intermediary’ means any financial institution regardless of its form and ownership, including fund-of-funds, private equity investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;
- (35) ‘journey’ means the movement of goods from the point of origin to the point of destination, including any intermediary sections or stages within or outside the Member State concerned, made using one or more means of transport;
- (36) ‘fair rate of return (FRR)’ means the expected rate of return equivalent to a risk-adjusted discount rate which reflects the level of risk of a project and the nature and level of capital the private investors plan to invest;
- (37) ‘total financing’ means the overall investment amount made into an eligible undertaking or project under Section 3 or under Articles 16 or 39 of this Regulation to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;
- (38) ‘competitive bidding process’ means a non-discriminatory bidding process that provides for the participation of a sufficient number of undertakings and where the aid is granted on the basis of either the initial bid submitted by the bidder or a clearing price. In addition, the budget or volume related to the bidding process is a binding constraint leading to a situation where not all bidders can receive aid;

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- (39) ‘operating profit’ means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

▼ B**Definitions applying to regional aid**

- (40) Definitions applying to aid for broadband infrastructures (Section 10) are applicable to the relevant regional aid provisions.
- (41) ‘regional investment aid’ means regional aid granted for an initial investment or an initial investment in favour of a new economic activity;

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- (42) ‘regional operating aid’ means aid to reduce an undertaking's current expenditure. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting investment aid;

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- (43) ‘steel sector’ means all activities related to the production of one or more of the following products:
- (a) pig iron and ferro-alloys:
- pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;
- (b) crude and semi-finished products of iron, ordinary steel or special steel:
- liquid steel whether or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;
- (c) hot finished products of iron, ordinary steel or special steel:
- rails, sleepers, fishplates, soleplates, joists, heavy sections of 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;
- (d) cold finished products:
- tinplate, terneplate, blackplate, galvanised sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;
- (e) tubes:
- all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;
- (44) ‘synthetic fibres sector’ means:
- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- (c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used;
- (45) ‘transport sector’ means the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically, the ‘transport sector’ means the following activities in terms of NACE Rev. 2:

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- (a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;
 - (b) NACE 50: Water transport;
 - (c) NACE 51: Air transport, excluding NACE 51.22 Space transport.
- (46) ‘scheme targeted at a limited number of specific sectors of economic activity’ means a scheme which covers activities falling within the scope of less than five classes (four-digit numerical code) of the NACE Rev. 2 statistical classification.
- (47) ‘tourism activity’ means the following activities in terms of NACE Rev. 2:
- (a) NACE 55: Accommodation;
 - (b) NACE 56: Food and beverage service activities;
 - (c) NACE 79: Travel agency, tour operator reservation service and related activities;
 - (d) NACE 90: Creative, arts and entertainment activities;
 - (e) NACE 91: Libraries, archives, museums and other cultural activities;
 - (f) NACE 93: Sports activities and amusement and recreation activities;

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- (48) ‘sparsely populated areas’ means NUTS 2 regions with less than 8 inhabitants per km² or NUTS 3 regions with less than 12,5 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;
- (48a) ‘very sparsely populated areas’ means NUTS 2 regions with less than 8 inhabitants per km² or areas which are recognized by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted;

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- (49) ‘initial investment’ means:
- (a) an investment in tangible and intangible assets related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or
 - (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller and excludes sole acquisition of the shares of an undertaking;
- (50) ‘the same or a similar activity’ means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the

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Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains ⁽¹⁾;

- (51) ‘initial investment in favour of new economic activity’ means:
- (a) an investment in tangible and intangible assets related to the setting up of a new establishment, or to the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment;
 - (b) the acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition;
- (52) ‘large investment project’ means an initial investment with eligible costs exceeding EUR 50 million, calculated at prices and exchange rates on the date of granting the aid;
- (53) ‘point of destination’ means the place where the goods are unloaded;
- (54) ‘point of origin’ means the place where the goods are loaded for transport;

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- (55) ‘areas eligible for operating aid’ means an outermost region referred to in Article 349 of the Treaty, a sparsely populated area or a very sparsely populated area;

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- (56) ‘means of transport’ means rail transport, road freight transport, inland waterway transport, maritime transport, air transport, and intermodal transport;
- (57) ‘urban development fund’ (‘UDF’) means a specialised investment vehicle set up for the purpose of investing in urban development projects under an urban development aid measure. UDFs are managed by an urban development fund manager;
- (58) ‘urban development fund manager’ means a professional management company with legal personality, selecting and making investments in eligible urban development projects;
- (59) ‘urban development project’ (‘UDP’) means an investment project that has the potential to support the implementation of interventions envisaged by an integrated approach to sustainable urban development and contribute to achieving of the objectives defined therein, including projects with an internal rate of return which may not be sufficient to attract financing on a purely commercial basis. An urban development project may be organised as a separate block of finance within the legal structures of the beneficiary private investor or as a separate legal entity, e.g. a special purpose vehicle;

⁽¹⁾ OJ L 393, 30.12.2006, p. 1.

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- (60) ‘integrated sustainable urban development strategy’ means a strategy officially proposed and certified by a relevant local authority or public sector agency, defined for a specific urban geographic area and period, that set out integrated actions to tackle the economic, environmental, climate, demographic and social challenges affecting urban areas;
- (61) ‘in-kind contribution’ means the contribution of land or real estate where the land or real estate forms part of the urban development project;

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- (61a) ‘relocation’ means a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment). There is a transfer if the product or service in the initial and in the aided establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA;

▼B**Definitions for Aid to SMEs**

- (62) ‘employment directly created by an investment project’ means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;
- (63) ‘organisational cooperation’ means the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs;
- (64) ‘advisory services linked to cooperation’ means consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation;
- (65) ‘support services linked to cooperation’ means the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents;

Definitions for Aid for access to finance for SMEs

- (66) ‘quasi-equity investment’ means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the

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underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

- (67) ‘guarantee’ in the context of sections 1, 3 and 7 of the Regulation means a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions such as debt or lease instruments, as well as quasi-equity instruments.;
- (68) ‘guarantee rate’ means the percentage of loss coverage by a public investor of each and every transaction eligible under the relevant State aid measure;
- (69) ‘exit’ means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares/loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering (IPO);
- (70) ‘financial endowment’ means a repayable public investment made to a financial intermediary for the purposes of making investments under a risk finance measure, and where all the proceeds shall be returned to the public investor;
- (71) ‘risk finance investment’ means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof to eligible undertakings for the purposes of making new investments;
- (72) ‘independent private investor’ means a private investor who is not a shareholder of the eligible undertaking in which it invests, including business angels and financial institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment. Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company;
- (73) ‘natural person’ for the purpose of Articles 21 and 23 means a person other than a legal entity who is not an undertaking for the purposes of Article 107(1) of the Treaty;
- (74) ‘equity investment’ means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;
- (75) ‘first commercial sale’ means the first sale by a company on a product or service market, excluding limited sales to test the market;
- (76) ‘unlisted SME’ means an SME which is not listed on the official list of a stock exchange, except for alternative trading platforms.
- (77) ‘follow-on investment’ means additional risk finance investment in a company subsequent to one or more previous risk finance investment rounds;

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- (78) ‘replacement capital’ means the purchase of existing shares in a company from an earlier investor or shareholder;
- (79) ‘entrusted entity’ means the European Investment Bank and the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission: the entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, ⁽¹⁾ or any subsequent legislation replacing that Directive in full or in part;
- (80) ‘innovative enterprise’ means an enterprise:
- (a) that can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, or
 - (b) the research and development costs of which represent at least 10 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor;
- (81) ‘alternative trading platform’ means a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC where the majority of the financial instruments admitted to trading are issued by SMEs;
- (82) ‘loan’ means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan.

Definitions for Aid for research and development and innovation

- (83) ‘research and knowledge-dissemination organisation’ means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

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also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it;

- (84) ‘fundamental research’ means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;
- (85) ‘industrial research’ means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation;
- (86) ‘experimental development’ means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services;

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements;

- (87) ‘feasibility study’ means the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success;

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- (88) ‘personnel costs’ means the costs of researchers, technicians and other supporting staff to the extent employed on the relevant project or activity;
- (89) ‘arm's length’ means that the conditions of the transaction between the contracting parties do not differ from those which would be stipulated between independent enterprises and contain no element of collusion. Any transaction that results from an open, transparent and non-discriminatory procedure is considered as meeting the arm's length principle;
- (90) ‘effective collaboration’ means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaboration.
- (91) ‘research infrastructure’ means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be ‘single-sited’ or ‘distributed’ (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)⁽¹⁾;
- (92) ‘innovation clusters’ means structures or organised groups of independent parties (such as innovative start-ups, small, medium and large enterprises, as well as research and knowledge dissemination organisations, non-for-profit organisations and other related economic actors) designed to stimulate innovative activity through promotion, sharing of facilities and exchange of knowledge and expertise and by contributing effectively to knowledge transfer, networking, information dissemination and collaboration among the undertakings and other organisations in the cluster;
- (93) ‘highly qualified personnel’ means staff having a tertiary education degree and at least 5 years of relevant professional experience which may also include doctoral training;
- (94) ‘innovation advisory services’ means consultancy, assistance and training in the fields of knowledge transfer, acquisition, protection and exploitation of intangible assets, use of standards and regulations embedding them;

⁽¹⁾ OJ L 206, 8.8.2009, p. 1.

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- (95) ‘innovation support services’ means the provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification for the purpose of developing more effective products, processes or services;
- (96) ‘organisational innovation’ means the implementation of a new organisational method in an undertaking's business practices, workplace organisation or external relations, excluding changes that are based on organisational methods already in use in the undertaking, changes in management strategy, mergers and acquisitions, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;
- (97) ‘process innovation’ means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), excluding minor changes or improvements, increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, ceasing to use a process, simple capital replacement or extension, changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes and trading of new or significantly improved products;
- (98) ‘secondment’ means temporary employment of staff by a beneficiary with the right for the staff to return to the previous employer;

Definitions for aid for disadvantaged workers and for workers with disabilities

- (99) ‘severely disadvantaged worker’ means any person who:
- (a) has not been in regular paid employment for at least 24 months; or
 - (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of ‘disadvantaged worker’.
- (100) ‘sheltered employment’ means employment in an undertaking where at least 30 % of workers are workers with disabilities;

Definitions applying to aid for environmental protection

- (101) ‘environmental protection’ means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce risk of such damage or to lead to a more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;

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- (102) ‘Union standard’ means:
- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings; or
 - (b) the obligation under Directive 2010/75/EU of the European Parliament and of the Council ⁽¹⁾ to use the best available techniques (BAT) and ensure that emission levels of pollutants are not higher than they would be when applying BAT; for the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of this Regulation; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable;
- (103) ‘energy efficiency’ means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;
- (104) ‘energy efficiency project’ means an investment project that increases the energy efficiency of a building;
- (105) ‘energy efficiency fund (EEF)’ means a specialised investment vehicle set up for the purpose of investing in energy efficiency projects aimed at improving the energy efficiency of buildings in both the domestic and non-domestic sectors. EEFs are managed by an energy efficiency fund manager;
- (106) ‘energy efficiency fund manager’ means a professional management company with a legal personality, selecting and making investments in eligible energy efficiency projects;
- (107) ‘high-efficiency cogeneration’ means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ⁽²⁾;
- (108) ‘cogeneration’ or combined heat and power (CHP) means the simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
- (109) ‘energy from renewable energy sources’ means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems;
- (110) ‘renewable energy sources’ means the following renewable non-fossil energy sources: wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

⁽¹⁾ OJ L 24, 29.1.2008, p. 8.

⁽²⁾ OJ L 315, 14.11.2012, p. 1.

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- (111) ‘biofuel’ means liquid or gaseous fuel for transport produced from biomass;
- (112) ‘sustainable biofuel’ means a biofuel fulfilling the sustainability criteria set out in Article 17 of Directive 2009/28/EC;
- (113) ‘food based biofuel’ means a biofuel produced from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources ⁽¹⁾;
- (114) ‘new and innovative technology’ means a new and unproven technology compared to the state of the art in the industry, which carries a risk of technological or industrial failure and is not an optimisation or scaling up of an existing technology;
- (115) ‘balancing responsibilities’ means responsibility for imbalances (deviations between generation, consumption and commercial transactions) of a market participant or its chosen representative, referred to as the ‘Balance Responsible Party’, within a given period of time, referred to as the ‘Imbalance Settlement Period’;
- (116) ‘standard balancing responsibilities’ means non-discriminatory balancing responsibilities across technologies which do not exempt any generator from those responsibilities;
- (117) ‘biomass’ means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as biogases and the biodegradable fraction of industrial and municipal waste;
- (118) ‘total levelized costs of producing energy’ is a calculation of the cost of generating electricity at the point of connection to a load or electricity grid. It includes the initial capital, discount rate, as well as the costs of continuous operation, fuel, and maintenance;
- (119) ‘environmental tax’ means a tax with a specific tax base that has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment;
- (120) ‘Union minimum tax level’ means the minimum level of taxation provided for in the Union legislation; for energy products and electricity it means the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽²⁾;

⁽¹⁾ COM (2012) 595, 17.10.2012.

⁽²⁾ OJ L 283, 31.10.2003, p. 51.

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- (121) ‘contaminated site’ means a site where there is a confirmed presence, caused by man, of hazardous substances of such a level that they pose a significant risk to human health or the environment taking into account current and approved future use of the land;
- (122) ‘polluter pays principle’ or ‘PPP’ means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution;
- (123) ‘pollution’ means the damage caused by a polluter directly or indirectly damaging the environment, or by creating conditions leading to such damage to physical surroundings or natural resources;
- (124) ‘energy efficient district heating and cooling’ means a district heating and cooling system which satisfies the definition of efficient district heating and cooling system set out in Article 2(41) and (42) of Directive 2012/27/EU. The definition includes the heating/cooling production plants and the network (including related facilities) necessary to distribute the heat/cooling from the production units to the customer premises;
- (125) ‘polluter’ means someone who directly or indirectly damages the environment or who creates conditions leading to such damage.
- (126) ‘re-use’ means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;
- (127) ‘preparing for re-use’ means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;
- (128) ‘recycling’ means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;
- (129) ‘state of the art’ means a process in which the re-use of a waste product to manufacture an end product is economically profitable normal practice. Where appropriate, the concept of state of the art must be interpreted from a Union technological and internal market perspective;
- (130) ‘energy infrastructure’ means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:
- (a) concerning electricity:
- (i) infrastructure for transmission, as defined in Article 2(3) by Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity⁽¹⁾;

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

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- (ii) infrastructure for distribution, as defined in Article 2(5) by Directive 2009/72/EC;
 - (iii) electricity storage, defined as facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;
 - (iv) any equipment or installation essential for the systems defined in points (i) to (iii) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations; and
 - (v) smart grids, defined as any equipment, line, cable or installation, both at transmission and low and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;
- (b) concerning gas:
- (i) transmission and distribution pipelines for the transport of natural gas and bio gas that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;
 - (ii) underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);
 - (iii) reception, storage and regasification or decompression facilities for liquefied natural gas ('LNG') or compressed natural gas ('CNG'); and
 - (iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
- (c) concerning oil:
- (i) pipelines used to transport crude oil;
 - (ii) pumping stations and storage facilities necessary for the operation of crude oil pipelines; and

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- (iii) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;
 - (d) concerning CO₂: networks of pipelines, including associated booster stations, for the transport of CO₂ to storage sites, with the aim to inject the CO₂ in suitable underground geological formations for permanent storage;
- (131) ‘internal energy market legislation’ includes Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas ⁽¹⁾, Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ⁽²⁾; Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges ⁽³⁾ and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks ⁽⁴⁾ or any subsequent legislation replacing these acts in full or in part;

Definitions applying to social aid for transport for residents of remote regions

- (132) ‘normal residence’ means the place where a natural person lives for at least 185 days, in each calendar year, because of personal and occupational ties; in the case of a person whose occupational ties are in a different place from his/her personal ties and who lives in two or more Member States, the place of normal residence is regarded as the place of his/her personal ties provided that he/she returns there regularly; where a person is living in a Member State in order to carry out a task of a set duration, the place of residence is still regarded as being the place of his/her personal ties, irrespective of whether he/she returns there during the course of this activity; attendance at a university or school in another Member State does not constitute a transfer of normal residence; alternatively, ‘normal residence’ shall have the meaning attributed to it in Member States' national law.

Definitions for aid for broadband infrastructures

- (133) ‘basic broadband’ ‘Basic broadband networks’ means networks with basic functionalities which are based on technology platforms such as asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems;
- (134) ‘broadband-related civil engineering works’ means the civil engineering works which are necessary for the deployment of a broadband network, such as digging up a road in order to enable the placement of (broadband) ducts.

⁽¹⁾ OJ L 211, 14.8.2009, p. 94.

⁽²⁾ OJ L 211, 14.8.2009, p. 1.

⁽³⁾ OJ L 211, 14.8.2009, p. 15.

⁽⁴⁾ OJ L 211, 14.8.2009, p. 36.

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- (135) ‘ducts’ means underground pipes or conduits used to house (fibre, copper or coax) cables of a broadband network.
- (136) ‘physical unbundling’ grants access to the end-consumer access line and allows competitors' own transmission systems to directly transmit over it.
- (137) ‘passive broadband infrastructure’ means a broadband network without any active component. It typically comprises civil engineering infrastructure, ducts and dark fibre and street cabinets.
- (138) ‘next generation access (NGA) networks’ means advanced networks which have at least the following characteristics: (a) deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed; (b) support a variety of advanced digital services including converged all-IP services, and (c) have substantially higher upload speeds (compared to basic broadband networks). At the current stage of market and technological development, NGA networks are: (a) fibre-based access networks (FTTx), (b) advanced upgraded cable networks and (c) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber.
- (139) ‘wholesale access’ means access which enables an operator to utilise the facilities of another operator. The widest possible access to be provided over the relevant network shall include, on the basis of the current technological developments, at least the following access products. For FTTH/FTTB networks: ducts access, access to dark fibre, unbundled access to the local loop, and bitstream access. For cable networks: duct access and bit-stream access. For FTTC networks: duct access, sub-loop unbundling and bit-stream access. For passive network infrastructure: duct access, access to dark fibre and/or unbundled access to the local loop. For ADSL-based broadband networks: unbundled access to the local loop, bit-stream access. For mobile or wireless networks: bit-stream, sharing of physical masts and access to the backhaul networks. For satellite platforms: bit-stream access.

Definitions for aid for culture and heritage conservation

- (140) ‘difficult audiovisual works’: means the works identified as such by Member States on the basis of pre-defined criteria when setting up schemes or granting the aid and may include films whose sole original version is in a language of a Member State with a limited territory, population or language area, short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works.
- (141) Development Assistance Committee (DAC) List of the OECD: means all countries and territories that are eligible to receive official development assistance and included in the list compiled by the Organisation for Economic Cooperation and Development (OECD);

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- (142) ‘reasonable profit’ shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable.

Definitions for aid for sport and multifunctional recreational infrastructures

- (143) ‘professional sport’ means the practice of sport in the nature of gainful employment or remunerated service, irrespective of whether or not a formal labour contract has been established between the professional sportsperson and the relevant sport organisation, where the compensation exceeds the cost of participation and constitutes a significant part of the income for the sportsperson. Travel and accommodation expenses to participate to the sport event shall not be considered as compensation for the purposes of this Regulation.

▼M1**Definitions for Aid for regional airports**

- (144) ‘airport infrastructure’ means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;
- (145) ‘airline’ means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council ⁽¹⁾;
- (146) ‘airport’ means an entity or group of entities performing the economic activity of providing airport services to airlines;
- (147) ‘airport services’ means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;
- (148) ‘average annual passenger traffic’ means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is granted;
- (149) ‘centralised ground handling infrastructure’ means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;
- (150) ‘high-speed train’ means a train capable of reaching speeds of over 200 km/h;

⁽¹⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

▼ M1

- (151) ‘ground handling services’ means services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC ⁽¹⁾;
- (152) ‘non-aeronautical activities’ means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;
- (153) ‘regional airport’ means an airport with average annual passenger traffic of up to 3 million passengers;

Definitions for Aid for ports

- (154) ‘port’ means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;
- (155) ‘maritime port’ means a port for, principally, the reception of sea-going vessels;
- (156) ‘inland port’ means a port other than a maritime port, for the reception of inland waterway vessels;
- (157) ‘port infrastructure’ means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;
- (158) ‘port superstructure’ means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;
- (159) ‘access infrastructure’ means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;
- (160) ‘dredging’ means the removal of sediments from the bottom of the waterway access to a port, or in a port;
- (161) ‘alternative fuel infrastructure’ means a fixed, mobile or offshore port infrastructure allowing a port to supply vessels with energy sources such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural

⁽¹⁾ Council Directive 96/67/EC of 15 October 1996 on access to the ground-handling market at Community airports (OJ L 272, 25.10.1996, p. 36).

▼ M1

gas (LNG)), and liquefied petroleum gas (LPG) which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector;

- (162) ‘vessels’ mean floating structures, whether self-propelled or not, with one or more surface displacement hulls;
- (163) ‘sea-going vessels’ mean vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters;
- (164) ‘inland waterway vessels’ mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;
- (165) ‘infrastructure for the collection of ship-generated waste and cargo residues’ means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council ⁽¹⁾.

▼ B*Article 3***Conditions for exemption**

Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(2) or (3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the conditions laid down in Chapter I of this Regulation, as well as the specific conditions for the relevant category of aid laid down in Chapter III of this Regulation.

*Article 4***Notification thresholds**

1. This Regulation shall not apply to aid which exceeds the following thresholds:
- (a) for regional investment aid: the ‘adjusted aid amount’ of aid, as calculated in accordance with the mechanism defined in Article 2, point 20 for an investment with eligible costs of EUR 100 million;
 - (b) for regional urban development aid, EUR 20 million as laid down in Article 16(3);
 - (c) for investment aid to SMEs: EUR 7,5 million per undertaking per investment project;
 - (d) for aid for consultancy in favour of SMEs: EUR 2 million per undertaking, per project;
 - (e) for aid to SMEs for participation in fairs: EUR 2 million per undertaking, per year;
 - (f) for aid to SMEs for cooperation costs incurred by participating in European Territorial Cooperation projects: EUR 2 million per undertaking, per project;

⁽¹⁾ Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).

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- (g) for risk finance aid: EUR 15 million per eligible undertaking as laid down in Article 21(9);
- (h) for aid for start-ups: the amounts laid down per undertaking in Article 22(3), (4) and (5);
- (i) for aid for research and development:
 - (i) if the project is predominantly fundamental research: EUR 40 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of fundamental research;
 - (ii) if the project is predominantly industrial research: EUR 20 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of industrial research or within the categories of industrial research and fundamental research taken together;
 - (iii) if the project is predominantly experimental development: EUR 15 million per undertaking, per project; that is the case where more than half of the eligible costs of the project are incurred through activities which fall within the category of experimental development;
 - (iv) if the project is a Eureka project or is implemented by a Joint Undertaking established on the basis of Article 185 or of Article 187 of the Treaty, the amounts referred to in points (i) to (iii) are doubled.
 - (v) if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (i) to (iv) are increased by 50 %;
 - (vi) aid for feasibility studies in preparation for research activities: EUR 7,5 million per study;
- (j) for investment aid for research infrastructures: EUR 20 million per infrastructure;
- (k) for aid for innovation clusters: EUR 7,5 million per cluster;
- (l) innovation aid for SMEs: EUR 5 million per undertaking, per project;
- (m) for aid for process and organisational innovation: EUR 7,5 million per undertaking, per project;

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- (n) for training aid: EUR 2 million per training project;
- (o) for aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking, per year;
- (p) for aid for the employment of workers with disabilities in the form of wage subsidies: EUR 10 million per undertaking, per year;
- (q) for aid for compensating the additional costs of employing workers with disabilities: EUR 10 million per undertaking, per year;
- (r) for aid for compensating the costs of assistance provided to disadvantaged workers: EUR 5 million per undertaking, per year;
- (s) for investment aid for environmental protection, excluding investment aid for the remediation of contaminated sites and aid for the distribution network part of the energy efficient district heating and cooling installation: EUR 15 million per undertaking per investment project;
- (t) for investment aid for energy efficiency projects: EUR 10 million as laid down in Article 39(5);
- (u) for investment aid for remediation of contaminated sites: EUR 20 million per undertaking per investment project;
- (v) for operating aid for the production of electricity from renewable sources and operating aid for the promotion of energy from renewable sources in small scale installations: EUR 15 million per undertaking per project. When the aid is granted on the basis of a competitive bidding process under Article 42: EUR 150 million per year taking into account the combined budget of all schemes falling under Article 42;
- (w) for investment aid for the district heating or cooling distribution network: EUR 20 million per undertaking per investment project;
- (x) for investment aid for energy infrastructure: EUR 50 million per undertaking, per investment project;
- (y) for aid for broadband infrastructures: EUR 70 million total costs per project;

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- (z) for investment aid for culture and heritage conservation: EUR 150 million per project; operating aid for culture and heritage conservation: EUR 75 million per undertaking per year;

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- (aa) for aid schemes for audiovisual works: EUR 50 million per scheme per year;

▼M1

- (bb) for investment aid for sport and multifunctional recreational infrastructures: EUR 30 million or the total costs exceeding EUR 100 million per project; operating aid for sport infrastructure: EUR 2 million per infrastructure per year;

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- (cc) for investment aid for local infrastructures: EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure;

▼M1

- (dd) for aid for regional airports: the aid intensities and aid amounts laid down in Article 56a;
- (ee) for aid for maritime ports: eligible costs of EUR 130 million per project (or EUR 150 million per project in a maritime port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁽¹⁾); as regards dredging a project is defined as all dredging carried out within one calendar year; and
- (ff) for aid for inland ports: eligible costs of EUR 40 million per project (or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013); as regards dredging a project is defined as all dredging carried out within one calendar year.

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- 2. The thresholds set out or referred to in paragraph 1 shall not be circumvented by artificially splitting up the aid schemes or aid projects.

*Article 5***Transparency of aid**

- 1. This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ('transparent aid').
- 2. The following categories of aid shall be considered to be transparent:
 - (a) aid comprised in grants and interest rate subsidies;
 - (b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
 - (c) aid comprised in guarantees:
 - (i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
 - (ii) where before the implementation of the measure, the methodology to calculate the gross grant equivalent of the guarantee has been accepted on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC

⁽¹⁾ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

▼B

Treaty to State aid in the form of guarantees ⁽¹⁾, or any successor notice, following notification of that methodology to the Commission under any regulation adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;

- (d) aid in the form of tax advantages, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
- (e) aid for regional urban development if the conditions laid down in Article 16 are fulfilled;
- (f) aid comprised in risk finance measures if the conditions laid down in Article 21 are fulfilled;
- (g) aid for start-ups if the conditions laid down in Article 22 are fulfilled;
- (h) aid for energy efficiency projects if the conditions laid down in Article 39 are fulfilled;
- (i) aid in the form of premiums in addition to the market price if the conditions laid down in Article 42 are fulfilled;
- (j) aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission;

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- (k) aid in the form of the sale or the lease of tangible assets below market rates where the value is established either by an independent expert evaluation prior to the transaction or by reference to a publicly available, regularly updated and generally accepted benchmark.

▼B*Article 6***Incentive effect**

1. This Regulation shall apply only to aid which has an incentive effect.
2. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts. The application for the aid shall contain at least the following information:

⁽¹⁾ OJ C 155, 20.6.2008, p. 10.

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- (a) undertaking's name and size;
- (b) description of the project, including its start and end dates;
- (c) location of the project;
- (d) list of project costs;
- (e) type of aid (grant, loan, guarantee, repayable advance, equity injection or other) and amount of public funding needed for the project;

3. Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to ensuring that the condition laid down in paragraph 2 is fulfilled, the Member State has verified, before granting the aid concerned, that documentation prepared by the beneficiary establishes that the aid will result in one or more of the following:

- (a) in the case of regional investment aid: that a project is carried out, which would not have been carried out in the area concerned or would not have been sufficiently profitable for the beneficiary in the area concerned in the absence of the aid.
- (b) in all other cases, that there is:
 - a material increase in the scope of the project/activity due to the aid, or
 - a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or
 - a material increase in the speed of completion of the project/activity concerned;

4. By way of derogation from paragraphs 2 and 3, measures in the form of tax advantages shall be deemed to have an incentive effect if the following conditions are fulfilled:

- (a) the measure establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
- (b) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages.

5. By way of derogation from paragraphs 2, 3 and 4, the following categories of aid are not required to have or shall be deemed to have an incentive effect:

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- (a) regional operating aid and regional urban development aid, where the relevant conditions laid down in Articles 15 and 16 are fulfilled,

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- (b) aid for access to finance for SMEs, if the relevant conditions laid down in Articles 21 and 22 are fulfilled,
- (c) aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of workers with disabilities in the form of wage subsidies, if the relevant conditions laid down in Articles 32 and 33 respectively are fulfilled,

▼ M1

- (d) aid compensating for the additional costs of employing workers with disabilities and aid for compensating the costs of assistance provided to disadvantaged workers, where the relevant conditions laid down in Articles 34 and 35 are fulfilled;

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- (e) aid in the form of reductions in environmental taxes under Directive 2003/96/EC, if the conditions laid down in Article 44 of this Regulation are fulfilled;
- (f) aid to make good the damage caused by certain natural disasters, if the conditions laid down in Article 50 are fulfilled;
- (g) social aid for transport for residents of remote regions, if the conditions laid down in Article 51 are fulfilled;
- (h) aid for culture and heritage conservation, if the conditions laid down in Article 53 are fulfilled.

*Article 7***Aid intensity and eligible costs**

1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.

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The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽¹⁾, provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.

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2. Where aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

3. ► **M1** Aid payable in several instalments shall be discounted to its value at the moment it is granted. ◀ The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted.

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⁽¹⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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5. Where aid is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of a reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the moment the aid is granted, the maximum aid intensities laid down in Chapter III may be increased by 10 percentage points.

6. Where regional aid is granted in the form of repayable advances, the maximum aid intensities established in a regional aid map in force at the moment the aid is granted may not be increased.

*Article 8***Cumulation**

1. In determining whether the notification thresholds in Article 4 and the maximum aid intensities in Chapter III are respected, the total amount of State aid for the aided activity or project or undertaking shall be taken into account.

2. Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.

3. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:

- (a) any other State aid, as long as those measures concern different identifiable eligible costs,
- (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.

4. Aid without identifiable eligible costs exempted under Articles 21, 22 and 23 of this Regulation may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission.

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5. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.

6. By way of derogation from paragraph 3(b), aid in favour of workers with disabilities, as provided for in Articles 33 and 34 may be cumulated with other aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100 % of the relevant costs over any period for which the workers concerned are employed.

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7. By way of derogation from paragraphs 1 to 6, in determining whether the ceilings for regional operating aid in outermost regions, as set out in Article 15(4), are respected, only regional operating aid in outermost regions implemented under this Regulation shall be taken into account.

▼B*Article 9***Publication and information**

1. The Member State concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of:

- (a) the summary information referred to in Article 11 in the standardised format laid down in Annex II or a link providing access to it;
- (b) the full text of each aid measure, as referred to in Article 11 or a link providing access to the full text;
- (c) the information referred to in Annex III on each individual aid award exceeding EUR 500 000.

As regards aid granted to European Territorial Cooperation projects, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.

2. For schemes in the form of tax advantages, and for schemes covered by Article 16 and 21 ⁽¹⁾ the conditions set out in paragraph 1(c) of this Article shall be considered fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

⁽¹⁾ For schemes under Article 16 and 21 of the present Regulation, the requirement to publish information on each individual award exceeding EUR 500 000 can be waived with respect to SMEs which have not carried out any commercial sale in any market.

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0,5-1;

1-2;

2-5;

5-10;

10-30; and

30 and more.

3. For schemes under Article 51 of this Regulation, the publication obligations laid down in this article shall not apply to final consumers.

4. The information referred to in paragraph 1(c) of this Article shall be organised and accessible in a standardised manner, as described in Annex III, and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be published within 6 months from the date the aid was granted, or for aid in the form of tax advantage, within 1 year from the date the tax declaration is due, and shall be available for at least 10 years from the date on which the aid was granted.

5. The Commission shall publish on its website:

(a) the links to the State aid websites referred to in paragraph 1 of this Article;

(b) the summary information referred to in Article 11.

6. Member States shall comply with the provisions of this Article at the latest within two years after the entry into force of this Regulation.

CHAPTER II MONITORING

Article 10

Withdrawal of the benefit of the block exemption

Where a Member State grants aid allegedly exempted from the notification requirement under this Regulation without fulfilling the conditions set out in Chapters I to III, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or some of the future aid measures adopted by the Member State concerned which would otherwise fulfil the requirements of this Regulation, are to be notified to the Commission in accordance with Article 108(3) of the Treaty. The measures to be notified may be limited to the measures granting certain types of aid or in favour of certain beneficiaries or aid measures adopted by certain authorities of the Member State concerned.

▼B*Article 11***Reporting**

Member States, or in the case of aid granted to European Territorial Cooperation projects, alternatively the Member State in which the Managing Authority, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located, shall transmit to the Commission:

- (a) via the Commission's electronic notification system, the summary information about each aid measure exempted under this Regulation in the standardised format laid down in Annex II, together with a link providing access to the full text of the aid measure, including its amendments, within 20 working days following its entry into force;
- (b) an annual report, as referred to in the Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁾ as amended, in electronic form, on the application of this Regulation, containing the information indicated in the Implementing Regulation, in respect of each whole year or each part of the year during which this Regulation applies.

▼M1*Article 12***Monitoring**

1. In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States, or alternatively, in the case of aid granted to European Territorial Cooperation projects, the Member State in which the Managing Authority is located, shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the *ad hoc* aid was granted or the last aid was granted under the scheme.

2. In the case of schemes under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no *ex ante* verification that all compatibility conditions are met for each beneficiary, Member States shall regularly verify, at least *ex post* and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States shall maintain detailed records of the verifications for at least 10 years from the date of the controls.

3. The Commission may request, from each Member State, all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation, including the information mentioned in paragraphs 1 and 2. The Member State concerned shall provide the Commission with the requested information and supporting documents within a period of 20 working days from receipt of the request or such longer period as may be fixed in the request.

⁽¹⁾ OJ L 140, 30.4.2004, p. 1.

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CHAPTER III
SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID

SECTION 1

Regional aid

Subsection A

Regional investment and operating aid

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Article 13

Scope of regional aid

This Section shall not apply to:

- (a) aid which favours activities in the steel sector, the coal sector, the shipbuilding sector or the synthetic fibres sector;
- (b) aid to the transport sector as well as the related infrastructure, and aid for energy generation, distribution and infrastructure, except for regional investment aid in outermost regions and regional operating aid schemes;
- (c) regional aid in the form of schemes which are targeted at a limited number of specific sectors of economic activity; schemes aimed at tourism activities, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
- (d) regional operating aid granted to undertakings whose principal activities fall under Section K 'Financial and insurance activities' of the NACE Rev. 2 or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.

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Article 14

Regional investment aid

1. Regional investment aid measures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted in assisted areas.
3. In assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty, the aid may be granted for an initial investment regardless of the size of the beneficiary. In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of initial investment. Aid to large enterprises shall only be granted for an initial investment in favour of new economic activity in the area concerned.

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4. The eligible costs shall be as follows:
- (a) investment costs in tangible and intangible assets;
 - (b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or
 - (c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher.

5. The investment shall be maintained in the recipient area for at least five years, or at least three years in the case of SMEs, after completion of the investment. This shall not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the relevant minimum period.

6. The assets acquired shall be new except for SMEs and for the acquisition of an establishment. Costs related to the lease of tangible assets may be taken into account under the following conditions:

- (a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment project for large undertakings or three years in the case of SMEs;
- (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.

► **M1** In the case of acquisition of the assets of an establishment within the meaning of point 49 or point 51 of Article 2, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. ◀ The transaction shall take place under market conditions. If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment.

7. ► **M1** For aid granted to large undertakings for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years. ◀ For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.

8. Intangible assets are eligible for the calculation of investment costs if they fulfil the following conditions:

- (a) they must be used exclusively in the establishment receiving the aid;
- (b) they must be amortisable;

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- (c) they must be purchased under market conditions from third parties unrelated to the buyer; and
- (d) they must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years or three years in the case of SMEs.

For large undertakings, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment.

9. Where eligible costs are calculated by reference to the estimated wage costs as referred to in paragraph 4(b), the following conditions shall be fulfilled:

- (a) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months, meaning that any job lost shall be deducted from the apparent created number of jobs during that period;
- (b) each post shall be filled within three years of completion of works; and
- (c) each job created through the investment shall be maintained in the area concerned for a period of at least five years from the date the post was first filled, or three years in the case of SMEs.

10. Regional aid for broadband network development shall fulfil the following conditions:

- (a) aid shall be granted only in areas where there is no network of the same category (either basic broadband or NGA) and where no such network is likely to be developed on commercial terms within three years from the decision to grant the aid; and
- (b) the subsidised network operator must offer active and passive wholesale access under fair and non-discriminatory conditions including physical unbundling in the case of NGA networks; and
- (c) aid shall be allocated on the basis of a competitive selection process.

11. Regional aid for research infrastructures shall be granted only if the aid is made conditional on giving transparent and non-discriminatory access to the aided infrastructure.

12. The aid intensity in gross grant equivalent shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is granted in the area concerned. Where the aid intensity is calculated on the basis of paragraph 4(c), the maximum aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs. For large investment projects the aid amount shall not exceed the adjusted aid amount calculated in accordance with the mechanism defined in Article 2, point 20;

13. Any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects.

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14. The aid beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support. In the outermost regions an investment made by an SME may receive an aid with a maximum aid intensity above 75 %, in such situations the remainder shall be provided by way of a financial contribution from the aid beneficiary.

15. For an initial investment linked to European territorial cooperation projects covered by Regulation (EU) No 1299/2013, the aid intensity of the area in which the initial investment is located shall apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity shall be the one applicable in the assisted area where the highest amount of eligible costs is incurred. In assisted areas eligible for aid under Article 107(3)(c) of the Treaty, this provision shall apply to large undertakings only if the initial investment concerns a new economic activity.

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16. The beneficiary shall confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

17. In the fisheries and aquaculture sector, aid shall not be granted to undertakings that have committed one or more of the infringements set out in Article 10(1)(a) to (d) and Article 10(3) of Regulation (EU) No 508/2014 of the European Parliament and of the Council⁽¹⁾ and for operations of Article 11 of that Regulation.

*Article 15***Regional operating aid**

1. Regional operating aid schemes in outermost regions, sparsely populated areas and very sparsely populated areas shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. In sparsely populated areas, the regional operating aid schemes shall compensate for the additional transport costs of goods which have been produced in areas eligible for operating aid, as well as additional transport costs of goods that are further processed in those areas, under the following conditions:

- (a) the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;

⁽¹⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

▼ M1

- (b) the additional transport costs are calculated on the basis of the journey of the goods inside the national border of the Member State concerned using the means of transport which results in the lowest costs for the beneficiary.

The aid intensity shall not exceed 100 % of the additional transport costs as set out in this paragraph.

3. In very sparsely populated areas, the regional operating aid schemes shall prevent or reduce depopulation under the following conditions:

- (a) the beneficiaries have their economic activity in the area concerned;
- (b) the annual aid amount per beneficiary under all operating aid schemes does not exceed 20 % of the annual labour costs incurred by the beneficiary in the area concerned.

4. In outermost regions, the operating aid schemes shall compensate for the additional operating costs incurred in those regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty, where the beneficiaries have their economic activity in an outermost region provided that the annual aid amount per beneficiary under all operating aid schemes implemented under this Regulation does not exceed any of the following percentages:

- (a) 35 % of the gross value added annually created by the beneficiary in the outermost region concerned;
- (b) 40 % of the annual labour costs incurred by the beneficiary in the outermost region concerned;
- (c) 30 % of the annual turnover of the beneficiary realised in the outermost region concerned.

▼ B**Subsection B****Urban development aid***Article 16***Regional urban development aid**

1. Regional urban development aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Urban development projects shall fulfil the following criteria:

- (a) they are implemented via urban development funds in assisted areas;
- (b) they are co-financed by the European Structural and Investment Funds;

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(c) they support the implementation of an ‘integrated sustainable urban development strategy’;

3. The total investment in an urban development project under any urban development aid measure shall not exceed EUR 20 million.

4. The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Articles 65 and 37 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽¹⁾.

5. Aid granted by an urban development fund to the eligible urban development projects may take the form of equity, quasi-equity, loans, guarantees, or a mix thereof.

6. The urban development aid shall leverage additional investment from private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching minimum 30 % of the total financing provided to an urban development project.

7. Private and public investors may provide cash or an in-kind contribution or a combination of those for the implementation of an urban development project. An in-kind contribution shall be taken into account at its market value, as certified by an independent qualified expert or duly authorised official body.

8. The urban development measures shall fulfil the following conditions:

(a) urban development fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with the applicable Union and national laws. In particular, there shall be no discrimination between urban development fund managers on the basis of their place of establishment or incorporation in any Member State. Urban development fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;

(b) the independent private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the fair rate of return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;

(c) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;

⁽¹⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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- (d) in the case of guarantees to private investors in urban development projects, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at 25 % of the underlying guaranteed portfolio;
- (e) the investors shall be allowed to be represented in the governance bodies of the urban development fund, such as the supervisory board or the advisory committee;
- (f) the urban development fund shall be established according to the applicable laws. The Member State shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the urban development aid measure.

9. Urban development funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the managers of the urban development fund fulfill the following conditions:

- (a) the managers of urban development funds shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- (b) the remuneration of the managers of urban development funds shall conform to market practices. This requirement is considered to be met where a manager is selected through an open, transparent and non-discriminatory call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- (c) the managers of urban development funds shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investors;
- (d) the managers of urban development funds shall set out an investment strategy, criteria and the proposed timing of investments in urban development projects, establishing the *ex ante* financial viability and their expected impact on urban development;
- (e) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

10. Where an urban development fund provides loans or guarantees to urban development projects, the following conditions shall be fulfilled:

- (a) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 3 of this Article;
- (b) in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 3 of this Article.

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11. The Member State may assign the implementation of the urban development aid measure to an entrusted entity.

*SECTION 2**Aid to SMEs**Article 17***Investment aid to SMEs**

1. Investment aid to SMEs operating inside or outside the territory of the Union shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be either or both of the following:

- (a) the costs of investment in tangible and intangible assets;
- (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.

3. In order to be considered an eligible cost for the purposes of this Article, an investment shall consist of the following:

- (a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or
- (b) the acquisition of the assets belonging to an establishment, where the following conditions are fulfilled:
 - the establishment has closed or would have closed had it not been purchased;
 - the assets are purchased from third parties unrelated to the buyer;
 - the transaction takes place under market conditions.

Where a member of the family of the original owner, or an employee, takes over a small enterprise, the condition that the assets shall be bought from third parties unrelated to the buyer shall be waived. The sole acquisition of the shares of an undertaking shall not constitute investment.

4. Intangible assets shall fulfil all of the following conditions:

- (a) they shall be used exclusively in the establishment receiving the aid;
- (b) they shall be regarded as amortizable assets;
- (c) they shall be purchased under market conditions from third parties unrelated to the buyer;

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- (d) they shall be included in the assets of the undertaking for at least three years;
5. Employment directly created by an investment project shall fulfil the following conditions:
- (a) it shall be created within three years of completion of the investment;
- (b) there shall be a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
- (c) it shall be maintained during a minimum period of three years from the date the post was first filled.
6. The aid intensity shall not exceed:
- (a) 20 % of the eligible costs in the case of small enterprises;
- (b) 10 % of the eligible costs in the case of medium-sized enterprises.

*Article 18***Aid for consultancy in favour of SMEs**

1. Aid for consultancy in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid intensity shall not exceed 50 % of the eligible costs.
3. The eligible costs shall be the costs of consultancy services provided by external consultants.
4. The services concerned shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

*Article 19***Aid to SMEs for participation in fairs**

1. Aid to SMEs for participation in fairs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.
3. The aid intensity shall not exceed 50 % of the eligible costs.



Article 20

Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects

1. Aid for cooperation costs incurred by SMEs participating in the European Territorial Cooperation projects covered by Regulation (EC) No 1299/2013 of the European Parliament and of the Council shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the following:
 - (a) costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;
 - (b) costs of advisory and support services linked to cooperation and delivered by external consultants and service providers;
 - (c) travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.
3. The services referred to in paragraph 2(b) shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or routine advertising.
4. The aid intensity shall not exceed 50 % of the eligible costs.

SECTION 3

Aid for access to finance for SMEs

Article 21

Risk finance aid

1. Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. At the level of financial intermediaries, risk finance aid to independent private investors may take one of the following forms:
 - (a) equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings;
 - (b) loans to provide risk finance investments directly or indirectly to eligible undertakings;

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(c) guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.

3. At the level of independent private investors, risk finance aid may take the forms mentioned in paragraph 2 of this Article, or be in the form of tax incentives to private investors who are natural persons providing risk finance directly or indirectly to eligible undertakings.

4. At the level of eligible undertakings, risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

5. Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:

- (a) they have not been operating in any market;
- (b) they have been operating in any market for less than 7 years following their first commercial sale;
- (c) they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

6. The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7 year period mentioned in paragraph 5(b), if the following cumulative conditions are fulfilled:

- (a) the total amount of risk finance mentioned in paragraph 9 is not exceeded;
- (b) the possibility of follow-on investments was foreseen in the original business plan;
- (c) the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3(3) of Annex I with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition.

7. For equity and quasi-equity investments in eligible undertakings, a risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least 50 % of each investment round into the eligible undertakings.

8. For equity and quasi-equity investments as referred to in paragraph 2(a), no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

9. The total amount of risk finance referred to in paragraph 4 shall not exceed EUR 15 million per eligible undertaking under any risk finance measure.

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10. For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds:

- (a) 10 % of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;
- (b) 40 % of the risk finance provided to the eligible undertakings referred to in paragraph 5(b) of this Article;
- (c) 60 % of the risk finance for investment provided to eligible undertakings mentioned in paragraph 5(c) and for follow-on investments in eligible undertakings after the 7-year period mentioned in paragraph 5(b).

11. Where a risk finance measure is implemented through a financial intermediary targeting eligible undertakings at different development stages as referred to in paragraph 10 and does not provide for private capital participation at the level of the eligible undertakings the financial intermediary shall achieve a private participation rate that represents at least the weighted average based on the volume of the individual investments in the underlying portfolio and resulting from the application of the minimum participation rates to such investments as referred to in paragraph 10.

12. A risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfil predefined criteria objectively justified by the nature of the investments.

13. A risk finance measure shall fulfil the following conditions:

- (a) it shall be implemented via one or more financial intermediaries, except for tax incentives to private investors in respect of their direct investments into eligible undertakings;
- (b) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
- (c) in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;

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- (d) in the case of guarantees falling under point 2(c), the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at a maximum of 25 % of the underlying guaranteed portfolio. Only guarantees covering expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

14. Risk finance measures shall ensure profit-driven financing decisions. This is considered to be the case where all of the following conditions are fulfilled:

- (a) financial intermediaries shall be established according to the applicable laws.
- (b) the Member State, or the entity entrusted with the implementation of the measure, shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the risk finance measure, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the relevant portfolio of investments;
- (c) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing *ex-ante* financial viability;
- (d) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.

15. Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled where the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:

- (a) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- (b) their remuneration shall conform to market practices. This requirement is presumed to be met where the manager or the financial intermediary is selected through an open, transparent and non-discriminatory selection call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
- (d) they shall set out an investment strategy, criteria and the proposed timing of investments;
- (e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.

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16. ►**M1** A risk finance measure providing guarantees or loans to eligible undertakings or providing quasi-equity investments structured as debt in eligible undertakings, shall fulfil the following conditions: ◀

- (a) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;

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- (b) in the case of loans and quasi-equity investments structured as debt, the nominal amount of the instrument is taken into account in calculating the maximum investment amount for the purposes of paragraph 9;

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- (c) in the case of guarantees, the nominal amount of the underlying loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9. The guarantee shall not exceed 80 % of the underlying loan.

17. A Member State may assign the implementation of a risk finance measure to an entrusted entity.

18. Risk finance aid for SMEs that do not fulfil the conditions laid down in paragraph 5 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that

- (a) at the level of the SMEs, the aid fulfils the conditions laid down in Regulation (EU) No 1407/2013; and
- (b) all the conditions laid down in the present Article, with the exception of those set out in paragraphs 5, 6, 9, 10, and 11, are fulfilled; and
- (c) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional financing from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least 60 % of the risk finance provided to the SMEs.

*Article 22***Aid for start-ups**

1. Start-up aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

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2. Eligible undertakings shall be any unlisted small enterprise up to five years following its registration, which fulfils the following conditions:

- (a) it has not taken over the activity of another enterprise;
- (b) it has not yet distributed profits;

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- (c) it has not been formed through a merger.

For eligible undertakings that are not subject to registration, the five year eligibility period may be considered to start from the moment when the enterprise either starts its economic activity or is liable to tax for its economic activity.

By way of derogation from point (c) of the first subparagraph, enterprises formed through a merger between undertakings eligible for aid under this Article shall also be considered eligible undertakings up to five years from the date of registration of the oldest enterprise participating in the merger.

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3. Start-up aid shall take the form of:

- (a) loans with interest rates which are not conform with market conditions, with a duration of 10 years and up to a maximum nominal amount of EUR 1 million, or EUR 1,5 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR 2 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty. For loans with a duration comprised between 5 and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than 5 years, the maximum amount shall be the same as for loans with a duration of 5 years;
- (b) guarantees with premiums which are not conform with market conditions, with a duration of 10 years and up to maximum EUR 1,5 million of amount guaranteed, or EUR 2,25 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR 3 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty. For guarantees with a duration comprised between 5 and 10 years the maximum amount guaranteed amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. For guarantees with a duration of less than 5 years, the maximum amount guaranteed shall be the same as for guarantees with a duration of 5 years. The guarantee shall not exceed 80 % of the underlying loan.
- (c) grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR 0,4 million gross grant equivalent or EUR 0,6 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR 0,8 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.

4. A beneficiary can receive support through a mix of the aid instruments referred to in paragraph 3 of this Article, provided that the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.

5. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled.

▼B*Article 23***Aid to alternative trading platforms specialised in SMEs**

1. Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Where the platform operator is a small enterprise, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 22 shall apply.

The aid measure may take the form of tax incentives to independent private investors that are natural persons in respect of their risk finance investments made through an alternative trading platform into undertakings eligible under the conditions laid down in Article 21.

*Article 24***Aid for scouting costs**

1. Aid for scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 21 and 22.
3. The aid intensity shall not exceed 50 % of the eligible costs.

*SECTION 4****Aid for research and development and innovation****Article 25***Aid for research and development projects****▼M1**

1. Aid for research and development projects, including projects having received a Seal of Excellence quality label under the Horizon 2020 SME-instrument, shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.

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2. The aided part of the research and development project shall completely fall within one or more of the following categories:

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- (a) fundamental research;
- (b) industrial research;
- (c) experimental development;
- (d) feasibility studies.

3. The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:

- (a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- (b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible.
- (c) Costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible.
- (d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project;

4. The eligible costs for feasibility studies shall be the costs of the study.

5. The aid intensity for each beneficiary shall not exceed:

- (a) 100 % of the eligible costs for fundamental research;
- (b) 50 % of the eligible costs for industrial research;
- (c) 25 % of the eligible costs for experimental development;
- (d) 50 % of the eligible costs for feasibility studies.

6. The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as follows:

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- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
 - (b) by 15 percentage points if one of the following conditions is fulfilled:
 - (i) the project involves effective collaboration:
 - between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or
 - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;
 - (ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.
7. The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;

*Article 26***Investment aid for research infrastructures**

1. Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.
3. The price charged for the operation or use of the infrastructure shall correspond to a market price.
4. Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.
5. The eligible costs shall be the investment costs in intangible and tangible assets.
6. The aid intensity shall not exceed 50 % of the eligible costs.

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7. Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

*Article 27***Aid for innovation clusters**

1. Aid for innovation clusters shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation).

3. Access to the cluster's premises, facilities and activities shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the innovation cluster may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

4. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.

5. Investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs shall be the investment costs in intangible and tangible assets.

6. The aid intensity of investment aid for innovation clusters shall not exceed 50 % of the eligible costs. The aid intensity may be increased by 15 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty

7. Operating aid may be granted for the operation of innovation clusters. It shall not exceed 10 years.

8. The eligible costs of operating aid for innovation clusters shall be the personnel and administrative costs (including overhead costs) relating to:

- (a) animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;
- (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;

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(c) management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

9. The aid intensity of operating aid shall not exceed 50 % of the total eligible costs during the period over which the aid is granted.

*Article 28***Innovation aid for SMEs**

1. Innovation aid for SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled:

2. The eligible costs shall be the following:

(a) costs for obtaining, validating and defending patents and other intangible assets;

(b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;

(c) costs for innovation advisory and support services;

3. The aid intensity shall not exceed 50 % of the eligible costs.

4. In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking within any three year period.

*Article 29***Aid for process and organisational innovation**

1. Aid for process and organisational innovation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.

3. The eligible costs shall be the following:

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- (a) personnel costs;
 - (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
 - (c) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
 - (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.
4. The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

*Article 30***Aid for research and development in the fishery and aquaculture sector**

1. Aid for research and development in the fishery and aquaculture sector shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aided project shall be of interest to all undertakings in the particular sector or sub-sector concerned.
3. Prior to the date of the start of the aided project the following information shall be published on the internet:
- (a) that the aided project will be carried out;
 - (b) the goals of the aided project;
 - (c) the approximate date for the publication of the results expected from the aided project and its place of publication on the internet;
 - (d) a reference that the results of the aided project will be available to all undertakings active in the particular sector or sub-sector concerned at no cost.
4. The results of the aided project shall be made available on internet from the end date of the aided project or the date on which any information concerning those results is given to members of any particular organisation, whatever comes first. The results shall remain available on internet for a period of at least 5 years starting from the end date of the aided project.

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5. Aid shall be granted directly to the research and knowledge-dissemination organisation and shall not involve the direct granting of non-research related aid to an undertaking producing, processing or marketing fishery or aquaculture products.
6. The eligible costs shall be those provided in Article 25(3).
7. The aid intensity shall not exceed 100 % of the eligible costs.

*SECTION 5****Training aid****Article 31***Training aid**

1. Training aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

3. The eligible costs shall be the following:

(a) trainers' personnel costs, for the hours during which the trainers participate in the training;

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(b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project;

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(c) costs of advisory services linked to the training project;

(d) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

4. The aid intensity shall not exceed 50 % of the eligible costs. It may be increased, up to a maximum aid intensity of 70 % of the eligible costs, as follows:

(a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;

(b) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

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5. Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100 % of the eligible costs provided that the following conditions are met:

- (a) the trainees are not active members of the crew but are supernumerary on board; and
- (b) the training is carried out on board of ships entered in Union registers.

*SECTION 6**Aid for disadvantaged workers and for workers with disabilities**Article 32***Aid for the recruitment of disadvantaged workers in the form of wage subsidies**

1. Aid schemes for the recruitment of disadvantaged workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker. Where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.

3. Where the recruitment does not represent a net increase, compared with the average over the previous 12 months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

4. Except in the case of lawful dismissal for misconduct, the disadvantaged workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.

5. If the period of employment is shorter than 12 months, or 24 months in the case of severely disadvantaged workers, the aid shall be reduced pro rata accordingly.

6. The aid intensity shall not exceed 50 % of the eligible costs.

*Article 33***Aid for the employment of workers with disabilities in the form of wage subsidies**

1. Aid for the employment of workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

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2. Eligible costs shall be the wage costs over any given period during which the worker with disabilities is employed.
3. Where the recruitment does not represent a net increase, compared with the average over the previous 12 months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disabilities, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.
4. Except in the case of lawful dismissal for misconduct, the workers with disabilities shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements which are legally binding for the undertaking and governing employment contracts.
5. The aid intensity shall not exceed 75 % of the eligible costs.

*Article 34***Aid for compensating the additional costs of employing workers with disabilities**

1. Aid for compensating the additional costs of employing workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the following:
 - (a) costs of adapting the premises;
 - (b) costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities;
 - (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities;
 - (d) costs directly linked to transport of workers with disabilities to the working place and for work related activities;
 - (e) wage costs for the hours spent by a worker with disabilities on rehabilitation;
 - (f) where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities.

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3. The aid intensity shall not exceed 100 % of the eligible costs.

*Article 35***Aid for compensating the costs of assistance provided to disadvantaged workers**

1. Aid for compensating the costs of assistance provided to disadvantaged workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be the costs of:
 - (a) employing staff solely for time spent on the assistance of the disadvantaged workers over a maximum period of 12 months following recruitment of a disadvantaged worker or over a maximum period of 24 months following recruitment of a severely disadvantaged worker;
 - (b) of training such staff to assist disadvantaged workers.

3. The assistance provided shall consist of measures to support the disadvantaged worker's autonomy and adaptation to the work environment, in accompanying the worker in social and administrative procedures, facilitation of communication with the entrepreneur and managing conflicts.

4. The aid intensity shall not exceed 50 % of the eligible costs.

*SECTION 7****Aid for environmental protection****Article 36***Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards**

1. Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The investment shall fulfil one of the following conditions:
 - (a) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
 - (b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.

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3. Aid shall not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.
 4. By way of derogation from paragraph 3, aid may be granted for
 - (a) the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date.
 - (b) retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.
 5. The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They shall be determined as follows:
 - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
 - (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.
- The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.
6. The aid intensity shall not exceed 40 % of the eligible costs.
 7. The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and by 20 percentage points for aid granted to small undertakings.
 8. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

*Article 37***Investment aid for early adaptation to future Union standards**

1. Aid encouraging undertakings to comply with new Union standards which increase the level of environmental protection and are not yet in force shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

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2. The Union standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

3. The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards. They shall be determined as follows:

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

4. The aid intensity shall not exceed the following:

- (a) 20 % of the eligible costs for small undertakings, 15 % of the eligible costs for medium-sized undertakings and 10 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard;
- (b) 15 % of the eligible costs for small undertakings, 10 % of the eligible costs for medium-sized undertakings and 5 % of the eligible costs for large undertakings if the implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard.

5. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

*Article 38***Investment aid for energy efficiency measures**

1. Investment aid enabling undertakings to achieve energy efficiency shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

3. The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:

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- (a) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible.

- 4. The aid intensity shall not exceed 30 % of the eligible costs.
- 5. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.
- 6. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Article 39

Investment aid for energy efficiency projects in buildings

- 1. Investment aid for energy efficiency projects in buildings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
- 2. Eligible for aid under the present Article are energy efficiency projects relating to buildings.
- 3. The eligible costs shall be the overall costs of the energy efficiency project.
- 4. The aid shall be granted in the form of an endowment, equity, a guarantee or loan to an energy efficiency fund or other financial intermediary, which shall fully pass it on to the final beneficiaries being the building owners or tenants.
- 5. The aid granted by the energy efficiency fund or other financial intermediary to the eligible energy efficiency projects may take the form of loans or guarantees. The nominal value of the loan or the amount guaranteed shall not exceed EUR 10 million per project at the level of the final beneficiaries. The guarantee should not exceed 80 % of the underlying loan.
- 6. The repayment by the building owners to the energy efficiency fund or other financial intermediary shall not be less than the nominal value of the loan.

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7. The energy efficiency aid shall leverage additional investment from private investors reaching at minimum 30 % of the total financing provided to an energy efficiency project. When the aid is provided by an energy efficiency fund, the leverage of private investment can be done at the level of the energy efficiency fund and/or at the level of the energy efficiency projects, so as to achieve an aggregate minimum 30 % of the total financing provided to an energy efficiency project.

8. Member States can set up energy efficiency funds and/or can use financial intermediaries when providing energy efficiency aid. The following conditions must then be fulfilled:

- (a) Financial intermediary managers, as well as energy efficiency fund managers shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws. In particular, there shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries and energy efficiency fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
- (b) The independent private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the fair rate of return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
- (c) In the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25 % of the total investment;
- (d) In the case of guarantees, the guarantee rate shall be limited to 80 % and total losses assumed by a Member State shall be capped at 25 % of the underlying guaranteed portfolio. Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium;
- (e) The investors shall be allowed to be represented in the governance bodies of the energy efficiency fund or financial intermediary, such as the supervisory board or the advisory committee;
- (f) The energy efficiency fund or financial intermediary shall be established according to the applicable laws and the Member State shall provide for a due diligence process in order to ensure a commercially sound investment strategy for the purpose of implementing the energy efficiency aid measure.

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9. Financial intermediaries, including energy efficiency funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the financial intermediary and, as the case may be, the managers of the energy efficiency fund fulfil the following conditions:

- (a) they are obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
- (b) their remuneration conforms with market practices. This requirement is considered to be met where the manager is selected through an open, transparent and non-discriminatory call, based on objective criteria linked to experience, expertise and operational and financial capacity;
- (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
- (d) they shall set out an investment strategy, criteria and the proposed timing of investments in energy efficiency projects, establishing the *ex-ante* financial viability and their expected impact on energy efficiency.
- (e) a clear and realistic exit strategy shall exist for the public funds invested in the energy efficiency fund or granted to the financial intermediary, allowing the market to finance energy efficiency projects when the market is ready to do so.

10. Energy efficiency improvements undertaken to ensure that the beneficiary complies with Union standards which have already been adopted shall not be exempted from the notification requirement under this Article.

Article 40

Investment aid for high-efficiency cogeneration

1. Investment aid for high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The investment aid shall be granted in respect of newly installed or refurbished capacities only.

3. The new cogeneration unit shall provide overall primary energy savings compared to separate production of heat and electricity as provided for by Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ⁽¹⁾. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

⁽¹⁾ OJ L 315, 14.11.2012, p. 1.

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4. The eligible costs shall be the extra investment costs for the equipment needed for the installation to operate as a high-efficiency cogeneration installation, compared to conventional electricity or heating installations of the same capacity or the extra investment cost to upgrade to a higher efficiency when an existing installation already meets the high-efficiency threshold.

5. The aid intensity shall not exceed 45 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

6. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

*Article 41***Investment aid for the promotion of energy from renewable sources**

1. Investment aid for the promotion of energy from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Investment aid for the production of biofuels shall be exempted from the notification requirement only to the extent that the aided investments are used for the production of sustainable biofuels other than food-based biofuels. However, investment aid to convert existing food-based biofuel plants into advanced biofuel plants shall be exempted under this Article, provided that the food-based production would be reduced commensurate to the new capacity.

3. Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

4. Aid shall not be granted for hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

5. The investment aid shall be granted to new installations only. No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

6. The eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. They shall be determined as follows:

- (a) where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;

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- (b) where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs;
- (c) for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

7. The aid intensity shall not exceed:

- (a) 45 % of the eligible costs if the eligible costs are calculated on the basis of point (6)(a) or point (6)(b);
- (b) 30 % of the eligible cost if the eligible costs are calculated on the basis of point point (6)(c).

8. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

9. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

10. Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 100 % of the eligible costs. Such a bidding process shall be non-discriminatory and provide for the participation of all interested undertakings. The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

Article 42

Operating aid for the promotion of electricity from renewable sources

1. Operating aid for the promotion of electricity from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria which shall be open to all generators producing electricity from renewable energy sources on a non-discriminatory basis.

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3. The bidding process can be limited to specific technologies where a process open to all generators would lead to a suboptimal result which cannot be addressed in the process design in view of in particular:

- (i) the longer-term potential of a given new and innovative technology; or
- (ii) the need to achieve diversification; or
- (iii) network constraints and grid stability; or
- (iv) system (integration) costs; or
- (v) the need to avoid distortions on the raw material markets from biomass support

Member States shall carry out a detailed assessment of the applicability of such conditions and report it to the Commission according to the modalities described in Article 11 (a).

4. Aid shall be granted to new and innovative renewable energy technologies in a competitive bidding process open to at least one such technology on the basis of clear, transparent and non-discriminatory criteria. Such aid shall not be granted for more than 5 % of the planned new electricity capacity from renewable energy sources per year in total.

5. Aid shall be granted as a premium in addition to the market price whereby the generators sell their electricity directly in the market.

6. Aid beneficiaries shall be subject to standard balancing responsibilities. Beneficiaries may outsource balancing responsibilities to other undertakings on their behalf, such as aggregators.

7. Aid shall not be granted when prices are negative.

8. Aid may be granted in the absence of a competitive bidding process as described in paragraph 2 to installations with an installed electricity capacity of less than 1 MW for the production of electricity from all renewable sources except for wind energy, where aid may be granted in the absence of a competitive bidding process as described in paragraph 2 to installations with an installed electricity capacity of less than 6 MW or to installations with less than 6 generation units. Without prejudice to paragraph 9, when aid is granted in the absence of a competitive bidding process, the conditions under paragraphs 5, 6 and 7 shall be respected. In addition, when aid is granted in the absence of a competitive bidding process, the conditions under Article 43 paragraphs 5, 6 and 7 shall be applicable.

9. The conditions under paragraphs 5, 6 and 7 shall not apply to operating aid granted to installations with an installed electricity capacity of less than 500 kW for the production of electricity from all renewable sources except for wind energy, where these conditions shall not apply to operating aid granted to installations with an installed electricity capacity of less than 3 MW or to installations with less than 3 generation units.

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10. For the purpose of calculating the above maximum capacities referred to in paragraphs 8 and 9, installations with a common connection point to the electricity grid shall be considered as one installation.

11. Aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated according to generally accepted accounting principles. Any investment aid previously received must be deducted from the operating aid.

*Article 43***Operating aid for the promotion of energy from renewable sources in small scale installations**

1. Operating aid for the promotion of energy from renewable energy sources in small scale installations shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall only be granted to installations with an installed capacity of less than 500 kW for the production of energy from all renewable sources except for wind energy, for which aid shall be granted to installations with an installed capacity of less than 3 MW or with less than 3 generation units and for biofuels, for which aid shall be granted to installations with an installed capacity of less than 50 000 tonnes/year. For the purpose of calculating those maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.

3. Aid shall only be granted to installations producing sustainable biofuels other than food-based biofuels. However, operating aid to plants producing food-based biofuels that have started operation before 31 December 2013 and are not yet fully depreciated shall be exempted under this Article but in any event no later than 2020.

4. Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

5. The aid per unit of energy shall not exceed the difference between the total levelized costs of producing energy from the renewable source in question and the market price of the form of energy concerned. The levelized costs shall be updated regularly and at least every year.

6. The maximum rate of return used in the levelized cost calculation shall not exceed the relevant swap rate plus a premium of 100 basis points. The relevant swap rate shall be the swap rate of the currency in which the aid is granted for a maturity that reflects the depreciation period of the installations supported.

7. Aid shall only be granted until the installation has been fully depreciated according to generally accepted accounting principles. Any investment aid granted to an installation shall be deducted from the operating aid.

*Article 44***Aid in the form of reductions in environmental taxes under Directive 2003/96/EC**

1. Aid schemes in the form of reductions in environmental taxes fulfilling the conditions of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽¹⁾ shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The beneficiaries of the tax reduction shall be selected on the basis of transparent and objective criteria and shall pay at least the respective minimum level of taxation set by Directive 2003/96/EC.
3. Aid schemes in the form of tax reductions shall be based on a reduction of the applicable environmental tax rate or on the payment of a fixed compensation amount or on a combination of these mechanisms.
4. Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

*Article 45***Investment aid for remediation of contaminated sites**

1. Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.
3. Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁽²⁾ as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries⁽³⁾, Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC,

⁽¹⁾ OJ L 283, 31.10.2003, p. 51.

⁽²⁾ OJ L 143, 30.4.2004, p. 56.

⁽³⁾ OJ L 102, 11.4.2006, p. 1.

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2008/1/EC and Regulation (EC) No 1013/2006 ⁽¹⁾ and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC ⁽²⁾ — is identified, that person must finance the remediation in accordance with the ‘polluter pays’ principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State aid.

4. The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

5. Evaluations of the increase in value of the land resulting from remediation shall be carried out by an independent expert.

6. The aid intensity shall not exceed 100 % of the eligible costs.

*Article 46***Investment aid for energy efficient district heating and cooling**

1. Investment aid for the installation of energy efficient district heating and cooling system shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the energy efficient district heating and cooling system.

3. The aid intensity for the production plant shall not exceed 45 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

4. The aid intensity for the production plant may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

⁽¹⁾ OJ L 140, 5.6.2009, p. 114.

⁽²⁾ OJ L 178, 28.6.2013, p. 66.

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5. The eligible costs for the distribution network shall be the investment costs.
6. The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.

*Article 47***Investment aid for waste recycling and re-utilisation**

1. Investment aid for waste recycling and re-utilisation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings.
3. The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.
4. The aid shall not indirectly relieve the polluters from a burden that should be borne by them under Union law, or from a burden that should be considered a normal company cost.
5. The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.
6. The investment shall go beyond the state of the art.
7. The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.
8. The aid intensity shall not exceed 35 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.
9. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
10. Aid for investments relating to the recycling and re-utilisation of the beneficiary's own waste shall not be exempt from the notification requirement under this Article.



Article 48

Investment aid for energy infrastructure

1. Investment aid for the construction or upgrade of energy infrastructure shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall be granted for energy infrastructure located in assisted areas.
3. The energy infrastructure shall be subject to full tariff and access regulation according to internal energy market legislation.
4. The eligible costs shall be the investment costs.
5. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.
6. Aid for investments in electricity and gas storage projects and oil infrastructure shall not be exempt from the notification requirement under this Article.

Article 49

Aid for environmental studies

1. Aid for studies, including energy audits, directly linked to investments referred to in this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the costs of the studies referred to in paragraph 1.
3. The aid intensity shall not exceed 50 % of the eligible costs.
4. The aid intensity may be increased by 20 percentage points for studies undertaken on behalf of small enterprises and by 10 percentage points for studies undertaken on behalf of medium size enterprises.
5. Aid shall not be granted to large undertakings for energy audits carried out under Article 8(4) of the Directive 2012/27/EU, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive.

▼B*SECTION 8**Aid to make good the damage caused by certain natural disasters**Article 50***Aid schemes to make good the damage caused by certain natural disasters**

1. Aid schemes to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin shall be compatible with the internal market within the meaning of Article 107(2)(b) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall be granted subject to the following conditions:

- (a) the competent public authorities of a Member State have formally recognised the character of the event as a natural disaster; and
- (b) there is a direct causal link between the natural disaster and the damages suffered by the affected undertaking.

3. Aid schemes related to a specific natural disaster shall be introduced within three years following the occurrence of the event. Aid on the basis of such schemes shall be granted within four years following the occurrence.

4. The costs arising from the damage incurred as a direct consequence of the natural disaster, as assessed by an independent expert recognised by the competent national authority or by an insurance undertaking shall be eligible costs. Such damage may include material damage to assets such as buildings, equipment, machinery or stocks and loss of income due to the full or partial suspension of activity for a period not exceeding six months from the occurrence of the disaster. The calculation of the material damage shall be based on the repair cost or economic value of the affected asset before the disaster. It shall not exceed the repair cost or the decrease in fair market value caused by the disaster, that is to say the difference between the property's value immediately before and immediately after the occurrence of the disaster. Loss of income shall be calculated on the basis of financial data of the affected undertaking (earnings before interest and taxes (EBIT), depreciation and labour costs related only to the establishment affected by the natural disaster) by comparing the financial data for the six months after the occurrence of the disaster with the average of three years chosen among the five years preceding the occurrence of the disaster (by excluding the two years giving the best and the worst financial result) and calculated for the same six months period of the year. The damage shall be calculated at the level of the individual beneficiary.

5. The aid and any other payments received to compensate for the damage, including payments under insurance policies, shall not exceed 100 % of the eligible costs.

*SECTION 9**Social aid for transport for residents of remote regions**Article 51***Social aid for transport for residents of remote regions**

1. Aid for air and maritime passenger transport shall be compatible with the internal market pursuant to Article 107(2)(a) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The entire aid shall be for the benefit of final consumers who have their normal residence in remote regions.
3. The aid shall be granted for passenger transport on a route linking an airport or port in a remote region with another airport or port within the European Economic Area.
4. The aid shall be granted without discrimination as to the identity of the carrier or type of service and without limitation as to the precise route to or from the remote region.
5. The eligible costs shall be the price of a return ticket from or to the remote region, including all taxes and charges invoiced by the carrier to the consumer.
6. The aid intensity shall not exceed 100 % of the eligible costs.

*SECTION 10**Aid for broadband infrastructures**Article 52***Aid for broadband infrastructures**

1. Investment aid for broadband network development shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the following:
 - (a) investment costs for the deployment of a passive broadband infrastructure;
 - (b) investment costs of broadband-related civil engineering works;
 - (c) investment costs for the deployment of basic broadband networks; and
 - (d) investment costs for the deployment of next generation access (NGA) networks.

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2a. As an alternative to establishing the eligible costs as provided for in paragraph 2, the maximum amount of aid for a project may be established on the basis of the competitive selection process as required by paragraph 4.

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3. The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation.

4. The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.

5. The network operator shall offer the widest possible active and passive wholesale access, according to Article 2, point 139 of this Regulation, under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks. Such wholesale access shall be granted for at least seven years and the right of access to ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several cable networks and different network topologies.

6. The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the Member State or the Union taking into account the aid received by the network operator. The national regulatory authority shall be consulted on access conditions, including pricing, and in the event of dispute between access seekers and the subsidised infrastructure operator.

7. Member States shall put in place a monitoring and claw-back mechanism if the amount of aid granted to the project exceeds EUR 10 million.

*SECTION 11**Aid for culture and heritage conservation**Article 53***Aid for culture and heritage conservation**

1. Aid for culture and heritage conservation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The aid shall be granted for the following cultural purposes and activities:

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(a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;

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- (b) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
- (c) intangible heritage in any form, including folklorist customs and crafts;
- (d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
- (e) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- (f) writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

3. The aid may take the form of:

- (a) investment aid, including aid for the construction or upgrade of culture infrastructure;
- (b) operating aid.

4. For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

- (a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;
- (b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- (c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
- (d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
- (e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project;

5. For operating aid, the eligible costs shall be the following:

- (a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;

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- (b) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- (c) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
- (d) operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;
- (e) costs for personnel working for the cultural institution or heritage site or for a project;
- (f) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

6. For investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.

7. For operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

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8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 6 and 7.

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9. ►**M1** For the activities defined in paragraph 2(f), the maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70 % of the eligible costs. ◀ The revenues shall be deducted from the eligible costs *ex ante* or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre-press costs and printing or e-publication costs.

10. Aid to press and magazines, whether they are published in print or electronically, shall not be eligible under this Article.

▼B*Article 54***Aid schemes for audiovisual works**

1. Aid schemes to support the script-writing, development, production, distribution and promotion of audiovisual works shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid shall support a cultural product. To avoid manifest errors in the qualification of a product as cultural, each Member State shall establish effective processes, such as selection of proposals by one or more persons entrusted with the selection or verification against a pre-determined list of cultural criteria.

3. Aid may take the form of:

- (a) aid to the production of audiovisual works;
- (b) pre-production aid; and
- (c) distribution aid.

4. Where a Member States makes the aid subject to territorial spending obligations, aid schemes for the production of audiovisual works may either:

- (a) require that up to 160 % of the aid granted to the production of a given audiovisual work is spent in the territory of the Member State granting the aid; or
- (b) calculate the aid granted to the production of a given audiovisual work as a percentage of the expenditure on production activities in the granting Member State, typically in case of aid schemes in the form of tax incentives.

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In both cases, the maximum expenditure subject to territorial spending obligations shall in no case exceed 80 % of the overall production budget.

For projects to be eligible for aid, a Member State may also require a minimum level of production activity in the territory concerned, but that level shall not exceed 50 % of the overall production budget.

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5. The eligible costs shall be the following:

- (a) for production aid: the overall costs of production of audiovisual works including costs to improve accessibility for persons with disabilities.
- (b) for pre-production aid: the costs of script-writing and the development of audiovisual works.
- (c) for distribution aid: the costs of distribution and promotion of audiovisual works.

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6. The aid intensity for the production of audiovisual works shall not exceed 50 % of the eligible costs.
7. The aid intensity may be increased as follows:
- (a) to 60 % of the eligible costs for cross-border productions funded by more than one Member State and involving producers from more than one Member State;
 - (b) to 100 % of the eligible costs for difficult audiovisual works and co-productions involving countries from the Development Assistance Committee (DAC) List of the OECD.
8. The aid intensity for pre-production shall not exceed 100 % of the eligible costs. If the resulting script or project is made into an audiovisual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.
9. Aid shall not be reserved for specific production activities or individual parts of the production value chain. Aid for film studio infrastructures shall not be eligible under this Article.
10. Aid shall not be reserved exclusively for nationals and beneficiaries shall not be required to have the status of undertaking established under national commercial law.

*SECTION 12**Aid for sport and multifunctional recreational infrastructures**Article 55***Aid for sport and multifunctional recreational infrastructures**

1. Aid for sport and multifunctional recreational infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.
3. Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.
4. Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

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5. If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.

6. Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on a open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

7. The aid may take the form of:

(a) investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;

(b) operating aid for sport infrastructure;

8. For investment aid for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.

9. For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

10. For investment aid for sport and multifunctional recreational infrastructure, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

11. For operating aid for sport infrastructure, the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

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12. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 10 and 11.

▼B*SECTION 13**Aid for local infrastructures**Article 56***Investment aid for local infrastructures**

1. Financing for the construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

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2. This Article shall not apply to aid for infrastructures that is covered by other sections of Chapter III of this Regulation with the exception of Section 1 — Regional aid. This Article shall also not apply to airport infrastructure and port infrastructure.
3. The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.
4. Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
5. The eligible costs shall be the investment costs in tangible and intangible assets.
6. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
7. Dedicated infrastructure shall not be exempted under this Article.

▼M1*SECTION 14****Aid for regional airports****Article 56a***Aid for regional airports**

1. Investment aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3 to 14 of this Article and in Chapter I are fulfilled.
2. Operating aid to an airport shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in paragraphs 3, 4, 10 and 15 to 18 of this Article and in Chapter I are fulfilled.
3. The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.
4. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport, including the conversion of an existing airfield into a passenger airport.
5. The investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.
6. The investment aid shall not be granted to an airport located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated.

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7. Paragraphs 5 and 6 shall not apply to airports with average annual passenger traffic of up to 200 000 passengers during the two financial years preceding the year in which aid is actually granted if the investment aid is not expected to result in the airport increasing its average annual passenger traffic to above 200 000 passengers within two financial years following the granting of the aid. Investment aid granted to such airports shall comply either with paragraph 11 or with paragraphs 13 and 14.

8. Paragraph 6 shall not apply where the investment aid is granted to an airport situated within 100 kilometres from existing airports from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated, provided the route between each of these other existing airports and the airport receiving the aid necessarily involves either a total travelling time by maritime transportation of at least 90 minutes or air transportation.

9. The investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The investment aid shall not be expected to result in the airport increasing its average annual traffic to above three million passengers within two financial years following the granting of the aid.

10. The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid.

11. The investment aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

12. The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs.

13. The investment aid amount shall not exceed:

- (a) 50 % of eligible costs for airports with an average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is actually granted;
- (b) 75 % of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is actually granted.

14. The maximum aid intensities set out in paragraph 13 may be increased by 20 percentage points for airports located in remote regions.

15. Operating aid shall not be granted to airports with average annual passenger traffic of more than 200 000 passengers during the two financial years preceding the year in which aid is actually granted.

16. The amount of operating aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be granted either in the form of periodic instalments fixed *ex ante*, which shall not be increased during the period for which the aid is granted, or in the form of amounts defined *ex post* based on the observed operating losses.

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17. Operating aid shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers.

18. The granting of the operating aid shall not be made conditional upon the conclusion of arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airlines' operations at the airport concerned.

*SECTION 15****Aid for ports****Article 56b***Aid for maritime ports**

1. Aid for maritime ports shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. The eligible costs shall be the costs, including planning costs, of:

- (a) investments for the construction, replacement or upgrade of port infrastructures;
- (b) investments for the construction, replacement or upgrade of access infrastructure;
- (c) dredging.

3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

4. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

5. The aid intensity per investment referred to in point (a) of paragraph 2 shall not exceed:

- (a) 100 % of the eligible costs where total eligible costs of the project are up to EUR 20 million;
- (b) 80 % of the eligible costs where total eligible costs of the project are above EUR 20 million and up to EUR 50 million;
- (c) 60 % of the eligible costs where total eligible costs of the project are above EUR 50 million and up to the amount laid down in point (ee) of Article 4(1).

The aid intensity shall not exceed 100 % of the eligible costs determined in point (b) of paragraph 2 and point (c) of paragraph 2 up to the amount laid down in point (ee) of Article 4(1).

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6. The aid intensities laid down in points (b) and (c) of the first subparagraph of paragraph 5 may be increased by 10 percentage points for investments located in assisted areas fulfilling the conditions of point (a) of Article 107(3) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of point (c) of Article 107(3) of the Treaty.
7. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
8. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
9. For aid not exceeding EUR 5 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4, 5 and 6.

*Article 56c***Aid for inland ports**

1. Aid for inland ports shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the costs, including planning costs, of:
 - (a) investments for the construction, replacement or upgrade of port infrastructures;
 - (b) investments for the construction, replacement or upgrade of access infrastructure;
 - (c) dredging.
3. Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.
4. The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
5. The maximum aid intensity shall not exceed 100 % of the eligible costs up to the amount laid down in point (ff) of Article 4(1).
6. Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
7. The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
8. For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80 % of eligible costs, as an alternative to application of the method referred to in paragraphs 4 and 5.

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CHAPTER IV
FINAL PROVISIONS

Article 57

Repeal

Regulation (EC) No 800/2008 shall be repealed.

Article 58

Transitional provisions

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1. This Regulation shall apply to individual aid granted before the respective provisions of this Regulation have entered into force where the aid fulfils all the conditions laid down in this Regulation, with the exception of Article 9.

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2. Any aid not exempted from the notification requirement of Article 108(3) of the Treaty by virtue of this Regulation or other regulations adopted pursuant to Article 1 of Regulation (EC) No 994/98 previously in force shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. Any individual aid granted before 1 January 2015 by virtue of any regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 in force at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty with the exclusion of regional aid. Risk capital aid schemes in favour of SMEs set up before 1 July 2014 and exempted from the notification requirement of Article 108(3) of the Treaty under Regulation (EC) No 800/2008, shall remain exempted and compatible with the internal market until the termination of the funding agreement, provided the commitment of the public funding into the supported private equity investment fund, on the basis of such agreement, was made before 1 January 2015 and the other conditions for exemption remain fulfilled.

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3a. Any individual aid granted between 1 July 2014 and 9 July 2017 in accordance with the provisions of this Regulation as applicable at the time of granting the aid shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Any individual aid granted before 1 July 2014 in accordance with the provisions of this Regulation, with the exception of Article 9, as applicable either before or after 10 July 2017 shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty.

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4. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire on the date of expiry of the approved regional aid maps. The exemption of risk finance aid exempted pursuant to Article 21(2)(a) shall expire at the end

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of the period foreseen in the funding agreement, provided the commitment of public funding to the supported private equity investment fund was made on the basis of such agreement within 6 months from the end of the period of validity of this Regulation and all other conditions for exemption remain fulfilled.

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5. If this Regulation is amended, any aid scheme exempted under this Regulation as applicable at the time of the entry into force of the scheme shall remain exempted during an adjustment period of six months.

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Article 59

This Regulation shall enter into force on 1 July 2014.

It shall apply until 31 December 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

*ANNEX I***SME DEFINITION***Article 1***Enterprise**

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2***Staff headcount and financial thresholds determining enterprise categories**

1. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

*Article 3***Types of enterprise taken into consideration in calculating staff numbers and financial amounts**

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
- (b) universities or non-profit research centres;
- (c) institutional investors, including regional development funds;

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(d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:

(a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

(b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

(c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

▼B

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

*Article 5***Staff headcount**

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

*Article 6***Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

▼B

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.



ANNEX II

INFORMATION REGARDING STATE AID EXEMPT UNDER THE CONDITIONS OF THIS REGULATION

PART I

to be provided through the established Commission IT application as laid down in Article 11

Aid reference	<i>(to be completed by the Commission)</i>	
Member State	.....
Member State reference number	.....
Region	Name of the Region(s) (NUTS ⁽¹⁾)	Regional aid status ⁽²⁾

Granting authority	Name	.....
	Postal address	.....
	Web address	.....
Title of the aid measure	.....
National legal basis (Reference to the relevant national official publication)	..... ..... .....
Web link to the full text of the aid measure	.....
Type of measure	<input type="checkbox"/> Scheme	Name of the beneficiary and the group ⁽³⁾ it belongs to
	<input type="checkbox"/> <i>Ad hoc aid</i>	
Amendment of an existing aid scheme or <i>ad hoc aid</i>		Commission aid reference
	<input type="checkbox"/> Prolongation	.....
	<input type="checkbox"/> Modification	.....
Duration ⁽⁴⁾	<input type="checkbox"/> Scheme	dd/mm/yyyy to dd/mm/yyyy
Date of granting ⁽⁵⁾	<input type="checkbox"/> <i>Ad hoc aid</i>	dd/mm/yyyy
Economic sector(s) concerned	<input type="checkbox"/> All economic sectors eligible to receive aid	
	<input type="checkbox"/> Limited to certain sectors: Please specify at NACE group level ⁽⁶⁾



Type of beneficiary	<input type="checkbox"/> SME		
	<input type="checkbox"/> Large undertakings		
Budget	Total annual amount of the budget planned under the scheme ⁽⁷⁾	National currency (full amounts)	
	Overall amount of the <i>ad hoc</i> aid awarded to the undertaking ⁽⁸⁾	National currency (full amounts)	
	<input type="checkbox"/> For guarantees ⁽⁹⁾	National currency (full amounts)	
Aid instrument	<input type="checkbox"/> Grant/Interest rate subsidy		
	<input type="checkbox"/> Loan/Repayable advances		
	<input type="checkbox"/> Guarantee (where appropriate with a reference to the Commission decision ⁽¹⁰⁾)		
	<input type="checkbox"/> Tax advantage or tax exemption		
	<input type="checkbox"/> Provision of risk finance		
	<input type="checkbox"/> Other (please specify)		
	Indicate to which broad category below it would fit best in terms of its effect/function: <input type="checkbox"/> Grant <input type="checkbox"/> Loan <input type="checkbox"/> Guarantee <input type="checkbox"/> Tax advantage <input type="checkbox"/> Provision of risk finance		
<input type="checkbox"/> If co-financed by EU fund(s)	Name of EU fund(s):	Amount of funding (as per EU fund)	National currency (full amounts)
<p>⁽¹⁾ NUTS — Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.</p> <p>⁽²⁾ Article 107(3)(a) TFEU (status 'A'), Article 107(3)(c) TFEU (status 'C'), unassisted areas i.e. areas not eligible for regional aid (status 'N').</p> <p>⁽³⁾ An undertaking for the purposes of rules on competition laid down in the Treaty and for the purposes of this Regulation is any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The Court of Justice has ruled that entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as one undertaking.</p> <p>⁽⁴⁾ Period during which the granting authority can commit itself to grant the aid.</p> <p>⁽⁵⁾ Determined in line with Article 2, point 27 of the Regulation.</p> <p>⁽⁶⁾ NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level.</p> <p>⁽⁷⁾ In case of an aid scheme: Indicate the annual overall amount of the budget planned under the scheme or the estimated tax loss per year for all aid instruments contained in the scheme.</p> <p>⁽⁸⁾ In case of an <i>ad hoc</i> aid award: Indicate the overall aid amount/tax loss.</p> <p>⁽⁹⁾ For guarantees, indicate the (maximum) amount of loans guaranteed.</p> <p>⁽¹⁰⁾ Where appropriate, reference to the Commission decision approving the methodology to calculate the gross grant equivalent, in line with article 5(2)(c) of the Regulation.</p>			

▼ **M1**

PART II

to be provided through the established Commission IT application as laid down in Article 11

Please indicate under which provision of the GBER the aid measure is implemented.

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %	
Regional aid — investment aid ⁽¹⁾ (Art. 14)	<input type="checkbox"/> Scheme	... %	... %	
	<input type="checkbox"/> Ad hoc aid	... %	... %	
Regional aid — operating aid (Art. 15)	<input type="checkbox"/> Transport costs of goods in eligible areas (Art. 15(2)(a))	... %	... %	
	<input type="checkbox"/> Additional costs in outermost regions (Art. 15(2)(b))	... %	... %	
<input type="checkbox"/> Regional urban development aid (Art. 16)		... national currency	... %	
SME aid (Art. 17-18 - 19-20)	<input type="checkbox"/> Investment aid to SMEs (Art. 17)	... %	... %	
	<input type="checkbox"/> Aid for consultancy in favour of SMEs (Art. 18)	... %	... %	
	<input type="checkbox"/> Aid to SMEs for participation in fairs (Art. 19)	... %	... %	
	<input type="checkbox"/> Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects (Art. 20)	... %	... %	
SME aid — SMEs' access to finance (Art. 21-22)	<input type="checkbox"/> Risk finance aid (Art. 21)	... national currency	... %	
	<input type="checkbox"/> Aid for start-ups (Art. 22)	... national currency	... %	
<input type="checkbox"/> SME aid — Aid to alternative trading platforms specialised in SMEs (Art. 23)		... %; in case the aid measure takes the form of start-up aid: ... national currency	... %	
<input type="checkbox"/> SME aid — Aid for scouting costs (Art. 24)		... %	... %	
Aid for research, development and innovation (Arts. 25-30)	Aid for research and development projects (Art. 25)	<input type="checkbox"/> Fundamental research (Art. 25(2)(a))	... %	... %
		<input type="checkbox"/> Industrial research (Art. 25(2)(b))	... %	... %
		<input type="checkbox"/> Experimental development (Art. 25(2)(c))	... %	... %
		<input type="checkbox"/> Feasibility studies (Art. 25(2)(d))	... %	... %

▼ **M1**

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
	<input type="checkbox"/> Investment aid for research infrastructures (Art. 26)	... %	... %
	<input type="checkbox"/> Aid for innovation clusters (Art. 27)	... %	... %
	<input type="checkbox"/> Innovation aid for SMEs (Art. 28)	... %	... %
	<input type="checkbox"/> Aid for process and organisational innovation (Article 29)	... %	... %
	<input type="checkbox"/> Aid for research and development in the fishery and aquaculture sector (Art. 30)	... %	... %
<input type="checkbox"/> Training aid (Art. 31)		... %	... %
Aid for disadvantaged workers and workers with disabilities (Arts. 32-35)	<input type="checkbox"/> Aid for the recruitment of disadvantaged workers in the form of wage subsidies (Article 32)	... %	... %
	<input type="checkbox"/> Aid for the employment of workers with disabilities in the form of wage subsidies (Art. 33)	... %	... %
	<input type="checkbox"/> Aid for compensating the additional costs of employing workers with disabilities (Art. 34)	... %	... %
	<input type="checkbox"/> Aid for compensating the costs of assistance provided to disadvantaged workers (Art. 35)	... %	... %
Aid for Environmental protection (Arts. 36-49)	<input type="checkbox"/> Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards (Art. 36)	... %	... %
	<input type="checkbox"/> Investment aid for early adaptation to future Union standards (Art. 37)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficiency measures (Art. 38)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficiency projects in buildings (Art. 39)	... national currency	... %
	<input type="checkbox"/> Investment aid for high-efficiency cogeneration (Art. 40)	... %	... %
	<input type="checkbox"/> Investment aid for the promotion of energy from renewable sources (Art. 41)	... %	... %
	<input type="checkbox"/> Operating aid for the promotion of electricity from renewable sources (Art. 42)	... %	... %
	<input type="checkbox"/> Operating aid for the promotion of energy from renewable sources in small scale installation (Art. 43)	... %	... %
	<input type="checkbox"/> Aid in the form of reductions in environmental taxes under Directive 2003/96/EC (Art. 44)	... %	... %

▼ **M1**

Primary objective — General Objectives (list)	Objectives (list)	Maximum aid intensity in % or Maximum annual aid amount in national currency (in full amounts)	SME — bonuses in %
	<input type="checkbox"/> Investment aid for remediation of contaminated sites (Art. 45)	... %	... %
	<input type="checkbox"/> Investment aid for energy efficient district heating and cooling (Art. 46)	... %	... %
	<input type="checkbox"/> Investment aid for waste recycling and re-utilisation (Art. 47)	... %	... %
	<input type="checkbox"/> Investment aid for energy infrastructure (Art. 48)	... %	... %
	<input type="checkbox"/> Aid for environmental studies (Art. 49)	... %	... %
<input type="checkbox"/> Aid schemes to make good the damage caused by certain natural disasters (Art. 50)	Maximum aid intensity	... %	... %
	Type of natural disaster	<input type="checkbox"/> earthquake <input type="checkbox"/> avalanche <input type="checkbox"/> landslide <input type="checkbox"/> flood <input type="checkbox"/> tornado <input type="checkbox"/> hurricane <input type="checkbox"/> volcanic eruption <input type="checkbox"/> wild fire	
	Date of occurrence of the natural disaster	dd/mm/yyyy to dd/mm/yyyy	
<input type="checkbox"/> Social aid for transport for residents of remote regions (Art. 51)		... %	... %
<input type="checkbox"/> Aid for broadband infrastructures (Art. 52)		... national currency	... %
<input type="checkbox"/> Aid for culture and heritage conservation (Art. 53)		... %	... %
<input type="checkbox"/> Aid schemes for audiovisual works (Art. 54)			
		... %	... %
<input type="checkbox"/> Aid for sport and multifunctional recreational infrastructures (Art. 55)		... %	... %
<input type="checkbox"/> Investment aid for local infrastructures (Art. 56)		... %	... %
<input type="checkbox"/> Aid for regional airports (Art. 56a)		... %	... %
<input type="checkbox"/> Aid for maritime ports (Art. 56b)		... %	... %
<input type="checkbox"/> Aid for inland ports (Art. 56c)		... %	... %

(¹) In the case of *ad hoc* regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the *ad hoc* aid.



ANNEX III

Provisions for the publication of information as laid down in Article 9(1)

Member States shall organise their comprehensive State aid websites, on which the information laid down in Article 9(1) is to be published, in such a way as to allow easy access to the information. Information shall be published in a spreadsheet data format, which allows data to be searched, extracted and easily published on the internet, for instance in CSV or XML format. Access to the website shall be allowed to any interested party without restrictions. No prior user registration shall be required to access the website.

The following information on individual awards as laid down in Article 9(1)(c) shall be published:

- Name of the beneficiary
- Beneficiary's identifier
- Type of enterprise (SME/large) at the time of granting
- Region in which the beneficiary is located, at NUTS level II ⁽¹⁾
- Sector of activity at NACE group level ⁽²⁾
- Aid element, expressed as full amount in national currency ⁽³⁾
- Aid instrument ⁽⁴⁾ (Grant/Interest rate subsidy, Loan/Repayable advances/Reimbursable grant, Guarantee, Tax advantage or tax exemption, Risk finance, Other (please specify))
- Date of granting
- Objective of the aid
- Granting authority
- For schemes under Articles 16 and 21, name of the entrusted entity, and the names of the selected financial intermediaries
- Reference of the aid measure. ⁽⁵⁾

⁽¹⁾ NUTS — Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

⁽²⁾ ► **MI** Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1). ◀

⁽³⁾ ► **MI** Gross grant equivalent, or for measures under Articles 16, 21, 22 or 39 of this Regulation, the amount of the investment. ◀ For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes and for schemes under Articles 16 (Regional urban development aid) and 21 (Risk finance aid), this amount can be provided by the ranges set out in Article 9(2) of this Regulation.

⁽⁴⁾ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

⁽⁵⁾ As provided by the Commission under the electronic procedure referred to in Article 11 of this Regulation.