

II

(Non-legislative acts)

REGULATIONS

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)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾, and in particular Article 1(1)(a) and (b) thereof,

After consulting the Advisory Committee on State Aid,

Whereas:

- (1) State funding meeting the criteria in Article 107(1) of the Treaty constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to those categories of State aid. Council Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 109 of the Treaty, that the following categories may, under certain conditions, be exempted from the notification requirement: aid to small and medium-sized enterprises (SMEs), aid in favour of research and development, aid in favour of environmental protection, employment and training aid and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid. On that basis, the Commission adopted Commission Regulation (EC) No 800/2008 ⁽²⁾. Regulation (EC) No 800/2008 originally applied until 31 December 2013 but was subsequently prolonged by Commission Regulation (EU) No 1224/2013 of 29 November 2013 amending Regulation (EC) No 800/2008 as regards its period of application ⁽³⁾ and now expires on 30 June 2014. On 22 July 2013 Regulation (EC) No 994/98 was amended by Council Regulation (EU) No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽⁴⁾ to empower the Commission to extend the block exemption to new categories of aid, in respect of which clear compatibility conditions can be defined. Such new categories of block exempted aid include: aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions, aid for broadband infrastructures, aid for innovation, aid for culture and heritage conservation, aid for sport and multifunctional recreational infrastructures. Provided that sufficient case experience is further developed allowing the design of

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ L 241, 9.8.2008, p. 3.

⁽³⁾ OJ L 320, 30.11.2013, p. 22.

⁽⁴⁾ OJ L 204, 31.7.2013, p. 11.

operational exemption criteria ensuring the *ex-ante* compatibility of other categories of aid, the Commission intends to review the scope of this Regulation with a view to including certain types of aid in those areas. In particular, the Commission envisages developing criteria for port and airport infrastructure by December 2015.

- (2) With its Communication on EU State Aid Modernisation (SAM) ⁽¹⁾, the Commission launched a wider review of the State aid rules. The main objectives of this modernisation are (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances, (ii) to focus Commission *ex ante* scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in State aid enforcement, and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations. The review of Regulation (EC) No 800/2008 constitutes a central element of SAM.
- (3) This Regulation should allow for better prioritisation of State aid enforcement activities, greater simplification and should enhance transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while preserving the institutional competences of the Commission and the Member States. In accordance with the principle of proportionality this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (4) The Commission's experience in applying Regulation (EC) No 800/2008 has allowed it to better define the conditions under which certain categories of aid can be considered compatible with the internal market and to extend the scope of block exemptions. It also revealed the necessity to strengthen transparency, monitoring and proper evaluation of very large schemes in light of their effect on competition in the internal market.
- (5) The general conditions for the application of this Regulation should be defined on the basis of a set of common principles that ensure the aid serves a purpose of common interest, has a clear incentive effect, is appropriate and proportionate, is granted in full transparency and subject to a control mechanism and regular evaluation, and does not adversely affect trading conditions to an extent that is contrary to the common interest.
- (6) Aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempted from the notification obligation laid down in Article 108(3) of the Treaty.
- (7) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.
- (8) In view of the greater potential impact of large schemes on trade and competition, aid schemes with an average annual State aid budget exceeding a threshold based on an absolute value should in principle be subject to State aid evaluation. The evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, as well as the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade. In order to ensure equal treatment, State aid evaluation should be carried out on the basis of an evaluation plan approved by the Commission. While such plan should normally be drawn up at the moment of the design of the scheme and approved in time for the scheme to enter into force, this may not be possible in all cases. Therefore, in order not to delay their entry into force, this Regulation will apply to such schemes for a maximum period of six months. The Commission may decide to extend this period, upon approval of the evaluation plan. To this end, the evaluation plan should be notified to the Commission within 20 working days following the entry into force of the scheme. The Commission can also exceptionally decide that an evaluation is not necessary given the specificities of the case. The Commission should receive from the Member State the necessary information to be able to carry out the assessment of the evaluation plan and request additional information without undue delay allowing the Member State to complete the missing elements for the Commission to take a decision. In view of the novelty of this process, the Commission will provide, in a separate document, a detailed guidance on the procedure applicable during the 6 months period for the approval of the evaluation plan and the relevant

⁽¹⁾ COM(2012) 209, 8.5.2012.

templates through which the evaluation plans will have to be submitted. Alterations of schemes subject to evaluation, 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, should be assessed taking account of the outcome of such evaluation and should be excluded from the scope of this Regulation. The alterations such as purely formal modifications, administrative modifications or alterations carried out within the framework of the EU co-financed measures should not, in principle, be considered as significantly affecting the content of the approved evaluation plan.

- (9) This Regulation should not apply to aid contingent upon the use of domestic over imported products or aid to export-related activities. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market in another Member State or third country does not normally constitute aid to export-related activities.
- (10) This Regulation should apply in principle across most sectors of the economy. However, in some sectors, such as the fisheries and aquaculture sector and primary agricultural production, the scope should be limited in the light of the special rules applicable.
- (11) This Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. For the purposes of this Regulation neither on-farm activities necessary for preparing a product for the first sale, nor the first sale by a primary producer to resellers or processors or any activity preparing a product for a first sale should be considered processing or marketing.
- (12) This Regulation should not apply to aid to facilitate the closure of uncompetitive coal mines, which is dealt with by the Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines ⁽¹⁾. This Regulation should apply to other types of aid in the coal sector, with the exception of regional aid.
- (13) The Commission should ensure that authorised aid does not adversely affect trading conditions to an extent that is contrary to the common interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation, with the exception of aid schemes to make good the damage caused by certain natural disasters.
- (14) Aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004 ⁽²⁾ as prolonged by Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004 ⁽³⁾ or their successor Guidelines, in order to avoid their circumvention, with the exception of aid schemes to make good the damage caused by certain natural disasters. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.
- (15) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid granted under block-exempted schemes.
- (16) Due to the high risk of adversely affecting trading conditions, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification. Thresholds should therefore be set for each category of aid falling within the scope of this Regulation at a level which takes into account the category of

⁽¹⁾ OJ L 336, 21.12.2010, p. 24.

⁽²⁾ OJ C 244, 1.10.2004, p. 2.

⁽³⁾ OJ C 296, 2.10.2012, p. 3.

aid concerned and its likely effect on trading conditions. Any aid granted above those thresholds should remain subject to the notification requirement of Article 108(3) of the Treaty. The thresholds set out in this Regulation should not be circumvented by artificially splitting up aid schemes or aid projects into several aid schemes or projects with similar characteristics, objectives or beneficiaries.

- (17) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent *ex ante* without the need to undertake a risk assessment ('transparent aid'). For certain specific aid instruments, such as loans, guarantees, tax measures, risk finance measures and, in particular, repayable advances, this Regulation should define the conditions under which they can be considered transparent. Capital injections should not be considered transparent aid, without prejudice to specific conditions concerning risk finance and start-up aid. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. In the case of small and medium-sized enterprises (SMEs), the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽¹⁾ indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.
- (18) In order to ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would in any case engage even in the absence of the aid. Aid should only be exempted from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.
- (19) As regards any ad hoc aid covered by this Regulation granted to a beneficiary who is a large enterprise, the Member State should ensure that, in addition to complying with the conditions relating to incentive effect which apply to beneficiaries who are SMEs, the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in the scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. Regional aid should be considered to have an incentive effect if the investment project would not have been carried out in the assisted region concerned in the absence of the aid.
- (20) Automatic aid schemes in the form of tax advantages should continue to be subject to a specific condition concerning the incentive effect, due to the fact that this kind of aid is granted under different procedures than other categories of aid. Such schemes should already have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes in the form of tax advantages. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the tax measure was set out for the first time in the original scheme, which is then replaced by the successor scheme.
- (21) As regards regional operating aid, regional urban development aid, aid for access to finance for SMEs, aid for the recruitment of disadvantaged workers, aid for employment of workers with disabilities and aid compensating for the additional costs of employing workers with disabilities, aid in the form of reductions in environmental taxes, aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions and aid for culture and heritage conservation, the requirement regarding the existence of an incentive effect does not apply or should be presumed as having been complied with, if the specific conditions set out for those categories of aid in this Regulation are fulfilled.
- (22) With a view to ensuring that aid is proportionate and limited to the amount necessary, maximum aid amounts should, whenever possible, be defined in terms of aid intensities in relation to a set of eligible costs. Where the maximum aid intensity cannot be set, because eligible costs cannot be identified or in order to provide simpler instruments for small amounts, maximum aid amounts defined in nominal terms should be set out in order to ensure proportionality of aid measures. The aid intensity and the maximum aid amounts should be fixed, in the light of the Commission's experience, at a level that minimises distortions of competition in the aided sector while appropriately addressing the market failure or cohesion issue. For regional investment aid, the aid intensity should comply with the allowable aid intensities under the regional aid maps.

⁽¹⁾ OJ C 155, 20.6.2008, p. 10.

- (23) For the calculation of aid intensity, only eligible costs should be included. The Regulation shall not exempt aid which exceeds the relevant aid intensity as a result of including ineligible costs. The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. All figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value at the moment it is granted. The eligible costs should also be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the amount of aid in the case of aid which does not take the form of a grant should be respectively the discount rate and the reference rate applicable at the time of the grant, as laid down in the Commission Communication on the revision of the method for setting the reference and discount rates ⁽¹⁾. Where aid is granted by means of tax advantages, aid tranches should be discounted on the basis of the discount rates applicable on the various dates when the tax advantages become effective. The use of aid in the form of repayable advances should be promoted, since such risk-sharing instruments are conducive to strengthened incentive effect of aid. It is therefore appropriate to establish that where aid is granted in the form of repayable advances the applicable aid intensities laid down in this Regulation may be increased, with the exception of regional aid since the latter may only be exempted if it complies with approved maps.
- (24) In the case of tax advantages on future taxes, the applicable discount rate and the exact amount of the aid tranches may not be known in advance. In such cases, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche at a given date becomes known, discounting can take place on the basis of the discount rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap (capped amount).
- (25) To determine whether the notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of State aid measures for the aided activity or project should be taken into account. Moreover, this Regulation should specify the circumstances under which different categories of aid may be cumulated. Aid exempted by this Regulation and any other compatible aid exempted under other Regulation or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same — partly or fully overlapping — identifiable eligible costs, cumulation should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation should also set out special rules for cumulation of aid measures with and without identifiable eligible costs, for cumulation with *de minimis* aid and for cumulation with aid in favour of workers with disabilities. *De minimis* aid is often not granted for or attributable to specific identifiable eligible costs. In such a case it should be possible to freely cumulate *de minimis* aid with State aid exempted under this Regulation. Where, however, *de minimis* aid is granted for the same identifiable eligible costs as State aid exempted under this Regulation, cumulation should only be allowed up to the maximum aid intensity as set out in Chapter III of this Regulation.
- (26) 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 Member States, does not constitute State aid. Where such Union funding is combined with State aid, only the latter should be considered for determining whether notification thresholds and maximum aid intensities are respected, provided 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.
- (27) Given that State aid within the meaning of Article 107(1) of the Treaty is, in principle, prohibited, it is important for all parties to be able to check whether an aid is granted in compliance with the applicable rules. Transparency of State aid is, therefore, essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. To ensure transparency, Member States should be required to establish comprehensive State aid websites, at regional or national level, setting out summary information about each aid measure exempted under this Regulation. That obligation should be a condition for the compatibility of the individual aid with the internal market. Following the standard practice regarding the publication of information in Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information ⁽²⁾, a standard format should be used which allows the information to be searched, downloaded and easily published on the internet. The links to the State aid websites of all the Member States should be published on the Commission's

⁽¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽²⁾ OJ L 175 27.6.2013, p. 1.

website. In accordance with Article 3 of Regulation (EC) No 994/98, as amended by Regulation (EU) No 733/2013, summary information on each aid measure exempted under this Regulation should be published on the website of the Commission.

- (28) To ensure effective monitoring of aid measures in accordance with Regulation (EC) No 994/98, as amended by Regulation (EU) No 733/2013, it is appropriate to establish requirements regarding the reporting by the Member States of aid measures which have been exempted pursuant to this Regulation and the application of this Regulation. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation, in light of the limitation period established in Article 15 of 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⁾.
- (29) To reinforce the effectiveness of compatibility conditions set out in this Regulation, it should be possible for the Commission to withdraw the benefit of the block exemption for the future aid measures in the event of failure to comply with these requirements. The Commission should be able to restrict the withdrawal of the benefit of the block exemption to certain types of aid, certain beneficiaries or aid measures adopted by certain authorities, where non-compliance with this Regulation affects only a limited group of measures or certain authorities. Such a targeted withdrawal should provide a proportionate remedy directly linked to the identified non-compliance with this Regulation. In case of failure to meet compatibility conditions set out in Chapters I and III, aid granted is not covered by this Regulation and, as a consequence, constitutes unlawful aid, which the Commission will examine in the framework of the relevant procedure as set out in Regulation No (EC) No 659/1999. In case of failure to fulfil the requirements of Chapter II, the withdrawal of the benefit of the block exemption in respect of the future aid measures does not affect the fact that the past measures complying with this Regulation were block exempted.
- (30) To eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Union and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises ⁽²⁾.
- (31) By addressing the handicaps of disadvantaged regions, regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context. In areas fulfilling the conditions of Article 107(3)(a) of the Treaty, regional aid may be granted to promote the setting-up of new establishments, the extension of the capacity of an existing establishment, the diversification of the output of an establishment or a fundamental change in the overall production process of an existing establishment. Considering that large enterprises are less affected by regional handicaps than SMEs when investing in an area fulfilling the conditions of Article 107(3)(c) of the Treaty, regional aid to large enterprises should be exempted from the notification requirement only for initial investments in favour of new economic activity in those areas.
- (32) Where a regional aid scheme is targeted at a limited number of sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, sectorial schemes cannot be exempted from the notification requirement. However, the Commission, upon notification, can assess their possible positive effects under the applicable guidelines or frameworks or decisions. In particular, this is the case for aid schemes covering economic activities in the coal sector, the shipbuilding sector, the transport sector. Furthermore, due to particular characteristics of the steel and synthetic fibres sectors, it is considered that the negative effects of regional aid in those sectors cannot be outweighed by the positive cohesion effects; for those reasons, regional aid cannot be granted in these sectors. Finally, the tourism and broadband sectors play an important role in national economies and, in general, have a particularly positive effect on regional development. Regional aid schemes aimed at tourism activities and broadband should therefore be exempted from the notification requirement. Processing and marketing of agricultural products are also strongly linked with local and regional economies and should benefit from the block exemption.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ L 124, 20.5.2003, p. 36.

- (33) Energy generation, distribution and infrastructure are subject to sector-specific internal market legislation, which is reflected in the criteria for ensuring that aid in these areas is compatible with the internal market and consistent with the Union's environmental and energy policies. Regional aid granted under Section 1 of this Regulation pursues economic development and cohesion objectives, and is therefore subject to very different compatibility conditions. The provisions of this Regulation on regional aid should therefore not apply to measures concerning energy generation, distribution and infrastructure.
- (34) Investments enabling undertakings to go beyond Union standards or increase the level of environmental protection in the absence of Union standards, investments for early adaptation to future Union standards, investments for energy efficiency measures, including energy efficiency projects in buildings, investments for remediation of contaminated sites and aid for environmental studies do not directly influence the functioning of energy markets. At the same time, such investments may contribute to both regional policy objectives and to the energy and environmental objectives of the European Union. In such cases, the provisions of this Regulation relating to both regional aid and aid for environmental protection may be applicable, depending on the main objective pursued by the measure concerned.
- (35) In order not to favour capital investment over investment in labour costs, it should be possible to measure regional investment aid on the basis of either the costs of the investment or the wage costs of employment directly created by an investment project.
- (36) Regional investment aid should not be exempted from notification when it is granted to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned.
- (37) The Commission has gained sufficient experience in the application of Article 107(3)(a) and (c) of the Treaty as regards regional operating aid to compensate for the additional transport costs of goods produced in the outermost regions or in sparsely populated areas, and of goods further processed in those areas, as well as the additional production and operating costs (other than additional transport costs) incurred by beneficiaries established in the outermost regions. Since there is a risk of over-compensation for transport costs resulting from additional support under the POSEI programmes in the agriculture sector and since it cannot be excluded that some agricultural products are not produced in an alternative location, the agriculture sector should be excluded from regional operating aid to compensate the additional transport costs of goods produced in the outermost regions or in sparsely populated areas under this Regulation. Regional operating aid to compensate for additional costs in the outermost regions, other than additional transport costs, should only be considered compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty in so far as the level of that aid is limited to either 15 % of the gross value added annually created by the beneficiary in the outermost region concerned or 25 % of the annual labor costs incurred by the beneficiary in the outermost region concerned, or 10 % of the annual turnover of the beneficiary in the outermost region concerned. Where the aid does not exceed the amount resulting from one of those alternative methods to determine the additional operating costs (other than transport costs), it can be considered as justified in terms of contributing to regional development and proportionate to the handicaps that undertakings face in the outermost regions.
- (38) By addressing the high concentration of economic, environmental and social problems of urban areas located in assisted areas identified in a regional aid map, urban development aid contributes to the economic, social and territorial cohesion of the Member States and the Union as a whole. The market failures to be addressed by urban development aid refer to the urban development funding environment, the lack of an integrated urban development approach, a funding deficit necessitating greater leverage of scarce public resources and the need for a more commercial approach to the regeneration of urban areas. Urban development aid to support the development of participative, integrated and sustainable strategies to tackle the additional problems identified in the assisted areas should therefore be covered by the block exemption.
- (39) Investments corresponding to the Europe 2020 ⁽¹⁾ priorities in green technologies and the shift towards a low carbon economy, undertaken in assisted areas as identified in the relevant regional aid map, should be eligible for higher aid amounts by means of a regional bonus.

⁽¹⁾ EUCO 13/10 REV 1.

- (40) SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and economic development. However, their development may be hampered by market failures, leading to these SMEs suffering from the following typical handicaps. SMEs often have difficulties in obtaining capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. To facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs. Those categories should include, in particular SME investment aid and SME participation in fairs.
- (41) SMEs participating in the European Territorial Cooperation (ETC) projects covered by Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal ⁽¹⁾ often find difficulties in financing additional costs stemming from the cooperation between partners located in different regions and in different Member States or third countries. Given the importance of the ETC for the cohesion policy providing a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States or third countries, this Regulation should address certain difficulties faced by ETC projects in order to facilitate their compliance with State aid rules. The ETC-specific issues that this Regulation should address relate to the applicable regional aid intensity for ETC projects, SMEs' co-operation costs linked to ETC projects and to obligations concerning publication and information, reporting and keeping records for monitoring purposes.
- (42) Having regard to the specific handicaps and differences between SMEs, different basic aid intensities and different bonuses may apply.
- (43) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in SMEs ⁽²⁾, there are a number of specific risk capital market failures in the Union in respect of certain types of investments at the different stages of the undertakings' development. Those market failures result from an imperfect matching of supply and demand for risk capital. As a result, the level of risk capital provided in the market may be too restricted and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. It not only affects the provision of risk capital, but also hampers access to debt finance for certain SMEs. Consequently, risk finance measures which seek to attract private capital for risk finance provision to unlisted SMEs affected by the funding gap and which ensure profit-driven financing decisions and commercial management of financial intermediaries should be exempted from the notification requirement under certain conditions.
- (44) Start-up aid for small enterprises, aid to alternative trading platforms specialised in SMEs and aid for costs related to the scouting of SMEs should also be exempted from the notification requirement under certain conditions.
- (45) Aid for research and development and innovation aid can contribute to sustainable economic growth, strengthen competitiveness and boost employment. Experience with the application of Regulation (EC) No 800/2008 and the Community framework for State aid for research and development and innovation ⁽³⁾ shows that market failures may prevent the market from reaching optimal output and lead to inefficiencies related to externalities, public goods/knowledge spill-overs, imperfect and asymmetric information, and coordination and network failures.
- (46) SMEs, may experience difficulties in gaining access to new technological developments, knowledge transfer or highly qualified personnel. Aid for research and development projects, aid for feasibility studies and innovation aid for SMEs, including aid to cover the costs of industrial property rights, may remedy those problems and should therefore be exempted from the notification requirement under certain conditions.

⁽¹⁾ OJ L 347, 20.12.2013, p. 259.

⁽²⁾ OJ C 194, 18.8.2006, p. 2.

⁽³⁾ OJ C 323, 30.12.2006, p. 1.

- (47) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task should be qualified as falling under one of those categories or as not falling under any of those categories. That qualification need not necessarily be chronological, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late project stage may be qualified as industrial research. Similarly, an activity carried out at an earlier stage may constitute experimental development. The aided part of the project may also include feasibility studies preparatory to research activities.
- (48) High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation because they attract global talent and are essential in supporting new information and communication technologies and key enabling technologies. Public research infrastructures should continue to partner with industry research. Access to publicly funded research infrastructures should be granted on a transparent and non-discriminatory basis and on market terms. If those conditions are not respected, the aid measure should not be exempted from the notification requirement. Multiple parties may own, operate and use a given research infrastructure, and public entities and undertakings may use the infrastructure collaboratively.
- (49) Research infrastructures may perform both economic and non-economic activities. In order to avoid granting State aid to economic activities through public funding of non-economic activities, the costs and financing of economic and non-economic activities should be clearly separated. Where an infrastructure is used for both economic and non-economic activities, the funding through State resources of the costs linked to the non-economic activities of the infrastructure does not constitute State aid. Public funding falls under State aid rules only insofar as it covers costs linked to the economic activities. Only the latter should be taken into account with a view to ensuring compliance with the notification thresholds and maximum aid intensities. If the infrastructure is used almost exclusively for a non-economic activity, its funding may fall outside State aid rules in its entirety, provided that the economic use remains purely ancillary, that is to say, an activity which is directly related to and necessary for the operation of the infrastructure or intrinsically linked to its main non-economic use, and is limited in scope. This should be considered to be the case when the economic activities consume the same inputs (such as material, equipment, labour and fixed capital) as the non-economic activities and the capacity allocated each year to such economic activity does not exceed 20 % of the research infrastructure's overall annual capacity.
- (50) Aid for innovation clusters aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters. State aid can either support investment in open and shared infrastructures for innovation clusters, or support the operation of clusters, so that collaboration, networking and learning is enhanced. Operating aid for innovation clusters should, however, only be allowed on a temporary basis for a limited period not exceeding 10 years. The ratio of the total amount of aid granted to the total eligible costs should not exceed 50 % during the period over which the aid is granted,
- (51) Process and organisational innovation may suffer from market failures in the form of imperfect information and positive externalities, which should be addressed by specific measures. Aid for this type of innovation is mainly relevant for SMEs, as they face constraints that may hamper their capability to improve their production or delivery methods or to significantly enhance their business practices, workplace organisation and external relations. In order to stimulate large enterprises to collaborate with SMEs in process and organisational innovation activities, aid measures which support the costs of large enterprises for such activities should also benefit from the block exemption regulation under certain conditions.
- (52) The promotion of training and the recruitment/employment of disadvantaged workers and of workers with disabilities constitutes a central objective of the economic and social policies of the Union and its Member States.
- (53) Training usually generates positive externalities for society as a whole, since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of the Union industry and plays an important role in the Union employment strategy. Aid to promote training should therefore be exempted from the notification requirement under certain conditions. In the light of the particular handicaps which SMEs face and the higher relative costs that they must bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. Furthermore, the intensities of aid exempted by this Regulation should be increased if the training is given to disadvantaged workers or to workers with disabilities. The characteristics of training in the maritime transport sector justify a specific approach for that sector.

- (54) Certain categories of disadvantaged workers and workers with disabilities still experience particular difficulties in entering and remaining in the labour market. For this reason, public authorities may apply measures providing incentives to undertakings to increase the levels of employment of these categories of workers, in particular of young people. As employment costs form part of the normal operating costs of any undertaking aid for the employment of disadvantaged workers and of workers with disabilities should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempted from the notification requirement when it is likely to assist those categories of workers in entering or re-entering and remaining in the job market. As set out in the Communication from the Commission to The European Parliament, the Council, the European Economic And Social Committee and the Committee Of The Regions — European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe ⁽¹⁾ the core elements of the EU disability strategy, combine anti-discrimination, equal opportunities and active inclusion measures and reflect the United Nations Convention on the Rights of Persons with Disabilities to which the EU and the majority of the Member States are a party. This Regulation should refer to aid for workers with disabilities in the sense of Article 1 of the Convention.
- (55) As stated in the Communication from the Commission — Europe 2020: A strategy for smart, sustainable and inclusive growth ⁽²⁾, Sustainable growth for a resource efficient, greener and more competitive economy is one of the main pillars of the Europe 2020 objective of the smart, sustainable and inclusive growth strategy. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. The area of environmental protection is confronted with market failures so that, under normal market conditions, undertakings may not necessarily have an incentive to reduce the pollution caused by them since any such reduction may increase their costs without corresponding benefits. When undertakings are not obliged to internalise the costs of pollution, society as a whole bears these costs.
- (56) Introducing mandatory environmental standards can address such market failure. A higher level of environmental protection can be achieved by investments that go beyond mandatory Union standards. In order to incentivise undertakings to improve the level of environmental protection beyond these mandatory Union standards, State aid in this area should be covered by the block exemption. In order not to dissuade Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, such State aid should be exempt, irrespective of the presence of mandatory national standards that are more stringent than the Union standard.
- (57) In principle aid should not be granted where investments bring undertakings into compliance with Union standards already adopted and not yet in force. However, State aid may result in undertakings improving their environmental behaviour if such State aid incentivises undertakings to adapt early to future Union standards before such standards enter into force and as long as such standards do not apply retroactively. Aid to undertakings to adapt to future Union standards, may result in a high level of environmental protection being achieved sooner and such aid should therefore be exempted.
- (58) As part of the Europe 2020 strategy, the Union has set itself the objective of achieving a 20 % increase in energy efficiency by 2020 and has, in particular, adopted 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 ⁽³⁾ which establishes a common framework to promote energy efficiency within the Union pursuing the overall objective of saving at least 20 % of the Union's primary energy consumption. In order to facilitate the achievement of those targets, measures supporting energy efficiency, high-efficiency cogeneration as well as energy efficient district heating and cooling should be covered by the block exemption.
- (59) Measures increasing the energy efficiency of buildings correspond to Europe 2020 priorities concerning a shift towards a low carbon economy. Due to the lack of an integrated approach for energy efficiency in buildings, such investments may often face a funding deficit necessitating greater leverage of scarce public resources. Therefore the Member States should have the possibility to support energy efficiency investments in buildings by granting aid in the form of direct grants to the building owners or tenants in line with the general provisions on energy

⁽¹⁾ Com(2010)636, 15.11.2010.

⁽²⁾ Com(2010) 2020, 3.3.2010.

⁽³⁾ OJ L 315, 14.11.2012, p. 1.

efficiency measures but also in the form of loans and guarantees via financial intermediaries chosen under a transparent selection mechanism under the specific provisions for energy efficiency projects in buildings.

- (60) To achieve the Union's renewable energy targets set out in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC ⁽¹⁾ and to the extent that additional support is needed on top of a regulatory framework such as the Union emission trading scheme in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ⁽²⁾, aid granted to investments supporting energy from renewable sources should be covered by the block exemption.
- (61) In view of the limited distortions of trade and competition, the block exemption should also cover operating aid for small scale installations producing renewable energy, subject to well-defined conditions. Operating aid to larger scale installations should be covered by the block exemption where distortions of competition are limited. Therefore, such operating aid can be block exempted when granted to new and innovative technologies if the aid is granted on the basis of a competitive bidding process open to at least one such technology using a mechanism which exposes renewable energy producers to market prices. The total aid granted on this basis cannot be granted for more than 5 % of the planned new electricity capacity from renewable energy sources. Aid granted through bidding processes open to all renewable energy technologies should be fully covered by the block exemption. Operating aid schemes should in principle be opened to other EEA countries and contracting parties of the Energy Community to limit the overall distortive effects. Member States are encouraged to consider having a co-operation mechanism in place before allowing cross border support. In the absence of a cooperation mechanism, production from installations in other countries will not count towards their national renewable energy target. In view of these constraints, Member States should be allowed sufficient lead time in order to design appropriate support schemes that are open to other countries. Therefore, such opening is not a condition for exemption from notification, to the extent it is not required under the Treaty.
- (62) With regard to aid for the production of hydropower, its impact can be twofold. On the one hand, it has a positive impact in terms of low greenhouse gas emissions and on the other hand it might also have a negative impact on water systems and biodiversity. Therefore, when granting aid to hydropower Member States should comply with Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽³⁾ and in particular Article 4(7) which lays down criteria in relation to allowing new modifications of bodies of water.
- (63) Aid should only be granted to sustainable forms of renewable energy. Aid to biofuels should only be covered by this Regulation in so far as it is granted for sustainable biofuels in accordance with the Directive 2009/28/EC of the European Parliament and the Council. However, aid for food based biofuels should be excluded from aid under this Regulation to incentivise the shift towards the production of more advanced forms of biofuels. Aid to biofuels that are subject to a supply or blending obligation should be excluded from the scope of the block exemption as the above legal obligation may provide sufficient incentive for investments in these types of renewable energy.
- (64) Aid in the form of tax reductions pursuant to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽⁴⁾ favouring environmental protection covered by this Regulation can indirectly benefit the environment. However, environmental taxes should reflect the social cost of emissions while reductions from taxes may adversely impact on this objective. It therefore seems appropriate to limit their duration to the period of application of this Regulation. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. In order to minimise the distortion of competition, the aid should be granted in the same way for all competitors found to be in a similar factual situation. To better preserve the price signal for undertakings which the environmental tax aims to give, Member States should have the option to design the tax reduction scheme based on a fixed annual compensation amount (tax refund) disbursement mechanism.

⁽¹⁾ OJ L 140, 5.6.2009, p. 16.

⁽²⁾ OJ L 275, 25.10.2003, p. 32.

⁽³⁾ OJ L 327, 22.12.2000, p. 1.

⁽⁴⁾ OJ L 283, 31.10.2003, p. 51.

- (65) In the light of the ‘polluter pays principle’, the costs of measures to deal with pollution should be borne by the polluter who causes the pollution. Aid for the remediation of contaminated sites is justified in cases where the person liable under the applicable law for the contamination cannot be identified. However, the conditions on environmental liability with regard to the prevention and remediation of environmental damage as defined in the 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 ⁽¹⁾ 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 and amending Directive 2004/35/EC ⁽²⁾ and 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, 2008/1/EC and Regulation (EC) No 1013/2006 ⁽³⁾ should apply. Therefore, to facilitate the correction of existing environmental damage, this type of aid should be covered by the block exemption under certain conditions.
- (66) In line with the waste hierarchy established in the European Union’s Waste Framework Directive, the Seventh Environment Action Programme identifies waste re-use and recycling as key priorities of the European Union environmental policy. State aid for these activities can contribute to environmental protection provided that Article 4(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Waste Framework Directive) ⁽⁴⁾ are respected. Moreover, such aid should not indirectly relieve the polluters of a burden they should bear under Union law, or of a burden that should be considered a normal company cost. Therefore, aid benefitting such activities should be covered by the block exemption including when it concerns waste of other undertakings and where the materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner.
- (67) A modern energy infrastructure is crucial both for an integrated energy market and to enable the Union to meet its climate and energy goals. In particular, infrastructure construction and upgrade in assisted regions contribute to the economic, social and territorial cohesion of Member States and the Union as a whole by supporting investment and job creation and the functioning of energy markets in the most disadvantaged areas. In order to limit any undue distortive effects of such aid, only aid to infrastructures subject to and in accordance with the internal energy market legislation should be block exempted.
- (68) Environmental studies can help to identify the investments necessary to achieve a higher level of environmental protection. State aid to support the carrying out of environmental studies which aim to support investments in environmental protection as covered by this Regulation should therefore be covered by the block exemption. As energy audits are mandatory for large enterprises, they should not benefit from State aid.
- (69) In accordance with Article 107(2)(b) of the Treaty, aid to make good the damage caused by natural disasters is compatible with the internal market. In order to provide legal certainty it is necessary to define the type of events that may constitute a natural disaster exempted by this Regulation. For the purposes of this Regulation, earthquakes, landslides, floods, in particular floods brought about by waters overflowing river banks or lake shores, avalanches, tornadoes, hurricanes, volcanic eruptions and wildfires of natural origin should be considered events constituting a natural disaster. Damage caused by adverse weather conditions such as frost, hail, ice, rain or drought, which occur on a more regular basis, should not be considered a natural disaster within the meaning of Article 107(2)(b) of the Treaty. In order to ensure that aid granted to make good the damage caused by natural disasters is indeed covered by the exemption, this Regulation should lay down conditions following established practice the fulfilment of which will ensure that aid schemes to make good the damage caused by natural disasters can benefit from block exemption. Those conditions should relate, in particular, to the formal recognition by the competent Member States’ authorities of the character of the event as a natural disaster and to a direct causal link between the natural disaster and the damages suffered by the beneficiary undertaking, which may include undertakings in difficulty, and should ensure that overcompensation is avoided. The compensation should not exceed what is necessary to enable the beneficiary to return to the situation prevailing before the disaster occurred.

⁽¹⁾ OJ L 143, 30.4.2004, p. 56.

⁽²⁾ OJ L 102, 11.4.2006, p. 15.

⁽³⁾ OJ L 140, 5.6.2009, p. 114.

⁽⁴⁾ OJ L 312, 22.11.2008, p. 3.

- (70) Aid has a social character for air and maritime passenger transport where it addresses the problem of steady connectivity for residents of remote regions by reducing certain transport ticket costs for them. This may be the case for outermost regions, Malta, Cyprus, Ceuta and Melilla, other islands which are part of the territory of a Member State and sparsely populated areas. Where a remote region is linked to the European Economic Area by several transport routes, including indirect routes, aid should be possible for all those routes and for transport by all carriers operating on these routes. Aid should be granted without discrimination as to the identity of the carrier or type of service and may include regular, charter and low-cost services.
- (71) Broadband connectivity is of strategic importance for the achievement of the Europe 2020 objective of smart, sustainable and inclusive growth and innovation and for social and territorial cohesion ⁽¹⁾. Investment aid for broadband infrastructure aims at fostering the deployment of such infrastructure and related civil engineering works in areas where no comparable infrastructure exists nor is likely to be deployed by market operators in the near future. In the light of the Commission's experience, such investment aid does not give rise to undue distortions of trade and competition, provided that certain conditions are met. Such conditions should aim, in particular, at limiting distortions of competition by subjecting aid to technology-neutral competitive selection and by ensuring wholesale access to the subsidised networks, taking into account the aid received by the network operator. Although under certain conditions virtual unbundling may be considered equivalent to physical unbundling, until more experience is acquired, there is a need to assess on a case by case basis whether a particular non-physical or virtual wholesale access product should be considered equivalent to local loop unbundling of a copper or fibre network. For this reason, and until such experience in individual State aid cases or in the *ex ante* regulatory context can be taken into account in a future review, physical unbundling should be required for the purposes of benefiting from the present block exemption regulation. Where future costs and revenue developments are uncertain and there is a strong asymmetry of information, Member States should also adopt financing models that include monitoring and claw-back elements to allow a balanced sharing of unanticipated gains. To avoid a disproportionate burden on small, local projects, such models should be put in place only for projects exceeding a minimum threshold.
- (72) In the culture and heritage conservation sector, a number of measures taken by Member States may not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the activity is not economic or because trade between Member States is not affected. To the extent that such measures are covered by Article 107(1) of the Treaty, cultural institutions and projects do not typically give rise to any significant distortion of competition, and case practice has shown that such aid has limited effects on trade. Article 167 of the Treaty recognises the importance of promoting culture for the Union and its Member States and provides that the Union should take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. As natural heritage is often crucial to shaping of artistic and cultural heritage, heritage conservation in the sense of this Regulation should be understood to cover also natural heritage linked to cultural heritage or formally recognised by the competent public authorities of a Member State. Because of the dual nature of culture, being on the one hand an economic good that offers important opportunities for the creation of wealth and employment, and, on the other, a vehicle of identities, values and meanings that mirror and shape our societies, State aid rules should acknowledge the specificities of culture and the economic activities related to it. A list of eligible cultural purposes and activities should be established and eligible costs should be specified. The block exemption should cover both investment and operating aid below determined thresholds provided that overcompensation is excluded. In general, activities which, although they may present a cultural aspect, have a predominantly commercial character because of the higher potential for competition distortions, such as press and magazines (written or electronic), should not be covered. Furthermore, the list of eligible cultural purposes and activities should not include commercial activities such as fashion, design or video games.
- (73) Audiovisual works play an important role in shaping European identities and reflect the different traditions of Member States and regions. While there is strong competition between films produced outside the Union, there is limited circulation of European films outside their country of origin due to the fragmentation into national or regional markets. The sector is characterised by high investment costs, a perceived lack of profitability due to limited audiences and difficulties to generate additional private funding. Due to these factors the Commission has developed specific criteria to assess the necessity, proportionality and adequacy of aid to script-writing, development, production, distribution and promotion of audiovisual works. New criteria were determined in the

⁽¹⁾ COM(2010) 245, 19.5.2010.

Communication from the Commission on State aid for films and other audiovisual works ⁽¹⁾ and should be reflected in block exemption rules for aid schemes for audiovisual works. Higher aid intensities are justified for cross-border productions and co-productions which are more likely to be distributed in several Member States.

- (74) Investment aid measures for sport infrastructures should be covered by the block exemption if they fulfil the conditions laid down in this Regulation, to the extent they constitute State aid. In the sport sector a number of measures taken by Member States may not constitute State aid because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. This could be, under certain circumstances, the case for aid measures which have a purely local character or which are taken in the field of amateur sport. Article 165 of the Treaty recognises the importance of promoting European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function. Aid to infrastructures which serve more than one purpose of recreation and are thus multifunctional should also be covered by the block exemption. However, aid to multifunctional tourism infrastructures such as leisure parks and hotel facilities should only be exempted if it is part of a regional aid scheme aimed at tourism activities in an assisted region which have a particular positive effect on regional development. The compatibility conditions regarding aid for sport or multifunctional infrastructures should ensure, in particular, open and non-discriminatory access to the infrastructures and a fair process of assignment of concessions to a third party in accordance with the relevant provisions of Union law and the case law of the Union to construct, upgrade and/or operate the infrastructure. If sport infrastructure is used by professional sport clubs, pricing conditions for the use of the infrastructure by those clubs should be made publicly available to ensure transparency and equal treatment of users. The exclusion of overcompensation should be ensured.
- (75) As emphasized by the conclusions of the European Council of the 17 June 2010 endorsing the Europe 2020 Strategy ⁽²⁾, efforts should seek to address the main bottlenecks constraining growth at EU level, including those related to the functioning of the internal market and infrastructure. The availability of local infrastructures is an important prerequisite for development of business and consumer environment and for modernising and developing the industrial base in order to ensure the full functioning of the internal market as referred to in the Council Recommendation on broad guidelines for economic policies of the Member States and of the Union ⁽³⁾, which form part of the Europe 2020 integrated guidelines. Such infrastructures, made available to interested parties on an open, transparent and non-discriminatory basis, enable the creation of an environment conducive to private investment and growth, thus contributing positively to objectives of common interest, and in particular to the Europe 2020 priorities and objectives ⁽⁴⁾, while the risks of distortions remain limited. A number of measures taken by Member States with regard to local infrastructures do not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the beneficiary does not carry out an economic activity, because there is no effect on trade between Member States, or because the measure consists of compensation for a service of general economic interest which fulfils all the criteria of the Altmark case-law ⁽⁵⁾. However, where the financing of such local infrastructures does constitute State aid within the meaning of Article 107(1) of the Treaty, such aid should be exempted from the notification requirement when only small amounts of aid are granted.
- (76) Since aid for other types of infrastructures may be subject to specific and well-designed criteria which ensure its compatibility with the internal market, the provisions of this Regulation regarding aid for local infrastructures should not apply to aid to the following types of infrastructures: research infrastructures, innovation clusters, energy efficient district heating and cooling, energy infrastructures, waste recycling and re-use, broadband infrastructures, culture and heritage conservation, sport and multifunctional recreational infrastructures, airports and ports.
- (77) In the light of the Commission's experience in this area, State aid policy should periodically be revised. The period of application of this Regulation should therefore be limited. It is appropriate to lay down transitional provisions, including the rules applicable to exempted aid schemes at the end of the period of application of this Regulation. Such rules should give Member States time to adapt to any future regime. The adjustment period should not, however, apply to regional aid schemes, including regional urban development aid schemes, the exemption of which must expire on the date on which the approved regional aid maps expire, and to certain risk finance aid schemes,

⁽¹⁾ OJ C 332, 15.11.2013, p. 1.

⁽²⁾ EUCO 13/10 REV 1.

⁽³⁾ OJ L 191, 23.7.2010, p. 28.

⁽⁴⁾ Com(2010)2020, 3.3.2010.

⁽⁵⁾ Judgment of the Court of Justice of 24 July 2003 in Case C-280/00, Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH and Oberbundesanwalt beim Bundesverwaltungsgericht ([2003] ECR I-7747).

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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;
- (k) aid for sport and multifunctional recreational infrastructures; and
- (l) aid for local infrastructures.

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;
- (d) aid contingent upon the use of domestic over imported goods.

3. 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 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 ⁽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 and aid for disadvantaged workers and workers with disabilities;
- (b) aid granted in the primary agricultural production sector, with the exception of compensation for additional costs other than transport costs in outermost regions as provided for in Article 15(2)(b), 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; or
 - (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 No 2010/787;
- (e) the categories of regional aid excluded 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⁾ OJ L 354, 28.12.2013, p. 1.

4. This Regulation shall not apply to:
- (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 illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;
 - (b) ad hoc aid in favour of an undertaking as referred to in point (a);
 - (c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters.
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
 - (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;
- (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;

⁽¹⁾ OJ L 336, 21.12.2010, p. 24.

- (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 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
- (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;

⁽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.

- (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.
- (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;
- (39) 'operating profit' means the difference between the discounted revenues and the discounted operating costs over the relevant 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, for the purpose of this Regulation, depreciation charges and the costs of financing if these have been covered by investment aid.

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;

- (42) 'regional operating aid' means aid to reduce an undertaking's current expenditure that is not related to an initial investment. This includes cost categories such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but excludes depreciation charges and the costs of financing if these have been included in the eligible costs when granting investment aid;
- (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:
- (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;
- (48) 'sparsely populated areas' means those areas which are recognized by the Commission as such in the individual decisions on regional aid maps for the period 1.7.2014-31.12.2020;
- (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 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;
- (55) 'areas eligible for operating aid', means an outermost region referred to in Article 349 of the Treaty or a sparsely populated area, as determined in the approved regional aid map for the Member State concerned for the period 1.7.2014-31.12.2020;
- (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;

⁽¹⁾ OJ L 393, 30.12.2006, p. 1.

- (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;
- (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;

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 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;
- (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 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;

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

- (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;
- (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;

⁽¹⁾ OJ L 206, 8.8.2009, p. 1.

- (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;
- (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;
- (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;

⁽¹⁾ OJ L 24, 29.1.2008, p. 8.

- (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 ⁽¹⁾;
- (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;
- (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 ⁽²⁾;
- (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;

⁽¹⁾ OJL 315, 14.11.2012, p. 1.

⁽²⁾ COM(2012) 595, 17.10.2012.

- (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 ⁽¹⁾;
- (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 ⁽²⁾;
- (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

⁽¹⁾ OJ L 283, 31.10.2003, p. 51.

⁽²⁾ OJ L 211, 14.8.2009, p. 55.

- (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
 - (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;

⁽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.

- (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.
- (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 Co-operation and Development (OECD);
- (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.

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;
 - (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;
 - (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;
- (z) for investment aid for culture and heritage conservation: EUR 100 million per project; operating aid for culture and heritage conservation: EUR 50 million per undertaking per year;
- (aa) for aid schemes for audiovisual works: EUR 50 million per scheme per year;
- (bb) for investment aid for sports and multifunctional infrastructures: EUR 15 million or the total costs exceeding EUR 50 million per project; operating aid for sport infrastructure: EUR 2 million per infrastructure per year; and
- (cc) for investment aid for local infrastructures: EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure.

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 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;

⁽¹⁾ OJ C 155, 20.6.2008, p. 10.

- (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.

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:
 - (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:
 - (a) regional operating aid, if the conditions laid down in Article 15 are fulfilled,
 - (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,
- (d) aid compensating for the additional costs of employing workers with disabilities, if the conditions laid down in Article 34 are fulfilled;
- (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.
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. 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.
4. Where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the discount rates applicable at the various times the tax advantage takes effect.
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.

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.

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):

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.

⁽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.

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.

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.

Article 12

Monitoring

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. The Member State concerned shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation.

⁽¹⁾ OJ L 140, 30.4.2004, p. 1.

CHAPTER III

SPECIFIC PROVISIONS FOR DIFFERENT CATEGORIES OF AID

SECTION 1

Regional aid

Subsection A

Regional investment and operating aid

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, the synthetic fibres sector, the transport sector as well as the related infrastructure, energy generation, distribution and infrastructure;
- (b) 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;
- (c) regional aid in the form of schemes which compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and granted in favour of:
 - (i) activities in the production, processing and marketing of products listed in Annex I to the Treaty; or
 - (ii) activities classified in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing 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⁾ as agriculture, forestry and fishing under section A of the NACE Rev. 2 statistical classification of economic activities, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or
 - (iii) transport of goods by pipeline;
- (d) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the European Economic Area in the two years preceding its application for regional investment aid or which, at the time of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned;
- (e) 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.

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.

⁽¹⁾ OJ L 393, 30.12.2006, p. 1.

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.

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.

In the case of acquisition of the assets of an establishment within the meaning of Article 2 point 49, 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. For aid granted 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;
- (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:
- 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
 - 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
 - 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.
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.

Article 15

Regional operating aid

1. Regional operating aid schemes in outermost regions and sparsely populated areas as designated by the Member States within their regional aid map approved by the Commission in accordance with paragraph 161 of the Guidelines on regional State aid for 2014-2020⁽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 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 these areas, under the following conditions:
 - the beneficiaries have their production activity in those areas;
 - the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit;
 - these 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. Only for outermost regions, additional transport costs of goods that are further processed in these areas may include the costs of transporting goods from any place of their production to these areas.

⁽¹⁾ OJ C 209, 23.7.2013, p. 1.

- (b) the additional operating costs other than transport costs, incurred in outermost regions as a direct effect of one or several of the permanent handicaps referred to in Article 349 of the Treaty, under the following conditions:
- (i) the beneficiaries have their economic activity in an outermost region;
 - (ii) the annual aid amount per beneficiary under all operating aid schemes does not exceed:
 - 15 % of the gross value added annually created by the beneficiary in the outermost region concerned; or
 - 25 % of the annual labour costs incurred by the beneficiary in the outermost region concerned; or
 - 10 % of the annual turnover of the beneficiary realised in the outermost region concerned.
3. The aid intensity shall not exceed 100 % of the eligible additional costs as determined in this Article.

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;
 - (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;

⁽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).

- (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.
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;
 - (b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, 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. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;
 - (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.
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.
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.
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.
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.
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:
 - (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.

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.

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.
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;

⁽¹⁾ OJ L 315, 14.11.2012, p. 1.

- (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 (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.

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.
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, 2008/1/EC and Regulation (EC) No 1013/2006 ⁽⁴⁾ 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 ⁽⁵⁾ — 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.

⁽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.

⁽⁴⁾ OJ L 140, 5.6.2009, p. 114.

⁽⁵⁾ OJ L 178, 28.6.2013, p. 66.

- (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.
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.

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</i> aid	
Amendment of an existing aid scheme or <i>ad hoc</i> aid	.....
	<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</i> aid	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)

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

⁽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').

⁽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.

⁽⁴⁾ Period during which the granting authority can commit itself to grant the aid.

⁽⁵⁾ Determined in line with Article 2, point 27 of the Regulation.

⁽⁶⁾ NACE Rev. 2 - Statistical classification of Economic Activities in the European Community. Typically, the sector shall be specified at group level.

⁽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.

⁽⁸⁾ In case of an *ad hoc* aid award: Indicate the overall aid amount/tax loss.

⁽⁹⁾ For guarantees, indicate the (maximum) amount of loans guaranteed.

⁽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.

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 %	
<input type="checkbox"/> SME aid (Art. 17-18-19-20)	 % %	
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)) % %
	<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)	 % %

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"/> 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 (Art. 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) % %
	<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) % %	

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"/> 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 audio-visual 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)	 % %
⁽¹⁾ In the case of <i>ad hoc</i> regional aid supplementing aid awarded under aid scheme(s), please indicate both the aid intensity granted under the scheme and the intensity of the <i>ad hoc</i> 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⁾ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1), as amended by Commission Regulation (EEC) No 761/93 of 24 March 1993 (OJ L 83, 3.4.1993, p. 1, and corrigendum, OJ L 159, 11.7.1995, p. 31).

⁽³⁾ Gross grant equivalent, or for risk finance schemes, 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.